

132 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

RRI Energy, Inc.
RRI Energy Wholesale Generation, LLC

Docket No. IN10-7-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued September 27, 2010)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and RRI Energy, Inc. (RRI, formerly known as Reliant Energy, Inc.) and RRI Energy Wholesale Generation, LLC (REWG). This order is in the public interest because it resolves the investigation into self-reported violations by RRI and REWG of the Commission's open access transportation program, including the prohibition on buy/sell transactions and competitive bidding requirements for long-term, discounted rate capacity releases. RRI and REWG have agreed to pay a civil penalty of \$750,000 and to submit compliance monitoring reports.¹

Background

2. RRI, through its subsidiaries, provides energy, capacity, ancillary, and other energy services to wholesale customers in competitive markets in the United States. RRI and its subsidiary REWG directly or indirectly own and operate natural gas-fired electric generating plants. Among the generating plants owned directly or indirectly by RRI and REWG at the relevant time are (1) Aurora, a summer peaking facility in Aurora, Illinois; (2) Shelby, a summer peaker located in Shelby County, Illinois; and (3) Astoria, a

¹ The civil penalty was agreed upon prior to the issuance of the Revised Policy Statement on Penalty Guidelines. Because RRI, REWG, and staff had already begun settlement negotiations before the Revised Policy Statement was issued, the Penalty Guidelines are not applicable. *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 at P 1, n.2 (2010).

summer peaker located in New York City. At the time of the conduct under investigation, REWG's interests in the Aurora and Shelby plants were held by Reliant Energy Aurora, LP and Reliant Energy Shelby County, LP, respectively, and RRI indirectly owned Astoria Generating Company L.P. (Astoria), which owned and operated the Astoria electric generating facility in the New York City area. Reliant Energy Aurora, LP and Reliant Energy Shelby County, LP were later merged into REWG. RRI Energy Services, Inc. (RES) (formerly Reliant Energy Services, Inc.) is responsible for buying, selling, and managing natural gas for all of RRI's generating plants.

3. Following a self-report by RRI, Enforcement staff opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010), into possible violations of the Commission's open access transportation program between January 2000 and March 2008. RRI self-reported potential buy/sell and "flipping"² transactions. Staff confirmed that the reported buy/sell and flipping transactions were violations of the Commission's open access transportation program, including the prohibition on buy/sell transactions and competitive bidding requirements for long-term, discounted rate capacity releases.

Violations

A. Prohibited Buy/Sell Transactions

4. The Commission has prohibited certain buy/sell transactions. A prohibited buy/sell transaction is a commercial arrangement where a shipper holding interstate pipeline capacity buys gas at the direction of, on behalf of, or directly from another entity (e.g., an end-user), ships that gas through its interstate pipeline capacity, and then resells an equivalent quantity of gas to the downstream entity at the delivery point. *See Williams Energy Marketing & Trading Co.*, 92 FERC ¶ 61,219, at 61,715-16 (2000). By prohibiting buy/sell transactions, the Commission prevents a capacity holder with priority to pipeline capacity from acting as a broker of transportation capacity or assigning transportation capacity to end-use customers. Such practices, if permitted, would be a barrier to open access transportation on interstate pipelines.

² Flipping is a term that describes transactions that avoid the posting and bidding requirements for discounted rate firm capacity at 18 C.F.R. § 284.8 (2009). Flipping is typically a series of short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis, without complying with the posting and bidding requirements, that creates a long-term, noncompetitive discounted rate release. *See, e.g., In re Puget Sound Energy, Inc.*, 127 FERC ¶ 61,070 (2009); *In re Anadarko Petroleum Corporation*, 127 FERC ¶ 61,069 (2009); *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008); *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007).

5. REWG, Astoria, and RES entered into numerous transactions that violate the buy/sell prohibition. The vast majority of these transactions involved transactions related to the gas supply arrangements for the Aurora, Shelby, and Astoria generating plants. Generally, REWG or Astoria bought gas from RES outside of the state in which the gas was consumed in generation operations, transported it on REWG's or Astoria's firm capacity, and resold any unused gas to RES to market to third parties. From 2000 to 2008, REWG and Astoria engaged in buy/sell transactions involving 162.5 Bcf of natural gas.³ In addition, Enforcement staff also confirmed that RES engaged in eleven prohibited buy/sell transactions with an unaffiliated entity that involved RES buying gas in the ELA zone of Texas Eastern Transmission, LP (Texas Eastern), transporting the gas on RES's capacity on Texas Eastern, and selling an equal amount of gas at St. Landry in the WLA zone. Taken together, the buy/sell transactions involved the transportation of 164.2 Bcf of natural gas.

