

122 FERC ¶ 61,220  
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 Constellation NewEnergy – Gas Division, LLC                      Docket No. IN08-1-000

**ORDER APPROVING STIPULATION AND CONSENT AGREEMENT**

(Issued March 11, 2008)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Constellation NewEnergy-Gas Division, LLC (CNE-G), Constellation Energy Commodities Group, Inc. (CCG), and Constellation Energy Group, Inc. (Constellation). This Order is in the public interest because it resolves the preliminary, non-public investigation into certain self-reported violations by CNE-G of the Commission's capacity release policies, including circumvention of the posting and bidding requirements for released capacity, violations of the shipper-must-have-title requirement, and violations of the prohibition on buy-sell transactions. CNE-G has agreed to pay a civil penalty of \$5 million and to disgorge \$1,899,416, plus interest, in unjust profits. In addition, CNE-G and CCG have agreed to implement a compliance monitoring plan.

**Background**

2. CNE-G, an indirect wholly owned subsidiary of Constellation, is a retail natural gas marketing company headquartered in Louisville, Kentucky. CNE-G delivers natural gas to retail markets in several states through interstate pipeline and storage capacity held in its name, as well as through customer-owned capacity. In 2006, CNE-G and its retail affiliates sold approximately 354 Bcf of natural gas.

3. Constellation is a large integrated energy company. CCG, also an indirect wholly owned subsidiary of Constellation, is a wholesale natural gas and power marketer.

4. CNE-G conducted a company-wide internal review after an initial compliance review revealed possible violations of the Commission's capacity release requirements. CNE-G thereafter met with staff to discuss its preliminary findings and subsequently submitted a lengthy and highly detailed self-report.

## **Violations**

5. Pursuant to Part 1b of the Commission's regulations,<sup>1</sup> Enforcement opened a preliminary, non-public investigation of CNE-G's transactions during the period January 1, 2005, through June 1, 2007. This investigation confirmed CNE-G's self-reported violations, including: circumventing the posting and bidding requirements for released capacity; violating the shipper-must-have-title requirement; and violating the prohibition on buy-sell transactions. These violations occurred on 13 interstate pipeline and storage facilities, and involved the transportation or storage of 35.5 Bcf of natural gas between January 1, 2005, and June 1, 2007. In total, CNE-G's conduct resulted in thousands of individual violations in the investigation period.

### **1. Circumvention of the competitive bidding requirements for released capacity**

6. Section 284.8 of the Commission's regulations requires releases of firm capacity exceeding 31 days at a price less than the maximum tariff rate to be posted for competitive bidding on the pipeline's Electronic Bulletin Board.<sup>2</sup> A discounted release for 31 days or less is exempt from the competitive bidding requirement, but must be posted for informational purposes within 48 hours of the release transaction. However, such a discounted, short-term release may not be rolled-over, extended, or in any way continued without complying with the regulation's posting and bidding requirements.

7. The prior posting requirement for long-term, discounted rate releases promotes natural gas market transparency by providing notice to all interested shippers of the availability of released capacity. The competitive bidding requirement, in turn, ensures that the released capacity will go to the shipper who values it most. Together, the posting and bidding requirements are integral components of the Commission's pipeline open-access program, and promote transparency, market efficiency, and the elimination of undue preference and discrimination in the natural gas transportation market.

8. CNE-G engaged in a 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 in order to avoid the competitive bidding requirement for discounted long-term capacity releases. The effect of flipping is to create a long-term, non-competitive discounted rate release. CNE-G obtained discounted capacity in this manner in three separate arrangements. In each arrangement, the releasing shipper released discounted short-term pipeline capacity to CNE-G and an affiliate, Fellon-McCord Associates, Inc., on an alternating monthly basis.

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<sup>1</sup> 18 C.F.R. Part 1b (2007).

<sup>2</sup> 18 C.F.R. § 284.8 (2007).

9. CNE-G's actions as a replacement shipper were deliberate and resulted in shielding the capacity that was released to CNE-G from competitive bidding. Moreover, these transactions were conducted at the direction of a former member of CNE-G's senior management. The alternating monthly use of two affiliates as replacement shippers for the same capacity was implemented by CNE-G's then-Vice President of Supply specifically for the purpose of circumventing the competitive bidding process for discounted, long-term released capacity.

