

140 FERC ¶ 61,135
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

In re Missouri Gas Energy

Docket No. IN12-16-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued August 23, 2012)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Missouri Gas Energy (MGE). This order is in the public interest, because it resolves the investigation into certain violations by MGE of the Commission's capacity release regulations and policies, including circumvention of the posting and bidding requirements for released capacity set forth in 18 C.F.R § 284.8 and violations of the Commission's shipper-must-have-title requirement and prohibition on buy/sell arrangements. MGE has agreed to pay a civil penalty of \$35,000 and to submit to compliance monitoring reports.

Background

2. MGE, a division of Southern Union Company, is a natural gas distribution company serving approximately 500,000 customers in portions of western Missouri and headquartered in Kansas City, Missouri. MGE is regulated by the Missouri Public Service Commission. MGE has interstate natural gas contracts with Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan), Panhandle Eastern Pipe Line Company, LP (Panhandle), Southern Star Central Gas Pipeline, Inc. (Southern Star), Trunkline Gas Company, LLC (Trunkline), and Quest Pipelines (Quest). MGE's primary use of natural gas is for commodity retail sales to its residential and commercial customers.

3. On December 13, 2007, MGE contacted the Commission's Office of Enforcement regarding possible violations of the Commission's regulations. MGE, thereafter, conducted an internal audit to identify any transactions in which MGE may have violated the Commission's capacity release regulations. MGE submitted a written self-report to Enforcement staff on February 29, 2008. On March 24, 2008, Enforcement staff opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2011), into possible capacity release violations by MGE. Staff's investigation found reported violations in the following categories: (1) rollovers, (2) shipper-must-have-title,

(3) prohibited buy/sell arrangements, (4) notice and posting deficiencies, and (5) failure to post biddable transactions. The investigative period extended from July 2005 through January 2008.

Violations

A. Section 284.8(h)(2) - Impermissible Rollovers

4. Before the Commission's issuance of Order No. 712, section 284.8(h)(2) of the Commission's regulations required 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.

5. Enforcement staff concluded that between August 1, 2005 and December 31, 2007, MGE released discounted rate capacity, of sufficient similarity in rates and terms, to the same replacement shipper in consecutive months in violation of section 284.8(h)(2). The majority of MGE's rollovers occurred on Southern Star, with some of the rollovers occurring on Kinder Morgan. The total contractual transportation capacity involved was 35.028 Bcf.

6. Enforcement staff concluded that MGE's rollovers created a number of potential impediments to a well-functioning capacity release market (e.g., lack of transactional liquidity, pricing transparencies and barriers to entry for non-affiliated marketers). Nonetheless, Enforcement staff also concluded that while the violations were serious, the conduct did not result in pecuniary harm to MGE's competitors as the pipelines were underutilized.

7. Enforcement staff concluded that there was no competitive advantage or unjust profits gained by MGE from these actions.

B. 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 tariff 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. Enforcement staff concluded that between July 1, 2005 and August 31, 2007, MGE improperly utilized its capacity rights in storage to inject 1.08 Bcf of gas titled to other entities in violation of the Commission's shipper-must-have-title requirement. MGE's shipper-must-have-title violations occurred between four counterparties on Panhandle and Southern Star.

10. Enforcement staff concluded that, like rollovers, the shipper-must-have-title requirement violations created a number of potential impediments to a well-functioning capacity release market; nonetheless, that conduct did not result in pecuniary harm to third-party competitors of MGE.

11. Enforcement staff concluded that MGE did not receive any unjust profits from its actions.

C. Prohibition Against Buy/Sell Arrangements

12. The Commission has prohibited 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. This prohibition was intended to prevent circumvention of the Commission's open access transportation policy and regulations which require released capacity to be posted and bid on a nondiscriminatory basis.

13. Enforcement staff concluded that between January 1, 2006 and September 30, 2006, MGE violated the prohibition against buy/sell arrangements with four counterparties on two pipelines utilizing 0.1379 Bcf of transportation capacity.

14. Enforcement staff concluded that, like other capacity release violations, a violation of the Commission's prohibition on buy/sell arrangements creates potential impediments to a well-functioning capacity release market. However, here, MGE's violation did not result in pecuniary harm to third parties.

15. Enforcement staff concluded that there was no competitive advantage or unjust profits gained by MGE from these arrangements.