6. The buy/sell transactions carried out by REWG, Astoria, and RES circumvent, and therefore frustrate, the Commission's open access transportation policies requiring releases of capacity from one shipper to another to be subject to certain posting and competitive bidding requirements so that the use of interstate pipeline capacity will be transparent to market participants. There were no unjust profits related to these transactions.

B. Circumvention of the Competitive Bidding Requirement for Released Capacity

7. Section 284.8(h) of the Commission's regulations requires that a shipper releasing firm capacity for a term longer than 31 days and at a price less than the maximum tariff rate must post the capacity for competitive bidding on the pipeline's Electronic Bulletin Board.⁴ The regulations also provide that a discounted release for 31 days or less is exempt from the competitive bidding requirement, but must be posted for informational purposes within 48 hours of the release. Under 18 C.F.R. § 284.8(h)(2), a discounted, short-term release may not be rolled-over, extended, or in any way continued without complying with the posting and bidding requirements.

8. The prior posting requirement for long-term, discounted rate releases promotes natural gas market transparency by providing notice to all interested shippers of the

³ Of the 164.2 Bcf of natural gas purchased and resold in buy/sell transactions, 78.3 Bcf occurred after the grant of civil penalty authority.

⁴ See, e.g., 18 C.F.R. § 284.8(h)(2) (2008). The Commission's regulations were subsequently amended to exempt certain releases from competitive bidding, although non-exempt releases still must be competitively bid. *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008).

availability of released capacity. The competitive bidding requirement, in turn, ensures that the released capacity will go to the shipper who values it most. Together, the posting and bidding requirements are integral components of the Commission's pipeline open-access program, and promote transparency, market efficiency, and the elimination of undue preference and discrimination in the natural gas transportation market.

9. RRI affiliate RES released 1.6 Bcf of capacity on Texas Eastern at a discounted rate to two entities, affiliated with each other but not with RRI or RES, over four consecutive months, December 5, 2006 through March 31, 2007, and did not post the capacity for competitive bidding. The flipping violations caused harm to natural gas transportation markets, because they impeded transparency and denied other market participants an opportunity to bid for discounted, long-term releases of capacity. There were no unjust profits related to these transactions.

Stipulation and Consent Agreement

10. Enforcement and RRI resolved Enforcement's investigation of RRI's self-reported violations by means of the attached Agreement. The Agreement requires RRI to pay a \$750,000 civil penalty to the United States Treasury within ten days of this order accepting and approving the Agreement. RRI also will submit semi-annual monitoring reports to Enforcement for a period of one year with the option of a second year at staff's discretion. Each compliance report shall describe any new and existing compliance program measures, including training, and alert staff to any additional violations of the open access transportation requirements that may occur.

Determination of the Appropriate Civil Penalty

11. Pursuant to section 22(a) of the Natural Gas Act (NGA), the Commission may assess a civil penalty up to \$1 million per day per violation for as long as the violation continues.⁵ In approving the Agreement and the \$750,000 civil penalty, we considered the factors set forth in section 22(c) of the NGA, 15 U.S.C. § 717t-1(c), and the Revised Policy Statement on Enforcement.⁶ We conclude that the penalty determination in the instant matter is a fair and equitable resolution of this matter and is in the public interest, as it reflects the nature and scope of RRI's violations. The penalty also reflects the fact that RRI self-reported the violations and that RRI's cooperation was exemplary.

⁵ 15 U.S.C. § 717t-1(a) (*added by the Energy Policy Act of 2005, Pub. L. No. 109-58, § 314 (b)(1)(B), 119 Stat. 594, 691 (2005) (authorizing the Commission to impose civil penalties "of not more than \$1,000,000 per day per violation for as long as the violation continues")*).

⁶ Enforcement of Statutes, Regulations and Orders, 123 FERC ¶ 61,156, at P 54 -71 (2008).