10. CNE-G's flipping denied other market participants an opportunity to bid for discounted, long-term releases of capacity that may not have otherwise been available from the pipeline or other releasing shippers. CNE-G transported 12.9 Bcf of natural gas on 577 days over 19 months using capacity acquired through flipping.

## 2. Shipper-must-have-title violations

11. 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. Known as the shipper-must-have-title requirement, the requirement was first established during the implementation of the Commission's initial pipeline open-access reforms.<sup>3</sup> The requirement is also reflected in interstate pipelines' FERC gas tariffs, which feature provisions requiring shippers to warrant good title to the gas tendered for transportation on the pipeline.<sup>4</sup>

12. In total, CNE-G engaged in transactions resulting in thousands of violations of the shipper-must-have-title requirement involving approximately 22.3 Bcf of natural gas transportation on eleven pipeline and storage facilities. As described further in the attached Agreement, CNE-G's shipper-must-have-title violations occurred in four ways. These violations involved the improper acquisition or use of capacity held by customers, affiliates, and third party non-customers. 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.

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<sup>3</sup> See, e.g., *Texas Eastern Transmission Corp.*, 37 FERC ¶ 61,260, at 61,683-85 (1986); *Consolidated Gas Transmission Corp.*, 38 FERC ¶ 61,150, at 61,408 (1987); *Williston Basin Interstate Pipeline Co.*, 44 FERC ¶ 61,129, at 61,368 (1988).

<sup>4</sup> Although the specific language of pipeline tariffs varies, we have 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. *Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

13. CNE-G's shipper-must-have-title violations reduced market transparency in the natural gas transportation market because they avoided the Commission's capacity release requirements. Had CNE-G taken released capacity for the gas CNE-G owned and shipped on capacity owned by others, CNE-G's compliance would have informed other market participants of CNE-G's activities on the pipelines. Further, violations of the shipper-must-have-title requirement impact the Commission's oversight of the natural gas market. As we have explained, ensuring non-discriminatory service and maintaining adequate oversight of the natural gas market depends, in large part, on adherence to the shipper-must-have-title requirement.<sup>5</sup>

### **3. Prohibited buy-sell transactions**

14. The Commission has prohibited certain buy-sell transactions.<sup>6</sup> 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.<sup>7</sup> 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. Such practices, if permitted, would be a barrier to open-access transportation on interstate pipelines.

15. CNE-G entered into two affiliate transactions that violated the buy-sell prohibition. The first was a long-term transaction which involved the sale of CNE-G's gas to its retail affiliate, Kaztex Energy Management, Inc. (Kaztex), for transport over Kaztex's capacity rights on ANR Pipeline Company (ANR), and then the resale of that gas back to CNE-G once the ANR transport was complete. The second buy-sell violation occurred in a single-day transaction where CCG, a wholesale affiliate, sold gas to CNE-G for transport over CNE-G's capacity on Northern Border Pipeline, for ultimate resale back to CCG. Together, these transactions occurred over a period of 226 days and involved the transportation of 266,085 Dth of gas.

16. Buy-sell transactions such as those carried out by CNE-G circumvent, and therefore frustrate, the Commission's pipeline open-access policies requiring releases of capacity from one shipper to another to be subject to certain posting and competitive bidding requirements.

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<sup>5</sup> *Rendezvous Gas Services, L.L.C.*, 113 FERC ¶ 61,169, at PP 42-43 (2005).

<sup>6</sup> *El Paso Natural Gas Co.*, 59 FERC ¶ 61,031, at 61,078-081 (1992).

<sup>7</sup> *Williams Energy Marketing & Trading Company*, 92 FERC ¶ 61,219, at 61,715-16 (2000).

### **Stipulation and Consent Agreement**

17. Enforcement, CNE-G, CCG, and Constellation have entered into the attached Agreement to resolve Enforcement's investigation of CNE-G's self-reported violations. The Agreement requires CNE-G to pay a \$5 million civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. CNE-G will also disgorge unjust profits of \$1,899,416, plus interest. Because there is no identifiable group that was harmed by CNE-G's actions, the company has agreed to distribute the disgorgement to certain energy assistance programs that receive and distribute funds from the federal Department of Health and Human Services.

