

132 FERC ¶ 61,266
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.

South Jersey Gas Company
South Jersey Resources Group, LLC

Docket No. IN10-6-000

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 South Jersey Gas Company (South Jersey Gas) and South Jersey Resources Group, LLC (South Jersey Resources) (referred to collectively as South Jersey). This order is in the public interest because it resolves the investigation of South Jersey regarding the Commission's open access transportation program, including the competitive bidding requirements for long-term, discounted rate capacity releases, the shipper-must-have-title requirement, and the prohibition on buy/sell transactions. South Jersey has agreed to pay a civil penalty of \$950,000.¹ In addition, South Jersey has agreed to disgorge \$120,550.69, plus interest, and submit compliance monitoring reports.

Background

2. South Jersey Gas is a local distribution company, primarily engaged in the distribution of natural gas to residential, commercial, and industrial utility customers in portions of southern New Jersey. South Jersey Resources, an affiliate of South Jersey Gas, is a natural gas marketing company with headquarters in Bedford, Texas, and provides wholesale natural gas trading, sales, storage management, peaking services,

¹ The civil penalty was agreed upon prior to the issuance of the Revised Policy Statement on Penalty Guidelines. Because South Jersey 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).

transportation capacity, and natural gas portfolio management to customers mostly in the Mid-Atlantic and southern regions of the United States. South Jersey Gas and South Jersey Resources are subsidiaries of South Jersey Industries, Inc.

3. Enforcement's investigation of South Jersey arose out of Enforcement's investigation of Constellation NewEnergy – Gas Division (Constellation),² which self-reported that it engaged in “flipping” transactions as a replacement shipper.³ South Jersey Gas was a releasing shipper in certain of Constellation's flipping transactions. In February 2008, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010), to confirm that South Jersey Gas engaged in flipping as a releasing shipper with Constellation, and to determine whether South Jersey Gas engaged in flipping with other replacement shippers. Enforcement investigated transactions that occurred during the period January 2005 through February 2008.

4. After Enforcement began investigating South Jersey Gas's involvement in flipping, South Jersey conducted a comprehensive internal review of its natural gas trading and transportation practices to bring those practices into compliance with the Commission's open access transportation requirements and, in August 2008, voluntarily disclosed possible violations of the shipper-must-have-title requirement and the prohibition on buy/sell transactions.

Violations

A. Circumvention of the Competitive Bidding Requirement for Released Capacity

5. 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

² *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008).

³ 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 (2010). 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).

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.

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

7. Enforcement concluded that South Jersey Gas improperly released 36.1 Bcf of discounted rate capacity through flipping transactions between January 2005 and October 2007, and that South Jersey Gas did not post the capacity releases for bidding.⁵ Enforcement concluded that the flipping transactions violated 18 C.F.R. § 284.8. South Jersey Gas admits making the releases in question but neither admits nor denies Enforcement's conclusion that its releases of discounted rate capacity to affiliated replacement shippers on an alternating monthly basis violated 18 C.F.R. § 284.8.

8. Enforcement concluded that the flipping transactions by South Jersey Gas 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. Enforcement also determined that South Jersey Gas did not earn unjust profits as a result of the flipping transactions that are the subject of this Agreement.

B. Shipper-Must-Have-Title Requirement Violations

9. A central requirement of the Commission's open access transportation program is that all shippers must have title to the gas at the time the gas is tendered to the pipeline or storage transporter and while it is being transported or held in storage by the transporter. Interstate pipeline tariffs include provisions requiring shippers to warrant good title to the gas tendered for transportation on the pipeline. The shipper-must-have-title requirement

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).

⁵ Of the 36.1 Bcf of capacity released in flipping transactions, South Jersey Gas released 24.2 Bcf after the grant of civil penalty authority.

is reflected in the FERC gas tariffs of interstate pipelines providing open access transportation services. Although the specific language of each interstate pipeline's tariffs varies, the Commission has made clear that the shipper of record and the owner of the gas must be one and the same throughout the course of the transportation or the duration of storage on any pipeline.⁶ Without the shipper-must-have-title requirement, it is unlikely that shippers would use capacity release, since capacity holders could transport gas over the pipeline for another entity.