D. Section 284.8(c) - MGE's Failure to Fully Disclose Terms and Conditions

16. Section 284.8(c) of the Commission's regulations requires that a firm shipper wanting to release any or all of its firm capacity notify the pipeline of the terms and conditions under which the shipper will release its capacity.

17. Enforcement staff concluded that between September 1, 2005 and October 31, 2007, MGE failed to properly post on Kinder Morgan's electronic bulletin board all of the terms and conditions of certain releases to three counterparties of capacity as required by section 284.8(c) of the Commission's regulations. The contractual capacity involved was 11.44 Bcf.

18. Enforcement staff concluded that MGE did not receive any unjust profits from these transactions.

E. Section 284.8(h)(1) – Biddable Releases

19. Pursuant to section 284.8(h)(1) of the Commission's regulations, all releases of capacity with a term of more than 31 days are required to be biddable releases except for releases: (1) of more than one year at the maximum rate, (2) pursuant to asset management agreements, or (3) pursuant to state-regulated retail choice programs.

20. Enforcement staff concluded that between August 1, 2005 and January 31, 2008, MGE failed to post for bidding discounted rate releases exceeding 31 days as required by section 284.8(h)(1). The violations involved five counterparties on Southern Star and 21.20 Bcf of contractual capacity.

21. Enforcement staff concluded that MGE did not receive any unjust profits from these transactions.

Stipulation and Consent Agreement

22. Enforcement and MGE have resolved Enforcement's investigation of MGE's capacity release violations by means of the attached Agreement. MGE admits its violations and admits that the previously described transactions violated the Commission's rules, regulations, or policies. MGE agrees to take the following actions.

23. The Agreement requires MGE to pay a \$35,000 civil penalty to the United States Treasury within ten days of this order accepting and approving the Agreement.

24. The Agreement requires MGE to submit semi-annual compliance monitoring reports to Enforcement staff for one year following the Effective Date of the Agreement, with the option of a second year at Enforcement's discretion. Each compliance report shall describe any new and existing compliance program measures, including training, and alert Enforcement staff to any additional capacity release violations that may occur.

Determination of the Appropriate Civil Penalty

25. 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.¹ In approving the Agreement and the \$35,000 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 Penalty Guidelines.² We conclude that the penalty determination 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 MGE's violations.³

26. The civil penalty assessment reflects the fact that MGE's conduct did not appear to result in pecuniary harm to MGE's competitors and did not result in any unjust profits for the company.

27. In determining the appropriate civil penalty, MGE received credit for: (1) self-reporting its violations, (2) demonstrating a recognition and acceptance of responsibility, (3) exhibiting excellent cooperation, and (4) having no history of prior violations. Additionally, we note that there was no high level personnel knowledge of or involvement in the violations and, upon discovering the violations, MGE promptly undertook remedial action.

28. The Commission concludes that the civil penalty and the compliance monitoring reports specified in the Agreement are fair and equitable, and in the public interest.

¹ 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").

² *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156 (2008) (Revised Policy Statement on Penalty Guidelines).

³ The civil penalty falls within a range consistent with the Penalty Guidelines. Application of the Penalty Guidelines in this case furthers the goal of "add[ing] greater fairness, consistency, and transparency to our enforcement program." *Id.* at P 2. We have considered the factors set forth in the Revised Policy Statement on Penalty Guidelines and have concluded that the penalty in this case is appropriate.

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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**

In re Missouri Gas Energy

Docket No. IN12-0016-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Missouri Gas Energy (MGE) 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 (2011), into whether MGE violated provisions of the Commission's open-access transportation program, which entailed the competitive bidding requirements for long-term, discounted rate capacity releases set forth at 18 C.F.R. § 284.8 (2011).

II. Stipulated Facts

Enforcement and MGE hereby stipulate and agree to the following:

A. Background

1. MGE, a division of Southern Union Company, is a natural gas distribution company serving approximately 500,000 customers in portions of western Missouri and headquartered in Kansas City, Missouri. MGE is regulated by the Missouri Public Service Commission (MoPSC). MGE has interstate natural gas contracts with Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan), Panhandle Eastern Pipe Line Company, LP (Panhandle), Southern Star Central Gas Pipeline, Inc. (Southern Star), Trunkline Gas Company, LLC (Trunkline), and Quest Pipelines (Quest). MGE's primary use of natural gas is for commodity retail sales to its residential and commercial customers.