18. CNE-G and CCG have also agreed to a compliance monitoring plan, pursuant to which CNE-G and CCG will jointly submit sworn compliance reports to Enforcement staff on a semi-annual basis.<sup>8</sup> The compliance reports will describe any new measures taken by CNE-G and CCG to amend, revise, or restructure the contracts found to be in violation, and will alert staff to whether additional violations of the capacity release requirements have occurred. In addition, the reports will describe training and other compliance measures implemented by CNE-G and CCG. CNE-G and CCG shall submit such semi-annual reports for a minimum period of two years, but Enforcement staff may extend this requirement for one additional year at its sole discretion.

### **Determination of the Appropriate Civil Penalty**

19. 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.<sup>9</sup> In approving the Agreement and the \$5 million civil penalty, we considered the factors set forth in section 22(c) of the NGA, 15 U.S.C. § 717t-1(c), and our 2005 Policy Statement on Enforcement.<sup>10</sup> 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 CNE-G's violations while recognizing the company's highly proactive approach to self-reporting and remedying its violations.

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<sup>8</sup> This requirement includes the participation of CCG because, as explained more fully in the Agreement, certain interstate gas contracts formerly administered by CNE-G were transferred to CCG.

<sup>9</sup> 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")*).

<sup>10</sup> *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 (2005) (Policy Statement on Enforcement).

20. CNE-G's violations were serious in terms of volume and scope, as they involved 35.5 Bcf of gas transportation and storage over 13 pipeline systems. The violations directly affected the transparency of the secondary market for natural gas transportation and storage, and impaired the effectiveness of the Commission's pipeline open-access policies. Further, CNE-G's violations resulted in harm to the regulatory process.<sup>11</sup>

21. CNE-G's flipping violations were particularly serious in nature. CNE-G, as a replacement shipper, structured these transactions as a deliberate means for circumventing the Commission's rules requiring posting and competitive bidding for all discounted, long-term releases of capacity. Further, we are aware of no other reason for alternating monthly releases other than to disguise a long-term discounted rate release as a series of short-term releases to avoid the requirement to post such releases for competitive bidding. Even more troubling is the evidence that the flipping transactions were conducted at the direction of a former senior manager of CNE-G who was not only aware of the practice but encouraged these transactions in order to circumvent the bidding requirements.

22. The civil penalty in this matter also reflects significant credit earned for self-reporting and cooperation. CNE-G and Constellation uncovered these violations after conducting a comprehensive internal review, with assistance from outside counsel, at the behest of Constellation senior management. When possible violations were identified, CNE-G and Constellation took immediate self-corrective action to terminate or restructure contracts to bring such transactions into compliance with the Commission's capacity release regulations and requirements. Finally, CNE-G submitted a highly detailed self-report that described the violations and provided an independent analysis addressing the financial impacts of these transactions, including the associated unjust profits. CNE-G also received credit for exemplary cooperation with staff throughout the course of its investigation. CNE-G and Constellation also took appropriate disciplinary action with respect to CNE-G personnel, including senior management.

23. Although we grant significant credit for CNE-G's self report and exemplary conduct, we are always concerned when there is evidence of senior management involvement in violating Commission rules and regulations. CNE-G and Constellation are to be commended for initiating action against senior management that was responsible for the flipping transactions. However, we look with great disfavor upon wrongdoing that is carried out with the knowledge and acquiescence of senior

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<sup>11</sup> See, e.g., *In re Columbia Gulf Transmission Co.*, 119 FERC ¶ 61,174, at P 13 (2007) (considering "harm to the orderly administration of the Natural Gas Act in weighing the seriousness of the violation"); *In re Gexa Energy, L.L.C.*, 120 FERC ¶ 61,175, at P 10 (2007) (explaining, "good faith compliance with statutes and Commission orders is of vital importance to the administration of the Commission's duties under the FPA.").

management, notwithstanding, the subsequent level or breadth of cooperation from the company. Last, we note that the civil penalty reflects the gravity of the violations and indicates that while subsequent cooperation can mitigate a penalty, it will not eliminate Commission enforcement of its statutes, orders, rules and regulations.

