

125 FERC ¶ 61,088
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 Enbridge Marketing (U.S.) L.P.

Docket No. IN09-1-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 24, 2008)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Enbridge Marketing (U.S.) L.P. (EMUS). This Order is in the public interest because it resolves the investigation into self-reported violations by EMUS of the Commission's capacity release policies, specifically violations of the shipper-must-have-title (SMHT) requirement. EMUS has agreed to pay a civil penalty of \$500,000. In addition, EMUS has agreed to compliance monitoring reporting.

Background

2. EMUS is a gas marketer serving principally small municipal utilities, local distribution companies, power generators, and industrial end-users. EMUS is a subsidiary of Enbridge Energy Partners, L.P., a publicly traded energy transportation company that conducts business in the Midwest, Mid-Continent and Gulf Coast regions of the United States.

3. EMUS commenced an internal investigation of its compliance with the Commission's capacity release requirements after the *Bangor*¹ order was issued. EMUS subsequently reported to Enforcement that certain of its transactions violated the SMHT requirement.

¹ *In re Bangor Gas Co., LLC*, 118 FERC ¶ 61,186 (2007) (*Bangor*) (a settled case involving SMHT violations where Bangor agreed to pay \$1 million civil penalty and submit compliance reports).

Violations

4. Enforcement opened an investigation into the reported violations pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008). Enforcement confirmed the SMHT violations, which occurred on several interstate pipelines, and involved the transportation of approximately 30 Bcf of natural gas between August 2004 and May 2007.

5. A central requirement 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. 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).

6. EMUS violated the SMHT requirement during the period August 2004 through May 2007 by improperly transporting approximately 30 Bcf of gas owned by EMUS on capacity held by others to third parties. To comply with the SMHT requirement when transporting EMUS-owned gas, EMUS should have obtained pipeline capacity in its own name, such as by capacity release. Violations of the SMHT requirement interfere with the Commission's oversight of natural gas markets and interfere with the Commission's goal of market transparency.

7. The primary cause of the violations was lack of an adequate SMHT compliance training for EMUS employees and the lack of adequate contract review safeguards in place to ensure compliance with Commission requirements.

Stipulation and Consent Agreement

8. Enforcement and EMUS resolved Enforcement's investigation of EMUS violations by means of the attached Agreement. The Agreement requires EMUS to pay a \$500,000 civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement.

9. EMUS has also agreed to compliance monitoring reports, and will submit semi-annual reports to Enforcement staff for one year. With respect to all of EMUS's wholesale natural gas business, each compliance report shall describe any new and existing compliance program measures including training, and alert staff to any additional violations of the capacity release requirements that may occur. Enforcement may extend the compliance monitoring for one additional year at its sole discretion.

Determination of the Appropriate Civil Penalty

10. 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.² In arriving at the appropriate civil penalty amount, staff considered the factors set forth in section 22(c) of the NGA, 15 U.S.C. § 717t-1(c), and the Commission's Revised Policy Statement on Enforcement.³ For the reasons noted below, 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 seriousness and scope of EMUS's violations while recognizing that the company took the initiative to both report and remedy its violations.

11. In determining EMUS's civil penalty we took into account that EMUS discovered the SMHT violations through an internal investigation and acted promptly to investigate, report, and correct the SMHT violations it found. The Commission also considered the fact that EMUS voluntarily improved its compliance practices by adopting contract review guidelines to address Commission requirements. Further, there was no demonstrated harm to market participants as a result of the SMHT violations and no unjust profits to disgorge. Finally, EMUS's cooperation throughout the investigation was exemplary.

12. EMUS's SMHT violations involved 30 Bcf of gas over a period of approximately three years. Compared with prior settlements in cases involving SMHT violations, the civil penalty amount appropriately addresses the extent of the violations and EMUS's efforts to report and remedy the violations.⁴

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

² 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").

³ *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156, at P 54 - 71 (2008).

⁴ *See, e.g., In re MGTC, Inc.*, 121 FERC ¶ 61, 087 (2007); *In re Entergy New Orleans*, 122 FERC ¶ 61, 219 (2008).

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 Enbridge Marketing (U.S.) L.P.)

Docket No. IN09-1-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Enbridge Marketing (U.S.) L.P. (EMUS) 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 (2008), into violations of the Commission's capacity release program, specifically violations of the shipper-must-have-title (SMHT) requirement.

II. STIPULATIONS

Enforcement and EMUS hereby stipulate and agree to the following:

A. Background

1. EMUS is a gas marketer serving principally small municipal utilities, local distribution companies, power generators, and industrial end-users. EMUS is a subsidiary of Enbridge Energy Partners, L.P., a publicly traded energy transportation company that conducts business in the Midwest, Mid-Continent and Gulf Coast regions of the United States.