10. South Jersey Resources violated the shipper-must-have-title requirement between November 2007 and July 2008 when it transported 1.6 Bcf of South Jersey Resources-titled gas on three interstate pipelines using the transportation capacity of an unaffiliated third party. South Jersey Resources could have avoided this arrangement by taking a bona fide capacity release that complied with the Commission's regulations. Had South Jersey Resources properly taken such released capacity, it would have informed market participants of its activities on the pipelines. Violations of the shipper-must-have-title requirement interfere with the Commission's oversight of natural gas markets and with the Commission's goal of market transparency. South Jersey Resources earned \$32,760 in unjust profits through its shipper-must-have-title violations.

C. Prohibited Buy/Sell Transactions

11. 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.

12. South Jersey Gas violated the prohibition on buy/sell transactions between July 2005 and December 2007 when South Jersey Gas purchased 2 Bcf of other parties' gas, transported or stored that gas using its capacity on Transco, and then sold equivalent volumes of gas back to the parties. Through these transactions, South Jersey Gas utilized its priority to transportation and storage capacity to engage in an improper form of capacity brokering.

⁶ *Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

13. The buy/sell transactions carried out by South Jersey Gas 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. South Jersey Gas earned \$87,790.69 in unjust profits as a result of its buy/sell transactions.

Stipulation and Consent Agreement

14. Enforcement and South Jersey resolved Enforcement's investigation of South Jersey's capacity releases and other transactions by means of the attached Agreement. The Agreement requires South Jersey to pay a \$950,000 civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. South Jersey also will disgorge \$120,550.69, plus interest, and 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 open access transportation requirements that may occur.

Determination of the Appropriate Civil Penalty

15. 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.⁷ In approving the Agreement and the \$950,000 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.⁸ 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 Enforcement's conclusions concerning South Jersey's transactions. The penalty also reflects that South Jersey did not self-report the flipping transactions, but that South Jersey subsequently voluntarily disclosed the shipper-must-have-title and buy/sell violations, and that South Jersey's cooperation with Enforcement staff's investigation was exemplary.

⁷ 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")*).

⁸ *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 54 -71 (2008).

Docket No. IN10-6-000

- 6 -

16. We conclude that the civil penalty, disgorgement of unjust profits, 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

South Jersey Gas Company) Docket No. IN10-6-000
South Jersey Resources Group, LLC)

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and South Jersey Gas Company (South Jersey Gas) and South Jersey Resources Group, LLC (South Jersey Resources) (referred to collectively as South Jersey) 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), into whether South Jersey violated the Commission's open access transportation program, including the competitive bidding requirements for long-term, discounted rate capacity releases, the shipper-must-have-title requirement, and the prohibition against buy/sell transactions.

II. STIPULATED FACTS

Enforcement and South Jersey hereby stipulate and agree to the following:

A. Background

1. South Jersey Gas is a local distribution company, primarily engaged in the distribution of natural gas to residential, commercial, and industrial utility customers in portions of southern New Jersey. South Jersey Gas engages in capacity release transactions in order to offset upstream supply and capacity costs and to recoup the value of its interstate pipeline capacity for itself and its customers. South Jersey Resources, an affiliate of South Jersey Gas, is a natural gas marketing company with headquarters in Bedford, Texas, and provides wholesale natural gas trading, sales, storage management, peaking services, transportation capacity, and natural gas portfolio management to customers mostly in the Mid-Atlantic and southern regions of the United States. South Jersey Gas and South Jersey Resources are subsidiaries of South Jersey Industries, Inc.

2. Enforcement's investigation of South Jersey arose out of

Enforcement's investigation of Constellation NewEnergy – Gas Division (Constellation),⁹ which self-reported that it engaged in flipping transactions as a replacement shipper.¹⁰ South Jersey Gas was a releasing shipper in certain of Constellation's flipping transactions. In February 2008, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010), to confirm that South Jersey Gas engaged in flipping as a releasing shipper with Constellation, and to determine whether South Jersey Gas engaged in flipping with other replacement shippers. Enforcement investigated transactions that occurred during the period January 2005 through February 2008.

3. After Enforcement began investigating South Jersey Gas's involvement in flipping, South Jersey conducted a comprehensive internal review of its natural gas trading and transportation practices to bring those practices into compliance with the Commission's capacity release rules and, in August 2008, voluntarily disclosed possible violations of the shipper-must-have-title requirement and the prohibition on buy/sell transactions.

B. Summary of Transactions

1. Flipping Transactions

4. 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

⁹ *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008).

¹⁰ 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, 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).

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).

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.