24. We conclude that the civil penalty, disgorgement, and the compliance monitoring plan specified in the Agreement are fair and equitable, and 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 )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

In re Constellation NewEnergy –	)	Docket No. IN08-1-000
Gas Division, LLC	)	

STIPULATION AND CONSENT AGREEMENT

**I. INTRODUCTION**

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Constellation NewEnergy-Gas Division, LLC (CNE-G), and its affiliate Constellation Energy Commodities Group, Inc. (CCG) and their parent Constellation Energy Group, Inc. (Constellation), enter into this Stipulation and Consent Agreement (Agreement) to resolve a preliminary, non-public investigation under Part 1b of the Commission’s regulations, 18 C.F.R. Part 1b (2007), into violations of certain elements of the Commission’s capacity release program, including: circumventing the competitive bidding requirements for long-term, discounted rate capacity releases; violations of the shipper-must-have-title requirement; and prohibited buy-sell arrangements.

**II. STIPULATIONS**

Enforcement and CNE-G, CCG, and Constellation hereby stipulate and agree to the following:

**A. Background**

1. CNE-G, an indirect wholly owned subsidiary of Constellation, is a retail natural gas marketing company headquartered in Louisville, Kentucky. CNE-G’s retail natural gas market includes 22 U.S. states and two Canadian provinces. CNE-G grew rapidly between 2002 and 2006 by acquiring natural gas retail companies. CNE-G delivers natural gas through interstate pipeline and storage capacity held in its name, as well as through customer-owned capacity. In 2006, CNE-G and its retail affiliates sold approximately 354 Bcf of natural gas.

2. Constellation is a large integrated energy company. CCG, also an indirect wholly owned subsidiary of Constellation, is a wholesale natural gas and power marketer.

3. CNE-G conducted a company-wide internal review after an initial



compliance review revealed possible violations of the Commission's capacity release requirements. CNE-G met with Enforcement on April 6, 2007 to discuss its preliminary findings and subsequently submitted a detailed written self-report in two parts on June 6, 2007, and July 27, 2007.

4. Enforcement opened a preliminary, non-public investigation into the reported violations pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2007). Enforcement investigated CNE-G's transactions during the period January 1, 2005, through June 1, 2007.

## **B. Summary of Violations**

5. Enforcement confirmed CNE-G's self-reported violations, including: circumventing the posting and bidding requirements for released capacity; violating the shipper-must-have-title requirement; and violating the prohibition on buy-sell arrangements. These violations occurred on 13 interstate pipeline and storage facilities, and involved the transportation or storage of 35.5 Bcf of natural gas between January 1, 2005, and June 1, 2007. The violations include thousands of individual transactions occurring during the investigation period.

6. The primary cause of the violations was the absence at CNE-G of adequate internal mechanisms for identifying and correcting Commission compliance issues related to CNE-G's retail gas business, a problem that was exacerbated by CNE-G's rapid growth through its acquisitions.

### **1. Flipping transactions**

7. The Commission's regulations, at 18 C.F.R. § 284.8 (2007), require a release of firm capacity for a term longer than 31 days and at a price less than the maximum tariff rate to be posted for competitive bidding on the pipeline's Electronic Bulletin Board. The regulations also provide that a discounted release for 31 days or less is exempt from the competitive bidding requirement, but must be posted for informational purposes within 48 hours of the release transaction. Under 18 C.F.R. § 284.8(h)(2), a discounted, short-term release may not be rolled-over, extended, or in any way continued without complying with the regulation's posting and bidding requirements.

8. CNE-G engaged in a 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 in order to avoid the competitive bidding requirement for discounted long-term capacity releases. The effect of flipping is to create a long-term, non-competitive discounted rate release. CNE-G obtained discounted capacity in this manner in three separate arrangements. In each arrangement,

the releasing shipper released discounted short-term pipeline capacity to CNE-G and an affiliate, Fellon-McCord Associates, Inc., on an alternating monthly basis. CNE-G shipped 12.9 Bcf of natural gas on 577 days over 19 months using capacity acquired through flipping.

9. The flipping transactions were undertaken at the direction of a former member of CNE-G's senior management. Specifically, CNE-G's then-Vice President of Supply directed the use of flipping transactions for the purpose of circumventing the bidding process for discounted, long-term released capacity.

## **2. Shipper-must-have-title violations**

10. 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. This is known as the shipper-must-have-title requirement.

11. 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 the eleven pipeline tariffs in this case 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).

12. CNE-G violated the shipper-must-have-title requirement in four different ways. The first involved the use of customer-owned pipeline capacity to ship gas owned by CNE-G in situations where CNE-G served as an agent for a customer holding capacity. In some instances CNE-G used the customer's capacity to ship gas to the customer holding the capacity, in other instances the customer's capacity was used to deliver gas to a third party.

