

121 FERC ¶ 61,087
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 MGTC, Inc.

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Docket No. IN07-34-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 25, 2007)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and MGTC, Inc. (MGTC). This Order is in the public interest because it resolves the preliminary, non-public investigation of violations by MGTC of the Commission's shipper-must-have-title requirement. The investigation followed a May 24, 2007 self-report of MGTC's violations by MGTC's parent company, Anadarko Petroleum Corporation (Anadarko). MGTC has agreed to pay a civil penalty of \$300,000 and to submit a compliance report.

Background

2. MGTC owns and operates an intrastate pipeline system located in the state of Wyoming. MIGC, Inc. (MIGC), a jurisdictional pipeline, provides open-access firm and interruptible transportation services pursuant to its Commission-approved gas tariff. MGTC has held interruptible transportation capacity on MIGC since 1998.

3. Anadarko, an independent oil and gas exploration and development company, acquired MGTC and MIGC in August 2006, as part of Anadarko's acquisition of Kerr McGee Corporation and Western Gas Resources Inc. Anadarko is involved in a wide variety of activities moving gas from the wellhead to the market, including gathering, compression, treating and dehydration, processing, field area supply, market area supply, transportation optimization, and storage management.

4. On or about March 15, 2007, counsel for and management of Anadarko learned that an existing transportation agreement dated January 23, 2002, under which MGTC provides intrastate transportation service for Kinder Morgan, Inc. (Kinder Morgan) in Wyoming relies upon upstream transportation by MIGC under a September 21, 1998 transportation agreement between MGTC and MIGC. This agreement contains terms and conditions under which MGTC transported gas using interruptible transportation capacity

on MIGC. However, MGTC transported gas owned by Kinder Morgan customers and did not have title to the gas it transported on MIGC.

5. On May 24, 2007, following an internal investigation, Anadarko self-reported to Enforcement staff that MGTC had failed to comply with the Commission's shipper-must-have-title requirement. Enforcement investigated MGTC's transactions during the period beginning September 1998 and ending May 2007.

Violations

6. 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 is the shipper-must-have-title requirement, under which a shipper must hold title to the gas being transported on the shipper's pipeline capacity.

7. The shipper-must-have-title requirement arose in pipeline-specific proceedings involving the implementation of open-access transportation under Order No. 436, wherein the Commission required 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 The shipper-must-have-title requirement was designed to prevent the unauthorized brokering of capacity.

8. The shipper-must-have-title requirement was retained when the Commission required pipelines to adopt capacity release programs in Order No. 636, and the Commission has stated on many occasions that the title requirement is intended to provide transparency to jurisdictional transactions and to prevent the withholding or brokering of interstate capacity.² Indeed, in Order No. 637 the Commission rejected producers' calls to eliminate the shipper-must-have-title requirement, explaining that the "capacity release rules were designed with this requirement as their foundation."³ Without the shipper-must-have-title requirement, the identities of the users of the pipeline's transportation and the conditions under which they moved gas would not be

¹ *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)); *accord Williston Basin Interstate Pipeline Co.*, 44 FERC ¶ 61,129, at 61,368 (1988).

² See, e.g., *Rendezvous Gas Services, LLC*, 113 FERC ¶ 61,169, at P 40 (2005) (stating that "[t]o use capacity on an interstate pipeline a shipper must have a capacity contract with the pipeline, and have title to the gas when transportation is scheduled"); *Enron Energy Services, Inc.*, 84 FERC ¶ 61,222, at 62,063 (1998), *reh'g denied*, 85 FERC ¶ 61,221 (1998).

³ Order No. 637, at 31,300.

known, undermining the Commission's objectives of pipeline open-access and non-discrimination.⁴

9. 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 require shippers to warrant good title to the gas shipped on their capacity. Further, in proceedings subsequent to Order No. 636, the Commission has emphasized that "[a]lthough the language of the tariff provisions may only indicate the shipper must have title to gas at the time it delivers the gas to the pipeline for transportation, longstanding Commission policy also requires that the shipper must continue to hold title to the gas throughout the entire course of the transportation of the gas."⁵

10. By failing to hold title to the gas transported on MIGC under its interruptible contract, MGTC violated the shipper-must-have-title requirement and MIGC's tariff, which applies the title requirement to interruptible as well as firm transportation. MGTC transported approximately 17.2 Bcf of natural gas in violation of the shipper-must-have-title requirement over the period reviewed.

11. MGTC did not profit unjustly from its violations, and it appears that no demonstrable financial harm to third parties was caused by MGTC's violations.

12. Upon learning of MGTC's violations of the Commission's shipper-must-have-title requirement, Anadarko moved quickly to investigate further, self-report MGTC's violations, and take corrective action. MIGC now requires that a shipper requesting new service execute a service request form and explicitly certify that the shipper has title to the gas it delivers to MIGC. MGTC is restructuring its transportation arrangements to ensure that MIGC's shipper-must-have-title requirement is met.

