

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

In re Bangor Gas Company, LLC

Docket No. IN07-23-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued March 7, 2007)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Bangor Gas Company, LLC (Bangor). This Order is in the public interest because it resolves certain self-reported violations by Bangor of the Commission's "shipper-must-have-title" requirement¹ resulting from Bangor's failure to hold title to the gas it transported on behalf of certain customers, with an agreed-upon payment of a \$1 million civil penalty, and a compliance plan to assure compliance with the Commission's capacity release program and pipeline tariffs, including the "shipper-must-have-title" requirement.

Background

2. Bangor is a local distribution company located in Maine serving both bundled and transportation-only retail customers. Bangor is a wholly-owned subsidiary of Penobscot Natural Gas Company, Inc., which is in turn a wholly-owned subsidiary of Sempra Energy, a Fortune 500 energy-services holding company with the largest regulated gas and electric utility customer base in the United States serving 29 million consumers, with more than 14,000 employees worldwide and revenues of \$11.7 billion in 2005.

3. Bangor entered into contracts with nine customers for unbundled transportation services from the interconnection of the Veazie and Bucksport Laterals with Maritimes and Northeast Pipeline's (MNE) mainline to delivery points on Bangor's own distribution system. Bangor's nine transportation-only customers either have their own transportation

¹ See, e.g., *Rendezvous Gas Services LLC*, 113 FERC ¶ 61,169, at P 40 (2005); *Enron Energy Services, Inc.*, 84 FERC ¶ 61,222, at 60,063 (1998); *Consolidated Gas Transmission Corp.*, 38 FERC ¶ 61,150, at 61,408 (1987) (citing *Texas Eastern Transmission Corp.*, 37 FERC ¶ 61,260, at 61,683-85 (1986)).

arrangements on the MNE mainline or purchase their gas supplies from third parties that have made such transportation arrangements.

4. On September 28, 2006, following an internal investigation prompted by facts uncovered during due diligence work associated with Sempra Energy's plans to sell Bangor, Sempra Energy submitted Bangor's written self-report to Enforcement. Enforcement staff's investigation reviewed Bangor's contracts and actions over a six year period beginning July 2000.

Summary of Violations

5. In order to promote pipeline open-access and to prevent undue discrimination in the primary and secondary markets for capacity, the Commission adopted a number of specific capacity release policies. Among them was the "shipper-must-have-title" policy, which requires that "all shippers shall have title to the gas at the time the gas is delivered to the transporter and while it is being transported by the transporter."²

6. As part of the implementation of Order No. 636, pipelines revised their tariffs to include "shipper-must-have-title" provisions in the General Terms and Conditions. These provisions, including the one in MNE's tariff,³ require shippers to warrant good title to the gas shipped on their capacity.

7. By failing to hold title to the gas transported on the Veazie and Bucksport Laterals under its firm contract with MNE, Bangor violated the "shipper-must-have-title" policy and MNE's tariff, and thereby violated the Commission requirement that it either hold title to the gas transported under its firm contract or release that capacity necessary to serve its nine transportation-only customers.

8. Bangor did not profit from its violations, and staff believes that no identifiable financial harm to third parties was caused by Bangor's violations. MNE's historical indices of customers submitted to the Commission on a quarterly basis dating back to 2000 show that, since Bangor has been receiving service from MNE, MNE has had no

² *Id.*

³ Section 19 of the General Terms and Conditions of MNE's tariff states, in relevant part: "Customer warrants that Customer will at the time of receipt of the natural gas by the Pipeline have good and merchantable title to all of the natural gas free and clear of all liens, encumbrances, and claims whatsoever or good right to tender gas for transportation (and all necessary authorizations related thereto). Title to the gas received by Pipeline for Customer's account hereunder shall remain with Customer during its transportation or storage with Pipeline." MNE First Revised Tariff Vol. No. 1, Original Sheet No. 293 (effective Dec. 1, 1999).

new firm customers for, and no party has taken interruptible service on, either the Veazie or Bucksport Laterals. In addition, for the six year period beginning July 2000 investigated by staff, the Veazie and Bucksport Laterals were at all times unconstrained.

9. Upon learning of Bangor's violations of the Commission's "shipper-must-have-title" requirement, Sempra Energy moved quickly to investigate further, self-report its violations, and take corrective action. Effective November 1, 2006, Bangor completed capacity releases on MNE's Veazie and Bucksport Laterals for all nine transportation-only contracts at issue such that Bangor is no longer transporting gas to which its transportation-only customers hold title. Bangor has taken additional steps to ensure the personnel responsible for arranging and administering transportation capacity on MNE understand and comply with the Commission's "shipper-must-have-title" policy and MNE's tariff provisions on capacity release. During the course of staff's investigation, Sempra Energy representatives acting on behalf of Bangor, demonstrated exemplary cooperation with staff by promptly and completely responding to all data requests, and keeping staff apprised of new developments.