13. The second category of shipper-must-have-title violations occurred with respect to certain situations where CNE-G shipped gas in its name on the pipeline capacity of an affiliate or *vice versa*. For instance, CNE-G shipped its gas on capacity held by Kaztex Energy Management, Inc. (Kaztex), an affiliate, and Kaztex shipped its gas on capacity held by CNE-G. CNE-G also shipped its gas on capacity held by its affiliate Constellation NewEnergy Canada Inc.

14. The third category of shipper-must-have-title violations entailed the use of a third party's storage and transportation capacity to serve CNE-G customers. In order to serve certain customers, Kaztex entered into an agreement with a third party, which held firm storage and transportation rights on ANR Pipeline Company. Pursuant to this agreement, Kaztex made in-field transfers of gas to the third party in the storage facility

without selling the gas to such party. The third party held Kaztex's gas using its firm storage rights, then withdrew the gas under its firm withdrawal rights, and finally shipped the gas from the storage facility to Kaztex customers using the third party's firm transportation rights.

15. The fourth category involved violations resulting from CNE-G's integration of newly acquired natural gas companies and other retail natural gas assets. In 2006, CNE-G acquired NOCO Energy Marketing, LLC (NEM), a natural gas retailer operating in New York, Kentucky and Pennsylvania. This transaction also included CNE-G's acquisition of certain assets held by NOCO Energy Corp.(NEC), which included gas purchase, transportation, storage and sale contract rights. For a period following these acquisitions, CNE-G provided service to former NEC and NEM customers directly and as an agent under numerous commodity and transportation contracts held by NEM, NEC, or CNE-G. This resulted in numerous mismatches between capacity rights and gas ownership as CNE-G attempted to serve new customers, integrate the newly acquired assets, acquire new capacity rights, and renew existing service agreements.

16. CNE-G's shipper-must-have-title violations often shielded the identity of the true party in interest in transportation, reduced market transparency in the natural gas transportation market, and avoided compliance with the Commission's capacity release requirements. Violations of the shipper-must-have-title requirement also interfere with the Commission's oversight of natural gas markets. CNE-G engaged in thousands of transactions resulting in violations of the shipper-must-have-title requirement involving approximately 22.3 Bcf of natural gas transportation on eleven pipeline systems.

### **3. Prohibited buy-sell transactions**

17. The Commission prohibits buy-sell transactions. *See El Paso Natural Gas Co.*, 59 FERC ¶ 61,031 (1992). The Commission has defined a buy-sell transaction as 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 rights, and then resells the gas to the downstream entity at the delivery point. *See Williams Energy Mktg. & Trading Co.*, 92 FERC ¶ 61,219, at 61,715-16 (2000).

18. CNE-G violated the Commission's prohibition on buy-sell transactions with two inter-affiliate transactions. The first transaction involved a long-term arrangement where CNE-G's retail affiliate Kaztex purchased gas from CNE-G, shipped the gas using Kaztex's rights on ANR Pipeline Company, and sold the gas back to CNE-G. This arrangement occurred between January 2005 and October 2005. The second transaction involved a one day arrangement between CNE-G and CCG, Constellation's wholesale gas and power marketing subsidiary. In order to assist its wholesale marketing affiliate in shipping gas on a pipeline on which CCG did not hold capacity rights, CNE-G

purchased gas from CCG and shipped it on CNE-G's capacity on Northern Border Pipeline. CNE-G then sold the gas back to CCG at a downstream interconnection with Northern Natural Gas Company where CCG held capacity rights. This transaction was immediately halted when it was discovered and was limited to a single day. These two buy-sell transactions occurred over a period of 226 days and involved the transportation of 266,085 Dth of gas.

### **C. Self-corrective Action**

19. Based upon preliminary findings indicating possible violations of the Commission's capacity release requirements, Constellation senior management directed an intensive review of CNE-G's entire retail gas business, with assistance from outside counsel, to identify and correct violations. The internal review spanned several months and received the cooperation of all relevant CNE-G and Constellation personnel.

20. CNE-G submitted a detailed written self-report, wherein 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 CNE-G's violations. The report also included a thorough and detailed, independent analysis of the financial impacts and possible market effects of the violations.