Stipulation and Consent Agreement

13. Enforcement and MGTC have entered into the attached Agreement to resolve Enforcement's investigation of MGTC's violations. The Agreement requires MGTC to pay a \$300,000 civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement.

14. The Agreement also requires that MGTC make a compliance report to Enforcement staff no later than thirty days after the issuance of this order. The compliance report will describe in detail how MGTC has restructured its transportation arrangements to ensure that MIGC's shipper-must-have-title requirement is met. In

⁴ *Id.*

⁵ *Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

particular, MGTC will explain how the MGTC-Kinder Morgan⁶ retail contract has been restructured. In addition, MGTC will also state whether MIGC and Source-Gas have entered into a firm transportation agreement pursuant to MIGC's tariff provisions approved by the Commission in Docket No. RP07-527-000, *et al.* on August 15, 2007. The compliance report will also include an affidavit that MGTC is in full compliance with the shipper-must-have-title requirement.

Determination of the Appropriate Remedy

15. Pursuant to section 22(a) of the Natural Gas Act (NGA), the Commission may impose 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 \$300,000 penalty, we considered the factors set forth in section 22(c) of the NGA, 15 U.S.C. § 717t-1(c), and in our Policy Statement on Enforcement.⁸ Among all the factors considered, seven are of particular significance: (1) that the Commission's shipper-must-have-title requirement is a long-standing, well-known, and critical element of the Commission's capacity release program; (2) that MGTC's new owner, Anadarko, promptly self-reported the violations after it discovered them; (3) that the violations began long before Anadarko's acquisition of MGTC; (4) that the violations occurred under an interruptible contract; (5) that the violations occurred in a small geographic area in Wyoming; (6) that there was no demonstrable harm to the market or to market participants from MGTC's violations; and (7) that Anadarko exhibited exemplary cooperation with staff's investigation.

16. We conclude that the civil penalty and compliance report specified in the Agreement are fair and equitable and in the public interest.

⁶ Kinder Morgan recently sold its interest in its former retail division to Source-Gas, LLC (Source-Gas).

⁷ 15 U.S.C. § 717t-1(a), *added by* Energy Policy Act of 2005, Pub. L. No. 109-58, § 314 (b)(1)(B) (2005). Section 22(a) provides that the Commission can assess a penalty "of not more than \$1,000,000 per day per violation for as long as the violation continues."

⁸ *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 (2005).

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 MGTC, Inc.)	
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STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and MGTC, Inc. (MGTC) enter into this Stipulation and Consent Agreement (Agreement) to resolve a preliminary, non-public investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2007), into violations of the shipper-must-have-title requirement. The investigation followed a May 24, 2007 self-report of MGTC's violations by MGTC's parent company, Anadarko Petroleum Corporation (Anadarko).

II. STIPULATION

Enforcement and MGTC hereby stipulate and agree to the following:

A. Background

2. MGTC owns and operates an intrastate pipeline system located in the state of Wyoming. MIGC, Inc. (MIGC), a jurisdictional pipeline, provides open-access firm and interruptible transportation services pursuant to its Commission-approved gas tariff. MGTC has held interruptible transportation capacity on MIGC since 1998.

3. Anadarko, an independent oil and gas exploration and development company, acquired MGTC and MIGC in August 2006, as part of Anadarko's acquisition of Kerr McGee Corporation and Western Gas Resources, Inc. (Western). Anadarko is an independent oil and gas exploration and development company. Anadarko is involved in both upstream and downstream activities. In aggregating gas from the wellhead to the market, Anadarko's range of services includes gathering, compression, treating and dehydration, and processing. Its market services include field area supply, market area supply, transportation optimization, and storage management.

4. Anadarko met with Enforcement staff on May 24, 2007, to disclose that, after it had acquired MGTC and MIGC, Anadarko conducted an assessment of MGTC which revealed violations of the Commission's shipper-must-have-title requirement. Anadarko explained that on or about March 15, 2007, counsel for and management of Anadarko learned that an existing transportation agreement dated January 23, 2002, under which MGTC provides intrastate transportation service for Kinder Morgan, Inc. (Kinder Morgan) in Wyoming relies upon upstream transportation by MIGC under a September 21, 1998, transportation agreement between MGTC and MIGC. This agreement contained terms and conditions under which MGTC transported gas using interruptible transportation capacity on MIGC. However, MGTC transported gas owned by Kinder Morgan customers and did not have title to the gas it transported on MIGC.

5. Anadarko also explained that during compliance training for its newly acquired business units, an MIGC employee brought these transactions to the attention of Anadarko senior management. At that time, the employee also informed Anadarko that in July 2006, she expressed concerns regarding the transactions to management of Western, which did not take any corrective action. Anadarko states that the Western personnel to whom this had been reported did not continue employment after Anadarko's acquisition of Western.

6. Enforcement opened a preliminary, non-public investigation into the reported violations. Enforcement investigated MGTC's transactions during the period beginning September 1998 and ending May 2007.