Stipulation and Agreement

10. Enforcement and Bangor have entered into the attached Agreement to resolve Enforcement's investigation of Bangor's self-report. The Agreement requires Bangor to pay a \$1 million civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement.

11. Bangor shall submit semi-annual reports with Enforcement for a period of one year, the first report to be submitted no later than August 31, 2007, which describe in detail the steps Bangor has taken to assure compliance with transportation requirements, and shall include an affidavit that Bangor is in compliance with the Commission's capacity release program and pipeline tariffs, including the "shipper-must-have-title" requirement.

Determination of the Appropriate Remedy

12. The Commission may impose civil penalties of up to \$1 million per day per violation pursuant to section 22(a) of the Natural Gas Act, as amended by the Energy Policy Act of 2005.⁴ In approving the Agreement and the \$1 million civil penalty, we

⁴ Energy Policy Act of 2005, Pub. L. No. 109-58, § 314 (b)(1)(B) (2005). Under the NGA (15 U.S.C. §§ 717 *et seq.* (2000)) section 22(a), the Commission can assess a penalty "of not more than \$1,000,000 per day per violation for as long as the violation continues." *See generally Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317 (2006).

considered the factors set forth in our Policy Statement on Enforcement.⁵ Among all the factors considered, six are of particular significance: (1) the fact that the Commission's "shipper-must-have-title" policy is a long-standing, well-known, and critical element of the Commission's capacity release program; (2) the failure of Bangor and Sempra Energy senior management to ensure relevant Bangor personnel followed the law; (3) Bangor's prompt submission of a self-report; (4) exemplary cooperation during the course of the investigation; (5) prompt corrective actions taken to help ensure future compliance; and (6) the violations occurred only on short laterals serving a small geographic area in Maine, with no identifiable financial harm to third parties.

13. In light of the facts and circumstances, we conclude that the penalty specified in the Agreement provides a fair and equitable resolution of this matter and is in the public interest. We also conclude that the compliance program specified in the Agreement is 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)

Philis J. Posey,
Acting Secretary.

⁵ Enforcement of Statutes, Orders, Rules, and Regulations, 113 FERC ¶ 61,068 (2006).

had previously agreed to construct to serve a third party. Combined, the Veazie and Bucksport Laterals represent about 1.5 miles of pipeline.

3. Subsequent to the time Bangor entered into the two long-term transportation contracts with MNE to support construction of the laterals, Bangor entered into contracts with nine customers for unbundled transportation services from the interconnection of the Veazie and Bucksport Laterals with MNE's mainline to delivery points on Bangor's own distribution system. Bangor's nine transportation-only customers either have their own transportation arrangements on the MNE mainline or purchase their gas supplies from third parties that have made such transportation arrangements.

4. Bangor's violations came to light as a result of due diligence work associated with Sempra Energy's plans to sell Bangor. In connection with this work, various Bangor contracts were reviewed beginning on September 1, 2006 when it was discovered that its transportation-only customers did not have firm contracts on MNE. Bangor commenced a review of its files and conducted several interviews with current and former Bangor employees to ascertain the relevant facts. As a result of its internal investigation, Bangor concluded that it has used its contract with MNE to transport gas that is not owned by Bangor. On September 20, 2006, the results of Bangor's investigation were shared with Sempra Energy senior management, and on September 28, 2006, Sempra Energy submitted Bangor's written self-report to Enforcement.

5. Enforcement opened a preliminary, non-public investigation into the reported violations. The period investigated by Enforcement was July 2000 through September 2006.

6. During the course of the investigation, Sempra Energy representatives acting on behalf of Bangor, demonstrated exemplary cooperation with staff, promptly responded to data requests and kept staff apprised of new developments, and provided expeditious and complete answers to all questions.

B. Violations

7. In order to promote pipeline open-access and to prevent undue discrimination in the primary and secondary markets for capacity, the Commission adopted a number of specific capacity release policies. Among them was the "shipper-must-have-title" policy, which requires that "all shippers shall have title to the gas at the time the gas is delivered to the transporter and while it is being transported by the transporter."¹

¹ See, e.g., *Rendezvous Gas Services LLC*, 113 FERC ¶ 61,169, at P 40 (2005); *Enron Energy Services, Inc.*, 84 FERC ¶ 61,222, at 60,063 (1998); *Consolidated Gas*

8. As part of the implementation of Order No. 636, pipelines revised their tariffs to include “shipper-must-have-title” provisions in the General Terms and Conditions. These provisions, including the one in MNE’s tariff noted below, require shippers to warrant good title to the gas shipped on their capacity.