2. On December 13, 2007, MGE contacted the Commission's Office of Enforcement regarding possible violations of the Commission's regulations. MGE, thereafter, conducted an internal audit to identify any transactions in which MGE may have violated the Commission's capacity release regulations. MGE submitted a written self-report to the Enforcement staff on February 29, 2008. On March 24, 2008, Enforcement staff opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2011) into possible capacity

release violations by MGE. Staff's investigation found reported violations in the following categories: (1) rollovers, (2) shipper-must-have-title, (3) prohibited buy/sell transactions, (4) notice and posting deficiencies, and (5) failure to post biddable transactions. The investigative period extended from July 2005 through January 2008.

B. Conduct and Violations

1. Rollovers

3. Between August 1, 2005 and December 31, 2007, MGE released monthly releases of discounted rate capacity to the same replacement shipper in consecutive months without waiting 28 days in violation of section 284.8(h)(2). The majority of MGE's rollovers occurred on Southern Star Central Gas Pipeline, Inc. (Southern Star). The total contractual transportation capacity released by MGE on Southern Star and Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan) through improper rollovers was 35.028 Bcf with thirteen counterparties.

4. All of MGE's rollovers occurred before the Commission's issuance of Order No. 712, at which time section 284.8(h)(2) of the Commission's regulations required 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.

Violations and Enforcement Conclusions

5. Enforcement staff concluded that the total contractual capacity released by MGE through improper rollovers was 35.028 Bcf.

6. Enforcement staff concluded that: (a) the terms of the releases of capacity by MGE, including rates and volumes, were of sufficient similarity to characterize the transactions as rollovers and (b) the subject releases of short-term, discounted rate capacity were rollover transactions that improperly avoided the requirement that discounted rate capacity be posted for competitive bidding prior to acquisition in violation of section 284.8(h)(2).

7. Enforcement staff concluded that the rollovers by MGE created a number of potential impediments to a well functioning capacity release market (*e.g.*, lack of transactional liquidity, pricing transparencies and barriers to entry for non-affiliated marketers). Nonetheless, Enforcement staff also concluded that while the rollovers were serious, no pecuniary harm to MGE's competitors resulted

therefrom, since at the time the pipelines were underutilized. There was no competitive advantage gained by MGE from its actions.

8. Enforcement staff concluded that there were no unjust profits as a result of the rollover violations.

2. Shipper-Must-Have-Title

9. Between July 1, 2005 and August 31, 2007, MGE improperly utilized its capacity rights to inject 1.08 Bcf of gas titled in someone else's name. MGE's shipper-must-have-title violations occurred between four counterparties on Panhandle East Pipeline Company, LP (Panhandle) and Southern Star. There was no financial gain from MGE's shipper-must-have-title violations.

10. 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 tariff 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.⁴

Violation and Enforcement Conclusions

11. Enforcement staff concluded that MGE violated the shipper-must-have-title requirement by permitting gas not titled to MGE to be stored using its capacity rights in storage.

12. Enforcement staff concluded that, like rollovers, the shipper-must-have-title violations created a number of potential impediments to a well functioning capacity release market (*e.g.*, lack of transactional liquidity, pricing transparencies and barriers to entry for non-affiliated marketers).

13. Enforcement staff concluded that MGE did not receive an unjust profit as a result of its shipper-must-have-title violations.

⁴ See *Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

3. Buy/Sell Arrangements

14. Between January 1 and September 30, 2006, MGE improperly engaged in buy/sell transactions involving 0.1379 Bcf of transportation capacity on Kinder Morgan and Southern Star with four counterparties. There was no financial gain from MGE's improper transactions.

15. The Commission's prohibition against buy/sells was intended to prevent circumvention of the Commission's open-access transportation policy and regulations which require released capacity to be posted and bid on a nondiscriminatory basis. Without the Commission's prohibition against buy/sells, shippers would be able to arrange for firm interstate pipeline capacity without having to compete with other shippers that might place greater value on the capacity.⁵

Violation and Enforcement Conclusions

16. Enforcement staff concluded that MGE violated the Commission's prohibition against buy/sells when it purchased natural gas from a counterparty, transported the gas to a different location using its firm transportation capacity, and then sold an equivalent volume of natural gas back to the counterparty from which it had originally purchased the gas.