21. CNE-G and Constellation took prompt self-corrective action to terminate or restructure contractual arrangements to bring CNE-G into compliance with the Commission's capacity release regulations or requirements.

22. CNE-G displayed exemplary cooperation throughout Enforcement staff's investigation. Early in its internal review, CNE-G informed Enforcement of the possible violations and the ongoing internal assessment. CNE-G described its internal review to Enforcement and was very responsive to Enforcement staff's suggestions concerning the scope and methodology of the internal review.

23. Since submitting the self-report, Constellation has instituted a number of measures that it expects will improve future compliance with the Commission's natural gas regulatory requirements. First, Constellation implemented several personnel actions with respect to individuals associated with the violations. The CNE-G employees who implemented the flipping transactions, including the CNE-G senior manager who directed the flipping transactions, are no longer employed by CNE-G or Constellation. Second, CNE-G and Constellation have hired additional attorneys and compliance personnel to assist with compliance matters. Third, CNE-G has implemented additional natural gas regulatory compliance controls to assist with identifying potential violations. Fourth, as part of a larger reorganization, Constellation has transferred virtually all of CNE-G's wholesale gas functions to CCG, Constellation's wholesale gas and power marketing affiliate, which is better equipped to monitor and ensure compliance with the

Commission's capacity release requirements. Transferred functions include certain jurisdictional transportation and storage contracts formerly administered by CNE-G.

### **III. REMEDIES AND SANCTIONS**

24. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation into the self-reported capacity release violations, CNE-G and CCG agree to take the following actions:

#### **A. Civil Penalty**

25. CNE-G shall pay a civil penalty of \$5,000,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined in paragraph 28 below.

#### **B. Disgorgement**

26. CNE-G shall disgorge \$1,899,416.00, plus interest, such amount representing the unjust profits from CNE-G's violations, to energy assistance programs administered by States, territories, or Indian tribes and tribal organizations, which have received grants from the federal Secretary of Health and Human Services, such energy assistance programs to be agreed upon and such disgorgement to be made within 30 days from the Effective Date of this Agreement. This distribution of unjust profits to such energy assistance programs is being made because there is no satisfactory method for accurately identifying individual entities that may have been harmed as a result of CNE-G's violations.

#### **C. Compliance Monitoring**

27. CNE-G and CCG shall jointly make a semi-annual report to Enforcement staff for two years 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. Remaining reports shall be submitted every six months thereafter. With respect to all of CNE-G's wholesale natural gas business and the gas contracts transferred from CNE-G to CCG, each compliance report shall: (1) explain in detail any new measures taken by CNE-G and CCG after the Effective Date of this Agreement to amend, revise, or restructure the contracts that gave rise to the violations of the Commission's regulations and requirements; (2) advise staff whether additional violations of the capacity release requirements have occurred; (3) 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 (4) include an affidavit executed by an officer of CNE-G and CCG that the compliance reports are true and accurate. Upon request by staff, CNE-G and CCG shall provide to staff all backup documentation supporting its reports. After the receipt of the fourth semi-annual report, Enforcement staff may, at its sole discretion, require CNE-G and CCG to submit semi-annual reports for one additional year.

#### **IV. TERMS**

28. 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 CNE-G and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to CNE-G.

29. Commission approval of this Agreement without material modification shall release CNE-G, CCG and Constellation and forever bar the Commission from holding CNE-G, CCG, and Constellation 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.

30. 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 CNE-G, CCG, and Constellation to additional action under the enforcement and penalty provisions of the NGA.

31. If CNE-G 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) (2007) from the date that payment is due, in addition to the penalty specified above.

32. The Agreement binds CNE-G, CCG, Constellation and their agents, successors, and assigns. The Agreement does not create any additional or independent obligations on CNE-G, CCG, or Constellation, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

33. 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, CNE-G, CCG or Constellation has been made to induce the signatories or

any other party to enter into the Agreement.

34. 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 CNE-G, CCG, or Constellation shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and CNE-G, CCG and Constellation.

35. In connection with the payment of the civil penalty provided for herein, CNE-G, CCG and Constellation agree 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). CNE-G, CCG, and Constellation waive 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.

36. 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.

37. The undersigned representatives of CNE-G, CCG, and Constellation 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.

38. The Agreement may be signed in counterparts.

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