5. Between January 1, 2005, and October 31, 2007, South Jersey Gas released a total of 36.1 Bcf of discounted rate natural gas pipeline capacity on Transcontinental Gas Pipe Line Corporation (Transco) and Texas Gas Transmission to five sets of affiliated replacement shippers on an alternating monthly basis without posting the capacity releases for bidding. The replacement shippers were not affiliated with South Jersey Gas. Of the 36.1 Bcf of capacity released in flipping transactions, South Jersey Gas released 24.2 Bcf after the grant of civil penalty authority. In two instances the capacity releases were conditioned upon South Jersey Gas purchasing gas from the replacement shipper.

6. Enforcement concluded that South Jersey Gas's releases to the affiliated replacement shippers were flipping transactions that violated the Commission's posting and bidding requirements at 18 C.F.R. § 284.8. Enforcement also concluded that South Jersey Gas's releases 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 that may not have otherwise been available from the pipeline or other releasing shippers.

7. Enforcement determined that South Jersey Gas did not earn unjust profits as a result of the flipping transactions that are the subject of this Agreement.

2. Shipper-Must-Have-Title Requirement

8. A central requirement of the Commission's open access transportation program is that all shippers must have title to the gas at the time the gas is tendered to the pipeline or storage transporter and while it is being transported or held in storage by the transporter. Interstate pipeline tariffs include provisions requiring shippers to warrant good title to the gas tendered for transportation on the pipeline. Although the specific language of each interstate pipeline's tariffs varies, the Commission has made clear that the shipper of record and the owner of the gas must be one and the same throughout the course of the transportation or the duration of storage on any pipeline. *See Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

9. South Jersey informed Enforcement that, between November 2007

and July 2008, South Jersey Resources transported 1.6 Bcf of South Jersey Resources-titled gas on three interstate pipelines using the transportation capacity of an unaffiliated third party.

10. South Jersey Resources's transportation of South Jersey Resources-titled gas using another party's transportation capacity violated the Commission's shipper-must-have-title requirement. South Jersey Resources could have avoided this arrangement by taking a bona fide capacity release that complied with the Commission's regulations. Had South Jersey Resources properly taken such released capacity, it would have informed market participants of its activities on the pipelines. Violations of the shipper-must-have-title requirement interfere with the Commission's oversight of natural gas markets and with the Commission's goal of market transparency.

11. South Jersey Resources earned \$32,760 in unjust profits through its shipper-must-have-title violations.

3. Buy/Sell Transactions

12. 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.

13. South Jersey informed Enforcement that, between July 2005 and December 2007, South Jersey Gas purchased 2 Bcf of other parties' gas, transported or stored that gas using its capacity on Transco, and then sold equivalent volumes of gas back to the parties. These purchases and sales consisted of two types of transactions. First, between November 2005 and December 2007, South Jersey Gas entered into numerous short-term purchases with counterparties, including South Jersey Resources, whereby South Jersey Gas took title to gas at a receipt point on Transco and delivered gas in equivalent volumes to the same counterparty at a downstream delivery point on Transco. In total, these transactions involved 1.5 Bcf of natural gas. Second, in July 2005, South Jersey Gas entered into a transaction with a third party whereby South Jersey Gas bought 0.5 Bcf of natural gas at a storage facility on Transco and agreed to deliver the same volume ratably to the third party in December 2005, January 2006, and

February 2006 at a downstream delivery point on Transco.

14. These transactions violated the Commission's prohibition on buy/sell transactions. Through these transactions, South Jersey Gas utilized its priority to transportation and storage capacity to engage in an improper form of capacity brokering. The Commission has found that such actions frustrate the Commission's capacity release regulations, which require transparency in the use of interstate capacity. Buy/sell transactions such as those carried out by South Jersey Gas 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.

15. South Jersey Gas retained \$87,790.69 in unjust profits as a result of its buy/sell transactions.

C. Self-Corrective Action

16. Prior to Enforcement's investigation of South Jersey, South Jersey's compliance program did not focus on the Commission's open access transportation program. As a result, South Jersey's operational personnel lacked sufficient familiarity with the Commission's requirements for the release or use of interstate pipeline capacity. Since Enforcement initiated its investigation, South Jersey engaged outside counsel to assist with a comprehensive review of its interstate pipeline and gas storage and transportation transactions, which resulted in South Jersey voluntarily disclosing possible violations of the shipper-must-have-title requirement and prohibition on buy/sell transactions. South Jersey has amended or terminated all contracts in violation, has provided training on the Commission's open access transportation requirements to its employees, senior management, and Board of Directors, and has significantly increased its compliance measures by formulating and implementing an enhanced compliance program.