12. We conclude that the civil penalty and the compliance monitoring reports specified in the Agreement are fair and equitable, and in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

RRI Energy, Inc.)
RRI Energy Wholesale Generation, LLC)

Docket No. IN10-07-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and RRI Energy, Inc. (formerly known as Reliant Energy, Inc.) (RRI) and RRI Energy Wholesale Generation, LLC (REWG), enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010), of whether transactions self-reported by RRI and REWG violated the Commission's open access transportation program, including the prohibition of buy/sell transactions and competitive bidding requirements for long-term, discounted rate capacity releases.

II. STIPULATIONS

Enforcement, RRI, and REWG hereby stipulate and agree to the following:

A. Background

1. RRI, through its subsidiaries, provides energy, capacity, ancillary and other energy services to wholesale customers in competitive markets in the United States. RRI and its subsidiary REWG directly or indirectly own and operate natural gas-fired electric generating plants. Among the generating plants owned directly or indirectly by RRI and REWG are (1) Aurora, a summer peaking facility in Aurora, Illinois; (2) Shelby, a summer peaker located in Shelby County, Illinois; and (3) Astoria, a summer peaker located in New York City. At the time of the conduct under investigation, (a) REWG's interests in the Aurora and Shelby plants were held by Reliant Energy Aurora, LP and Reliant Energy Shelby County, LP, respectively, and (b) RRI indirectly owned Astoria Generating Company L.P. (Astoria), which owned and operated the Astoria electric generating facility in the New York City area. Reliant Energy Aurora, LP and Reliant Energy Shelby County, LP were later merged into REWG. RRI sold Astoria in February 2006.

2. RRI Energy Services, Inc. (RES) (formerly Reliant Energy Services, Inc.) is responsible for buying, selling, and managing natural gas for all of RRI's generating plants. Neither RRI nor RRI's generating subsidiaries (including REWG) buy gas from or sell gas to third parties, because only RES has the necessary trading infrastructure and third-party purchase and sale agreements to acquire gas supply for RRI and REWG generating plants. RES also holds the firm pipeline capacity previously held by REWG to transport natural gas to the generating plants.

3. On December 17, 2007, RRI conducted a training session that discussed the Commission's capacity release requirements in light of the *BP Energy Company* and *Calpine Energy Services* orders approving settlements.⁷ As a result of this training, RRI personnel determined that RES had engaged in activities for the Aurora plant similar to those addressed in the orders. Immediately thereafter, RRI personnel began a review of the transactions undertaken by RES and REWG. In addition, RRI conducted a more extensive internal review to ensure compliance with all capacity release requirements. RRI met with Enforcement staff to discuss its review on March 26, 2008, and submitted a written self-report on April 18, 2008. Enforcement staff opened an investigation pursuant to Part 1b of the Commission's regulations to investigate the reported transactions.

B. Summary of Violations

4. Certain transactions self-reported by RRI and REWG were violations of Commission open access transportation requirements. REWG, RES, and Astoria engaged in prohibited buy/sell transactions from January 2000 to March 2008, and RES engaged as a releasing shipper in flipping transactions from December 2006 through March 2007⁸ in violation of section 284.8(h)(2) of the Commission's regulations.

⁷ *BP Energy Company*, 121 FERC ¶ 61,088 (2007); *Calpine Energy Services, LP*, 119 FERC ¶ 61,125 (2007).

⁸ "Flipping" is a term that describes transactions that avoid the posting and bidding requirements for discounted rate firm capacity at 18 C.F.R. § 284.8. Flipping is typically a series of short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis, without complying with the posting and bidding requirements, that creates a long-term, non-competitive discounted rate release. See, e.g., *In re Puget Sound Energy, Inc.*, 127 FERC ¶ 61,070 (2009); *In re Anadarko Petroleum Co.*, 127 FERC ¶ 61,069 (2009); *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008); *In re BP Energy Co.*, 121 FERC ¶ 61,088 (2007).

1. Buy/Sell Violations

5. The Commission prohibits certain buy/sell transactions. A prohibited buy/sell transaction is a commercial arrangement where a shipper holding interstate pipeline capacity buys gas at the direction of, on behalf of, or directly from another entity (e.g., an end-user), ships that gas through its interstate pipeline capacity, and then resells an equivalent quantity of gas to the downstream entity at the delivery point. *See Williams Energy Marketing & Trading Co.*, 92 FERC ¶ 61,219, at 61,715-16 (2000). By prohibiting buy/sell transactions, the Commission prevents a capacity holder with priority to pipeline capacity from acting as a broker of transportation capacity or assigning transportation capacity to end-use customers. Such practices, if permitted, would be a barrier to open access transportation on interstate pipelines.