B. Violations

7. A central element of the Commission's capacity release 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.

8. Interstate pipeline tariffs feature provisions requiring shippers to warrant good title to the gas tendered for transportation on the pipeline. Although the specific language of pipeline 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. *See Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

9. Section 5(f) of the General Terms and Conditions of MIGC's tariff states in relevant part:

Performance - A letter from Shipper certifying that Shipper has title to the gas to be delivered to MIGC for transportation, or has a current contractual right to acquire title to the gas prior to its delivery to MIGC,

and has entered into or will enter into those arrangements necessary to assure all upstream and downstream transportation will be in place prior to the commencement of transportation service.⁹

10. By failing to hold title to the gas transported on MIGC under its interruptible contract, MGTC violated the shipper-must-have-title requirement and MIGC's tariff. MGTC engaged in thousands of individual transactions involving the transportation of 17.2 Bcf of natural gas in violation of the shipper-must-have-title requirement over the period reviewed.

11. Under MIGC's tariff, the shipper-must-have-title requirement applies to interruptible as well as firm transportation. By not complying with this requirement, MGTC shielded the identity of the true party in interest in the transportation provided by MIGC and interfered with the reporting requirements of 18 C.F.R. § 284.13(b)(2).

12. MGTC's violations of the Commission's shipper-must-have-title requirement are attributable to the long-standing failure of MGTC's former management to comply with MIGC's tariff and to the failure of MGTC's former management to take corrective action after being notified of the issue in July 2006.

C. Anadarko's self-corrective remedial action

13. Upon the completion of its internal review, Anadarko took immediate action to address MGTC's violation of the Commission's shipper-must-have-title requirement. Anadarko also submitted a self-report, wherein it disclosed to Enforcement staff the findings of its internal assessment. The report provided a complete and candid assessment of the scope and nature of the MGTC's violations.

14. In addition to the shipper-must-have-title provision of its tariff, Anadarko states that MIGC now requires that a shipper requesting new service execute a service request form containing a provision that explicitly certifies that the shipper has title to the gas it delivers to MIGC for transportation and delivery to MGTC. In addition, MGTC is restructuring its transportation arrangements to ensure that MIGC's shipper-must-have-title requirement is met. Kinder Morgan recently sold its interest in its former retail division to Source-Gas, LLC (Source-Gas). MGTC will cause the MGTC-Kinder Morgan retail contract to be restructured to exclude any movement on MIGC. Source-Gas will then assign its MIGC capacity to its suppliers through the capacity release process and will assign its MGTC capacity to its suppliers pursuant to MGTC's Wyoming tariff.

⁹ MIGC First Revised Tariff Volume No. 1, Third Revised Sheet No. 70.

15. MIGC and Source-Gas will enter into a firm transportation agreement pursuant to MIGC's tariff provisions approved by the Commission in Docket No. RP07-527-000, *et al.* on August 15, 2007. As stated above, the MGTC capacity will have been assigned by Source-Gas to its suppliers pursuant to MGTC's Wyoming tariff. Source-Gas will release its MIGC capacity to its suppliers, keeping in alignment legal title to the gas and the identity of the shipper of record.

16. Anadarko exhibited exemplary cooperation throughout Enforcement staff's investigation.

III. REMEDIES AND SANCTIONS

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

18. MGTC shall pay a civil penalty of \$300,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined in paragraph 20 below.

19. MGTC shall make a compliance report to Enforcement staff no later than thirty days after the Commission issues an order approving this Agreement. The compliance report will include (1) confirmation that all steps have been taken with respect to all related aspects of the transaction(s) to correct the violation as set forth in paragraphs 14 and 15 or that the contracts otherwise have been fully corrected or terminated, (2) executed copies of the restructured contract(s), and (3) an affidavit executed by an officer of MGTC attesting that MGTC is in full compliance with the shipper-must-have-title requirement and that the compliance report is true and accurate.

IV. TERMS

20. 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 matter specifically addressed herein as to MGTC and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to MGTC.

21. Commission approval of this Agreement without material modification shall release MGTC and forever bar the Commission from holding MGTC liable for any and all administrative or civil claims arising out of, related to, or connected with the shipper-must-have-title violations addressed in this Agreement.

22. Failure to make a timely civil penalty payment or to comply with the compliance report 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 MGTC to additional action under the enforcement and penalty provisions of the NGA.
23. If MGTC 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.
24. The Agreement binds MGTC and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on MGTC, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.
25. 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 MGTC has been made to induce the signatories or any other party to enter into the Agreement.
26. 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 MGTC shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and MGTC.
27. In connection with the payment of the civil penalty provided for herein, MGTC 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). MGTC 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.
28. 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.
29. The undersigned representative of MGTC 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.

30. The Agreement may be signed in counterparts.

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

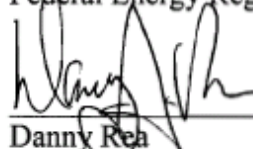
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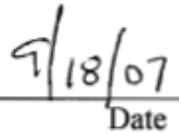
Susan J. Court
Director
Office of Enforcement
Federal Energy Regulatory Commission



Date



Danny Rea
Vice President, Midstream
MGTC, Inc.



Date