2. Following its review of the *Bangor*⁵ order, EMUS conducted a review of its own business practices and later retained outside counsel and a consultant. EMUS looked into all capacity release issues from January 2005 through May 2007 and one transaction from August 2004 through May 2007, including buy-sell transactions and posting and bidding regulations required for capacity release, and only identified violations of the SMHT requirement.

⁵ *In re Bangor Gas Co., LLC*, 118 FERC ¶ 61,186 (2007) (*Bangor*) (a settled case involving shipper-must-have-title violations where Bangor agreed to pay \$1 million civil penalty and compliance monitoring).

3. Counsel for EMUS called Enforcement staff to describe EMUS's potential violations and to inform staff that the company would submit a written self-report. Upon receipt of EMUS's self-report, Enforcement opened an investigation into the reported violations pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008).

B. Summary of Violations

4. Enforcement confirmed certain of EMUS's self-reported violations of the Commission's SMHT requirement. The SMHT violations occurred on multiple pipelines and involved the transportation of approximately 30 Bcf of natural gas in violation of the Commission's SMHT policy between August 2004 and May 2007. Staff did not find that EMUS made any unjust profits to disgorge from these transactions.

5. The primary reason these violations occurred is because EMUS management failed to ensure adequate SMHT compliance training for its employees and failed to have adequate contract review safeguards in place to ensure compliance with Commission rules and policies.

6. A central requirement 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. 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).

7. EMUS often acts as agent for customers that hold pipeline capacity and delivers gas to those customers. In some instances, however, EMUS used such capacity to deliver gas to third parties. To comply with the SMHT requirement in such cases, EMUS should have obtained pipeline capacity in its own name, such as by capacity release. EMUS violated the SMHT requirement during the period August 2004 through May 2007 by improperly transporting approximately 30 Bcf of gas owned by EMUS on capacity held by its customers but delivered the gas to third parties. EMUS's SMHT violations avoided compliance with the Commission's capacity release requirements. EMUS's violations of the SMHT requirement reduced market transparency in the natural gas transportation market and impacted the Commission's oversight of that market.

C. Self-Corrective Action

8. After discovering potential violations of the SMHT requirement, EMUS, in conjunction with outside counsel and a consulting firm that specializes in data analysis, conducted a comprehensive review of EMUS's interstate pipeline transportation

transactions. Senior management fully supported EMUS's review and did not attempt to conceal the violations. EMUS self-reported to the Commission, took prompt self-corrective action to terminate or restructure its contractual arrangements, and revised its contract practices to avoid future incidents of SMHT violations.

9. EMUS submitted a detailed written self-report, in which it disclosed to Enforcement staff the findings of its self-assessment. The report provided a complete and candid assessment of the scope and nature of the SMHT violations, including the economic impact of the violations. Enforcement determined that EMUS did not earn unjust profit as a result of the violations.

10. EMUS's cooperation throughout this investigation was exemplary, including voluntarily providing internal investigation and audit reports, hiring a consulting firm to assist in the investigation, and making available knowledgeable employees who helped provide a complete picture of the violations.

11. At the time the violations described occurred, EMUS did not have a comprehensive compliance program relating to the Commission's capacity release requirements. As a result, EMUS's employees lacked sufficient familiarity with the Commission's SMHT and capacity release requirements. Since submitting the self-report, EMUS instituted a regulatory compliance training program to focus on Commission requirements and voluntarily developed a compliance program that includes contract review guidelines to address Commission requirements. EMUS also assigned a compliance officer to monitor EMUS's commercial transactions and adopted a due diligence checklist to assist in compliance in future transactions.

III. REMEDIES AND SANCTIONS

12. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation into the self-reported capacity release violations, EMUS agrees to take the following actions.

A. Civil Penalty

13. EMUS shall pay a civil penalty of \$500,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

B. Compliance Monitoring

14. EMUS shall make semi-annual reports to Enforcement staff for one year following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The second report shall be submitted six months thereafter. With respect to all of EMUS's wholesale natural gas

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

IV. TERMS

15. 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 EMUS and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to EMUS.

16. Commission approval of this Agreement without material modification shall release EMUS and forever bar the Commission from holding EMUS liable for any and all administrative or civil claims arising out of, related to, or connected with the capacity release violations addressed in this Agreement.

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

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

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

20. 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 EMUS has been made to induce the signatories or any other party to enter into the Agreement.

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

22. In connection with the payment of the civil penalty provided for herein, EMUS 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). EMUS 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.


23. 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.

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

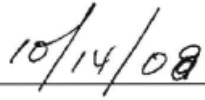
25. The Agreement may be signed in counterparts.

26. 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
Federal Energy Regulatory Commission

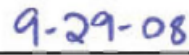


Date

Enbridge Marketing (U.S.) L.P.
By: Enbridge Marketing (U.S.) L.L.C.
Its Sole General Partner

By 

Janet Coy, President



Date