6. REWG and Astoria engaged in prohibited buy/sell transactions totaling 164.2 Bcf of natural gas from 2000 to 2008, 78.3 Bcf of which occurred after August 2005. The buy/sell transactions relate mainly to the gas supply arrangements for the Aurora, Shelby, and Astoria generating plants, which generally operated only in the summer. In order to be prepared to generate electricity when called upon during the summer, RES obtained gas supply to sell to REWG and Astoria, each of which held firm pipeline capacity to transport that gas to their plants. Generally, REWG and Astoria bought gas from RES outside of the state in which the gas was consumed in generation operations⁹ and transported it to the plants on REWG's or Astoria's firm capacity. If a plant was not called on, or was not fully dispatched on a given day, REWG or Astoria transported the unused gas to a market location and resold the gas to RES which in turn sold the gas to third parties.¹⁰ REWG operated in this manner both during the summer, when its generating plants ran, and the winter, when they did not. Astoria operated in this manner during the summer, but not in the winter when it burned fuel oil rather than gas. This transaction structure was chosen to facilitate the ability to meet the generating facilities' operational needs, that is, to enable REWG and Astoria to buy enough gas to meet generating needs and to sell excess gas back to RES during the summer. REWG and

⁹ The transactions were structured in this manner because state taxes were levied on sales to end-users of natural gas within the states.

¹⁰ REWG also engaged in buy/sell transactions related to storage agreements with Natural Gas Pipeline of America (NGPL) to serve Aurora. Similar to its transportation capacity, when REWG wanted to store gas, it purchased the gas from RES prior to injection, and then when REWG withdrew the gas, it either was transported to and used at Aurora, or sold back to RES for resale to third parties.

RES engaged in buy/sells for the full quantity of gas acquired each day during the winter because Aurora was not expected to run and Shelby did not run. Whenever REWG and Astoria bought gas from RES and then resold it to RES after transportation of the gas, REWG and Astoria engaged in a prohibited buy/sell transaction. These transactions totaled 162.5 Bcf of natural gas, 77.8 of which occurred after August 2005.

7. Although REWG, Astoria, and RES engaged in these transactions as a way to meet the operational needs of the generating plants, the buy/sell transactions carried out by REWG, Astoria and RES nonetheless circumvent, and therefore frustrate, the Commission's open access transportation policies requiring releases of capacity from one shipper to another so that the use of interstate pipeline capacity will be transparent to market participants. Enforcement staff determined that there were no unjust profits from the buy/sell transactions.

8. RES also engaged in eleven prohibited buy/sell transactions with an unaffiliated entity that involved RES buying gas in the ELA zone of Texas Eastern Transmission, LP (Texas Eastern), transporting the gas on RES's capacity on Texas Eastern, and selling an equal amount of gas back to the entity at St. Landry in the WLA zone. These transactions occurred between January and February of 2007 and totaled 0.5 Bcf.

2. Flipping Violations

9. The Commission's regulations at the relevant time required that a shipper releasing any firm capacity on a pipeline for a term longer than 31 days and at a price less than the maximum tariff rate must post the capacity for competitive bidding on the pipeline's Electronic Bulletin Board.¹¹ The regulations also provided that a discounted release for 31 days or less is exempt from the competitive bidding requirement, but must be posted for informational purposes within 48 hours of the release. Under 18 C.F.R. § 284.8(h)(2) at the relevant time, a discounted, short-term release may not be rolled-over, extended, or in any way continued without complying with the posting and bidding requirements.

10. RES released 1.6 Bcf of discounted rate capacity on Texas Eastern to two third-party entities that were affiliated with each other over four consecutive months, from December 5, 2006 through March 31, 2007. These releases were not posted for competitive bidding. By releasing the same capacity to the same party in interest, RES

¹¹ See, e.g., 18 C.F.R. § 284.8(h)(2) (2008). The Commission's regulations were subsequently amended to exempt certain releases relating to qualifying asset management arrangements from the competitive bidding requirement. *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008).

effectively rolled over, extended, or otherwise continued the same release in violation of section 284.8.