17. Promptly after the commencement of the investigation South Jersey ceased entering into transactions like those described above and revised its operational practices to avoid future incidents of violations. South Jersey's cooperation with Enforcement staff's investigation was exemplary.

III. REMEDIES AND SANCTIONS

18. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, South Jersey agrees with the facts as stipulated. South Jersey agrees that South Jersey Resources's transportation of South Jersey Resources-titled gas using another party's transportation capacity

violated the Commission's shipper-must-have-title requirement and that arrangements whereby South Jersey Gas purchased other parties' gas, transported and stored that gas using its pipeline capacity, and then resold the gas back to the same parties in equivalent volumes, violated the Commission's prohibition on buy/sell transactions. South Jersey, however, neither admits nor denies Enforcement's conclusion that the capacity releases by South Jersey Gas of discounted rate capacity to the affiliated replacement shippers constituted violations of 18 C.F.R. § 284.8. Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving the dispute between Enforcement and South Jersey without further proceedings, South Jersey agrees to undertake the obligations set forth in this Agreement.

19. Neither the stipulated facts nor the existence of this Agreement constitute an admission by South Jersey that this conduct unfairly or inappropriately impacted any third party.

A. Civil Penalty

20. South Jersey shall pay a civil penalty of \$950,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

21. The civil penalty shall not be passed through, directly or indirectly, to any present or future South Jersey customers or ratepayers.

B. Disgorgement

22. South Jersey shall disgorge \$120,550.69, plus interest, such amount representing unjust profits from South Jersey's transactions that violated the shipper-must-have-title requirement and the prohibition on buy/sell transactions, to energy assistance programs administered by States, territories, or Indian tribes and tribal organizations that have received grants from the federal Secretary of Health and Human Services, such energy assistance programs to be agreed upon and such disgorgement to be made within 30 days from the Effective Date of this Agreement.

C. Compliance Monitoring

23. South Jersey shall make semi-annual compliance monitoring reports to Enforcement 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. Each compliance report shall: (1) advise Enforcement whether violations by

South Jersey of the requirements of 18 C.F.R. § 284.8, the shipper-must-have-title requirement, or the prohibition on buy/sell transactions 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 capacity release policies, and a list of the personnel that have received such training and when the training took place; and (3) include an affidavit executed by an officer of South Jersey that the compliance reports are true and accurate. Upon request by Enforcement, South Jersey shall provide to Enforcement documentation to support its reports. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require South Jersey to submit semi-annual reports for one additional year.

IV. TERMS

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

25. Commission approval of this Agreement in its entirety and without material modification shall release South Jersey and forever bar the Commission from holding South Jersey, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the investigation addressed in this Agreement.

26. South Jersey consents to the use of Enforcement's conclusion set forth in Paragraph 6 of this Agreement for the purpose of assessing the factors in any further matter, including the factor of determining the company's history of violations, that are set forth in the Revised Policy Statement on Enforcement, *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008), or that may be set forth in any successor policy statement or order. Such use may be in any other proceeding before the Commission or to which the Commission is a party; provided, however, that South Jersey does not consent to the use of specific acts set forth in this Agreement as the sole basis for any other proceeding brought by the Commission, nor does South Jersey consent to the use of this Agreement by any other party in any other proceeding. This Agreement shall have no precedential effect except as set forth in the first sentence of this paragraph.

27. Failure to make a timely civil penalty payment, disgorgement, or to comply with the compliance reporting requirements 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 South Jersey to additional action under the enforcement and penalty provisions of the NGA.

28. If South Jersey does not make the civil penalty or disgorgement payments 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) (2010) from the date those payments are due, in addition to the penalty specified above.

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

30. 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 South Jersey has been made to induce the signatories or any other party to enter into the Agreement.

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

32. In connection with the payment of the civil penalty provided for herein, South Jersey agrees that the Commission's order approving the Agreement without material 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). South Jersey waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

33. 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.

34. The undersigned representative of South Jersey affirms that he has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance

on those representations.

35. 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



Date


Jeffrey DuBois, Vice-President
South Jersey Industries, Inc.



Date

Document Content(s)

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