17. Notwithstanding MGE's contention that its traders were unaware of the Commission's prohibition on buy/sells, staff finds that it was incumbent upon MGE to adequately advise and train its personnel on the Commission's rules, regulations, and policies, and on the pipeline's tariff provisions prohibiting the proscribed activity.

4. MGE's Failure to Fully Disclose the Terms and Conditions

18. Between September 1, 2005 and October 31, 2007, MGE failed to properly post the terms and conditions of the release as required by section 284.8(c) of the Commission's regulations. The contractual capacity involved was 11.44 Bcf on Kinder Morgan between three counterparties. MGE did not receive a profit from these releases.

19. According to section 284.8(c), "a firm shipper that wants to release any or all of its firm capacity must notify the pipeline of the terms and conditions under which the shipper will release its capacity."

⁵ *Order No. 636*, 59 FERC ¶ 61,030, at 30,416-17, and *El Paso Natural Gas Co.*, 59 FERC ¶ 61,031, *reh'g denied*, 60 FERC ¶ 61,117 (1992).

Violation and Enforcement Conclusions

20. Enforcement staff concludes that MGE violated the Commission's regulation in connection with six capacity release arrangements when it failed to fully disclose that the prearranged replacement shipper had agreed to provide additional compensation to MGE.

5. MGE's Failure to Post Biddible Capacity

21. Between August 1, 2005 and January 31, 2008, MGE failed to post for bid discounted-rate releases exceeding 31 days as required by section 284.8(h)(1). The violations involved five counterparties on Southern Star and 21.20 Bcf of contractual capacity. MGE did not receive a profit from these transactions.

Violation and Enforcement Conclusions

22. Enforcement staff concludes that MGE violated section 284.8(h)(1) by failing to post transactions exceeding 31 days.

23. While MGE contends that its employees were unaware of the rules related to capacity postings and expected the pipeline's electronic bulletin board (EBB) to inform them that the transaction needed to be posted for bid, it was MGE's responsibility to adhere to the Commission's regulations.

C. Compliance and Mitigation Measures

24. Prior to MGE's self-report it did not have written procedures or policies addressing FERC regulations. Subsequently, MGE took remedial measures to improve compliance with the Commission's open-access transportation requirements. As part of the enhancements, MGE developed and implemented a formal compliance program directed at all of the Commission's rules, regulations, and policies that affect the assets, activities, or operations of the company. The compliance plan, which includes a comprehensive training program for employees, makes clear that all employees must be in full compliance and may be subject to disciplinary action for failure to achieve compliance.

25. MGE also conducted several training sessions for its gas supply, trading, audit, and management personnel and developed and distributed a compliance manual. Additionally, MGE appointed a FERC Compliance Monitor tasked with the authority to order the cessation of all improper transactions.

26. During the course of Enforcement's investigation, the cooperation of MGE was excellent.

III. REMEDIES AND SANCTIONS

27. MGE admits engaging in the above enumerated violations as described herein, and admits that these transactions violated the Commission's rules, regulations, or policies. MGE agrees to take the following actions.

A. Civil Penalty

28. MGE shall pay a civil penalty of \$35,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

B. Compliance Monitoring

29. MGE 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. Each compliance report shall: (1) advise staff whether additional violations by MGE of open-access transportation requirements have occurred; (2) provide a detailed update of all natural gas-related compliance training administered and natural gas-related 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 list of the personnel that have received such training and when the training took place; and (3) include an affidavit executed by an officer(s) of MGE that the compliance reports are true and accurate. Upon request by staff, MGE shall provide to staff documentation to support its reports. After the receipt of the second semi-annual report, Enforcement staff may, at its sole discretion, require MGE to submit semi-annual reports for one additional year.

IV. TERMS

30. 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 MGE and any affiliated entity, their agents, officers, directors and employees, both past and present, and any successor in interest to MGE.

31. Commission approval of this Agreement in its entirety and without material modification shall release MGE and forever bar the Commission from holding MGE, 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.

32. Failure to make a timely civil penalty payment 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 MGE to additional action under the enforcement and penalty provisions of the Natural Gas Act.

33. If MGE 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) (2011) from the date that payment is due, in addition to the penalty specified above.

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

35. 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 MGE has been made to induce the signatories or any other party to enter into the Agreement.

36. 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 MGE shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and MGE.

37. In connection with the payment of the civil penalty provided for herein, MGE 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). MGE 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.

38. 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.

Document Content(s)

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