11. The Commission has stated that such flipping violations circumvent the requirement that long-term discounted rate capacity be obtained through competitive bidding. The Commission has also stated that flipping transactions also cause harm to natural gas transportation markets because they impede transparency and deny other market participants an opportunity to bid for discounted, long-term releases of capacity that may not have been available from the pipeline or other releasing shippers. Enforcement staff determined that RES received no unjust profits from the flipping transactions.

C. Self-Corrective Action

12. At the time the violations occurred, RRI maintained an overall corporate compliance policy that was focused on trading, EQR reporting, and Standards of Conduct, but RRI's compliance policy did not adequately address requirements for transportation of natural gas. As such, RRI's compliance policy failed to prevent RRI from engaging in numerous violations of the capacity release rules over an extended period of time. Enforcement staff found no intent by RRI or REWG to violate the Commission's requirements.

13. Since self-reporting these violations, RRI and REWG have ceased entering into transactions like those self-reported and have taken remedial action of their own accord by making substantial voluntary compliance and training program improvements regarding natural gas transportation. RRI's and REWG's cooperation in the investigation was exemplary.

III. REMEDIES AND SANCTIONS

14. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, RRI and REWG accept and agree to the facts as stipulated above and agree to take the following actions:

A. Civil Penalty

15. RRI shall pay a civil penalty of \$750,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

B. Compliance Monitoring

16. RRI and REWG shall make semi-annual reports to Enforcement staff for one year following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The second report shall be

submitted six months thereafter. With respect to all of RRI's and REWG's wholesale natural gas business, each compliance report shall: (1) advise staff whether additional violations of the open access transportation requirements have occurred; (2) provide a detailed update of all compliance training administered and compliance measures instituted in the applicable period, including a description of the training provided to all relevant personnel concerning the Commission's open access transportation policies and a statement of the personnel that have received such training and when the training took place; and (3) include an affidavit executed by an officer of RRI that the compliance reports are true and accurate. Upon request by staff, RRI and REWG shall provide to staff all documentation supporting its reports. After the receipt of the second semi-annual report, Enforcement staff may, in its sole discretion, require Reliant and RRI to submit semi-annual reports for one additional year.

IV. TERMS

17. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to RRI and REWG and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to RRI, REWG, and any affiliated entity.

18. Commission approval of this Agreement without modification shall release RRI and REWG and forever bar the Commission from holding RRI and REWG, any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to RRI or REWG liable for any and all administrative, civil or other claims arising out of, related to, or connected with the matters addressed in this Agreement.

19. Failure to make a timely civil penalty payment or to comply with the compliance monitoring agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Natural Gas Act (NGA), and may subject RRI and REWG to additional action under the enforcement and penalty provisions of the NGA.

20. If RRI does not make the civil penalty payment above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 154.501(d) (2008) from the date that payment is due, in addition to the penalty specified above.

21. The Agreement binds RRI and REWG and their agents, successors, and assigns. The Agreement does not create any additional or independent obligations on RRI or REWG, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

22. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or RRI or REWG has been made to induce the signatories or any other party to enter into the Agreement.

23. Unless the Commission issues an order approving the Agreement in its entirety and without modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor RRI and REWG shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and RRI and REWG.

24. In connection with the payment of the civil penalty provided for herein, RRI and REWG agree that the Commission's order approving the Agreement without modification shall be a final and unappealable order assessing a civil penalty under section 22(a) of the NGA, 15 U.S.C. § 717t-1(a). RRI and REWG waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without modification, and judicial review by any court of any Commission order approving the Agreement without modification.

25. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

26. The undersigned representatives of RRI and REWG affirm that they have read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of their knowledge, information and belief, and that they understand that the Agreement is entered into by Enforcement in express reliance on those representations.

27. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

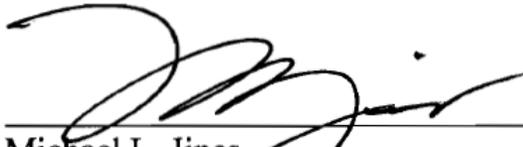
Agreed to and accepted:



Norman C. Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

9.10.10

Date



Michael L. Jines
Executive Vice President, General Counsel
and Corporate Secretary, RRI Energy, Inc.
and Vice President, General
Counsel and Corporate Secretary,
RRI Energy Wholesale Generation, LLC

9-7-10

Date