



FEDERAL ENERGY REGULATORY COMMISSION

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Docket Nos. IN08-1-000, IN08-4-000

NEWS MEDIA CONTACT

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FERC Enforces Gas Capacity Release Rules

The Federal Energy Regulatory Commission today approved two separate stipulation and consent agreements that resolve staff investigations into violations of FERC policies and procedures. The agreements provide for \$5.4 million in civil penalties and \$1.9 million in disgorgement of unjust profits.

Under the first settlement, Constellation NewEnergy-Gas Division, LLC (CNE-G), will pay a \$5 million civil penalty and disgorge unjust profits of almost \$1.9 million, plus interest, for violating FERC's capacity release policies, including circumvention of the competitive bidding requirement for discounted released capacity, violations of the shipper-must-have-title requirement and violations of the prohibition on buy-sell transactions. CNE-G self-reported these violations.

Under the second settlement, Entergy New Orleans, Inc. will pay \$400,000 in civil penalties for its self-reported violations of the shipper-must-have-title requirement.

"The capacity release rules are a long-standing, well-known and critical element of our gas transportation open-access program and we expect market participants to play by those rules," FERC Chairman Joseph T. Kelliher said. "The penalties are significant because the violations are serious. Given the scope and volume of violations, both of these companies could have faced substantially higher penalties. But both companies self-reported their violations and cooperated with our investigators."

Constellation NewEnergy-Gas Division

CNE-G is a retail natural gas marketing company that delivers natural gas to retail markets in several states through interstate pipeline and storage capacity held in its name and through customer-owned capacity. Today's settlement involves CNE-G as well as Constellation Energy Commodities Group Inc. (CCG) and their parent, Constellation Energy Group Inc. (Constellation).

The investigation, which followed CNE-G's April 2007 initial self-report of its violations, confirmed thousands of individual self-reported violations that occurred on 13 interstate natural gas pipelines and storage facilities and involved the transport or storage of 35.5 billion cubic feet of natural gas over a 29-month period between Jan. 1, 2005, and June 1, 2007. In addition, CNE-G and CCG have agreed to implement a compliance monitoring plan.

Under the agreement, the \$1.9 million in disgorged unjust profits will go to certain energy assistance programs administered by states, territories or tribal organizations that receive grants from the Department of Health and Human Services. This is being done because there is no satisfactory method to accurately identify individual entities that may have been harmed by CNE-G's violations.

The investigation found that among CNE-G's more serious violations is the practice known as "flipping." Flipping involves a series of repeated short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis, circumventing the competitive bidding





requirements for released capacity. CNE-G effectively denied other market participants an opportunity to bid for discounted, long-term releases of capacity that otherwise may not have been available from the pipeline or other releasing shippers.

A particularly serious aspect of CNE-G's flipping conduct was that it occurred under the direction of a then-member of CNE-G's senior management. As stated in the October 2005 Policy Statement on Enforcement, violations occurring with the acquiescence of a company's senior management are serious. Among other efforts to bring CNE-G into compliance, CNE-G and Constellation took appropriate personnel action with respect to the individuals responsible for these and other violations. The company transported 12.9 Bcf of gas on 577 days over 19 months using capacity acquired through flipping.

CNE-G's violations of FERC's shipper-must-have-title rule involved transactions totaling 22.3 Bcf of natural gas transportation on 11 pipeline and storage facilities. These violations involved the improper acquisition or use of capacity held by customers, affiliates and third-party non-customers, and one group of violations involved numerous mismatches between capacity rights and gas ownership as CNE-G attempted to integrate recently acquired natural gas companies and contracts. Violations also included two prohibited buy-sell transactions involving CNE-G and its affiliates.

Entergy New Orleans

Entergy New Orleans, Inc. will pay a \$400,000 civil penalty for its self-reported violations of FERC's shipper-must-have-title requirements. The investigation was based on a May 1, 2007, self-report that the company had violated the shipper-must-have-title requirement since January 1999 by transporting, on no notice service on Gulf South Pipeline Company LP, gas to which Entergy New Orleans' supplier held title.

Under a series of supply agreements since January 1999, Entergy New Orleans had its supplier transfer title to the gas to the utility at the delivery point on Gulf South, rather than at the receipt point on Gulf South. As a result, Entergy New Orleans did not have title to the gas transported on its capacity. The violations involved transportation of approximately 50 Bcf of natural gas, which Entergy New Orleans used to serve its retail load.

FERC staff determined that while the violations involved a critical element of the open-access program, there was no demonstrable harm to the market or other market participants. Upon discovery of the violations, Entergy New Orleans renegotiated the supply contract with its current supplier so that the utility now takes title to the gas at the receipt point on Gulf South. The renegotiated agreement took effect Aug. 1, 2007.

The company also reviewed its other supply and transportation contracts and all contracts of its affiliated and other transactions in compliance with the shipper-must-have-title requirement. The company also instituted employee training in shipper-must-have-title and other capacity release issues.

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