9. Section 19 of the General Terms and Conditions of MNE’s tariff states, in relevant part:

Customer warrants that Customer will at the time of receipt of the natural gas by the Pipeline have good and merchantable title to all of the natural gas free and clear of all liens, encumbrances, and claims whatsoever or good right to tender gas for transportation (and all necessary authorizations related thereto). Title to the gas received by Pipeline for Customer’s account hereunder shall remain with Customer during its transportation or storage with Pipeline.²

10. By failing to hold title to the gas transported on the Veazie and Bucksport Laterals under its firm contract with MNE, Bangor violated the “shipper-must-have-title” policy and MNE’s tariff, and thereby violated the Commission requirement that it either hold title to the gas transported under its firm contract or release that capacity necessary to serve its nine transportation-only customers.

11. During the term of each violation, Bangor admits that the personnel responsible for nominating and scheduling the gas on MNE were unaware of the above MNE tariff section incorporating the Commission’s requirement that a shipper must hold title to the gas transported, and did not take the steps necessary to ensure that Bangor had title to the gas transported on MNE’s laterals. Bangor also admits that for the period July 2000 through September 2006, there was no training provided to personnel related to compliance with the Commission’s capacity release program and the Commission’s “shipper-must-have-title” policy.

12. Bangor did not profit from its violations, and staff believes that no identifiable financial harm to third parties was caused by Bangor’s violations. MNE’s historical indices of customers submitted to the Commission on a quarterly basis dating back to 2000 show that, since Bangor has been receiving service from MNE, MNE has had no new firm customers for, and no party has taken interruptible service on, either the Veazie or Bucksport Laterals. In addition, for the period July 2000 through September

Transmission Corp., 38 FERC ¶ 61,150, at 61,408 (1987) (citing *Texas Eastern Transmission Corp.*, 37 FERC ¶ 61,260, at 61,683-85 (1986)).

² MNE First Revised Tariff Vol. No. 1, Original Sheet No. 293 (effective Dec. 1, 1999).

2006, the Veazie and Bucksport Laterals were at all times unconstrained.

C. Action Subsequent to Violations

13. Upon learning of Bangor's violations of the Commission's "shipper-must-have-title" requirement, Sempra Energy moved quickly to investigate further, self-report its violations, and take corrective action. Effective November 1, 2006, Bangor completed capacity releases on MNE's Veazie and Bucksport Laterals for all nine transportation-only contracts at issue such that Bangor is no longer transporting gas on MNE's laterals to which its transportation-only customers hold title.

14. Bangor has taken steps to ensure the personnel responsible for arranging and administering transportation capacity on MNE understand and comply with the Commission's "shipper-must-have-title" policy and MNE's tariff provisions on capacity release.

III. REMEDIES AND SANCTIONS

For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation into the matters self-reported by Bangor, Enforcement and Bangor agree that on and after the effective date of this Agreement, Bangor shall take the following actions:

15. Bangor shall pay a civil penalty of \$1,000,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined in paragraph 17 below. Bangor shall not seek, and shall take no action, to pass through to ratepayers any part of the civil penalty.

16. Bangor shall submit semi-annual reports with Enforcement for a period of one year, the first report to be submitted no later than August 31, 2007, and the second report to be submitted no later than February 28, 2008. The reports shall describe Bangor's transportation of gas for others and steps taken by Bangor to assure compliance with transportation requirements, and shall include an affidavit that Bangor is in compliance with the Commission's capacity release program and pipeline tariffs, including the "shipper-must-have-title" requirement. Specifically, the compliance reports must include: (1) a description of the training provided to all relevant personnel concerning the Commission's capacity release program, including the "shipper-must-have-title" requirement, (2) a statement of the personnel that have received such training, and when the training took place; (3) a summary of Bangor's transportation-only contracts, including any new transportation-only contracts or material changes to existing transportation-only contracts; (4) a description of the arrangements made by Bangor to assure that its transportation-only service is in compliance with the "shipper-must-have-

title” requirement; and (5) an affidavit executed by a member of senior management affirming that the compliance reports are true and accurate. Upon request by staff, Bangor shall provide to staff all backup documentation supporting Bangor’s reports.

IV. TERMS

17. 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 Bangor and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to Bangor (hereinafter collectively, Bangor).

18. Commission approval of this Agreement without material modification shall release Bangor and forever bar the Commission from bringing against Bangor any and all administrative or civil claims arising out of, related to, or connected with the violations addressed in this Agreement.

19. Failure to make a timely civil penalty payment or to comply with the compliance program 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 Bangor to additional action under the enforcement and penalty provisions of the NGA.

20. If Bangor 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. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

21. The signatories to the 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 Bangor has been made to induce the signatories or any other party to enter into the Agreement.

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

23. In connection with the payment of the civil penalty provided for herein, Bangor 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) (2005). Bangor 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.

24. 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.

25. The undersigned representative of Bangor 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.

26. The Agreement may be signed in counterparts.

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

Agreed to and accepted:



Susan J. Court, Director
Office of Enforcement



Date



Arturo Infanzon
President of Bangor Gas Company



Date