135 FERC ¶ 61,010
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

In re Seminole Energy Services, LLC Docket No. IN09-9-000
Seminole Gas Company, LLC
Seminole High Plains, LLC
Lakeshore Energy Services, LLC
Vanguard Energy Services, LLC

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued April 7, 2011)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Seminole Energy Services, LLC (Seminole Energy), Seminole Gas Company, LLC (Seminole Gas), Seminole High Plains, LLC (High Plains), Lakeshore Energy Services, LLC (Lakeshore) and Vanguard Energy Services, LLC (Vanguard) (referred to collectively as Seminole).

2. This Order is in the public interest because it resolves Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010) into whether Seminole's bidding for interstate natural gas pipeline transportation capacity in an open season on Cheyenne Plains Gas Pipeline Company, LLC (Cheyenne Plains), held on March 13, 2007, violated any Commission statutes, rules or requirements.

3. In the attached Agreement, Seminole neither admits nor denies violating the Commission's prohibition of buy/sell transactions. Seminole agrees to submit to compliance reporting requirements, to pay a $300,000 civil penalty, and to disgorge $271,315 plus interest.

Background

4. Cheyenne Plains, a subsidiary of El Paso Corporation, owns and operates a 380-mile long, 36-inch natural gas pipeline extending from the Cheyenne Hub, near the Wyoming-Colorado border, to south-central Kansas, with a total certificated capacity of

780,000 Dth/d. Cheyenne Plains is an interstate pipeline regulated under Part 284 of the Commission's regulations. The system serves markets in the Midwest with delivery interconnections with several mid-continent pipelines near Greensburg, Kansas. In March 2007, the difference between the price at which natural gas could be bought at the Cheyenne Plains Wyoming receipt points and sold at the Cheyenne Plains Kansas delivery point significantly exceeded the transportation costs.

5. On March 6, 2007, Cheyenne Plains posted an open season notice for unsubscribed capacity available in the amounts of 70,000 Dth/d for April and October 2007, and 45,000 Dth/d for May and September 2007. The notice specified that Cheyenne Plains would evaluate all open season bids based on the net present value (NPV) of the monthly reservation charges for each bid consistent with Cheyenne Plains' FERC Gas Tariff. In the event there was not sufficient capacity to meet all winning bids, Cheyenne Plains stated in its Electronic Bulletin Board (EBB) posting that capacity would be allocated *pro rata* based on the maximum delivery quantity of the winning bids. The open season was a closed auction – that is, the bids and identities of the bidders were submitted under seal and only became known when Cheyenne Plains posted the results of the open season on its EBB following the close of the open season on March 14, 2007.

6. On March 14, 2007, Cheyenne Plains notified the open season bidders of the results: 48 entities bid the full quantities available at the maximum allowable rate and for the full term, and thus all bids were at the same NPV. Under Cheyenne Plains' stated tie-breaker mechanism, 47 bidders each were awarded, on a *pro rata* basis (because all valued the capacity the same), 1/47th (2.1 percent) of the total capacity made available in the open season, or 1,489 Dth/d for the April/October capacity and 957 Dth/d for the May/September capacity.[1]

7. Of the 47 "winning" bids, five different groups of entities accounted for 27 of the winning bids and obtained 57 percent of the capacity. The first group received 17 percent of the available capacity and included Tenaska Marketing Ventures, LLC and seven of its affiliates, Tenaska Energy Services LLC, Tenaska Gas Co., Tenaska Marketing, Inc., Tenaska Storage Co., Tenaska Gas Storage, Tenaska Operations, Inc., and Tenaska Grimes, Inc. (together, Tenaska). The second group received approximately 12.8 percent of the available capacity and included ONEOK Energy Services Company, ONEOK Energy Marketing Company, ONEOK Energy Services Canada, LTD, ONEOK Field Services Company, L.L.C., ONEOK Midstream Gas Supply, L.L.C. and Bear Paw Energy, L.L.C. (together, ONEOK). The third group included Klabzuba Oil & Gas, F.L.P. (Klabzuba), Jefferson Energy Trading Company, LLC (Jetco), Wizco, Inc. (Wizco) and Golden Stone Resources, LLC (Golden Stone). Klabzuba, Jetco, Wizco and

[1] One bidder had conditioned its bid on receiving a minimum quantity that was greater than its *pro rata* allocation and thus was not awarded capacity.

Golden Stone each submitted bids with Jetco acting as their agent, each obtaining 2.1 percent of the capacity, and collectively 8.4 percent of the available capacity. The fourth group received 8.5 percent of the available capacity and included National Fuel Marketing Company, LLC, NFM Midstream, LLC, NFM Texas Pipeline, LLC and NFM Texas Gathering, LLC (together NFM). The fifth group received 10.6 percent of the available capacity and included Seminole Energy and its four affiliates, Seminole Gas, High Plains, Lakeshore and Vanguard.

8. Shortly after the close of the March 2007 Cheyenne Plains open season, staff received several calls to the FERC Enforcement Hotline from other bidders complaining that Commission rules or requirements might have been violated. Enforcement staff conducted an investigation to ascertain all of the facts and circumstances surrounding the March 2007 open season and to determine whether any violation of the Commission's rules or requirements occurred.

9. The facts uncovered during the investigation led Enforcement staff to conclude that some entities bid multiple affiliates with the intent to defeat Cheyenne Plains' *pro rata* allocation mechanism in violation of 18 C.F.R. 1c.1. Staff also concluded that other affiliated entities bid with no such intent. Staff additionally concluded that some entities engaged in transactions with respect to the capacity obtained in the auction that circumvent, and therefore frustrate, the Commission's open-access transportation policies. On January 15, 2009, the Commission issued an order approving four stipulation and consent agreements, with two Commissioners dissenting. *See In re Tenaska Marketing Ventures, et al.*, 126 FERC ¶ 61,040 (2009) (Moeller, Comm'r dissenting) (Spitzer, Comm'r dissenting). That Order resolved Enforcement's investigations into whether bidding by Tenaska, ONEOK, Klabzuba, Jetco, Wizco and Golden Stone in the March 2007 open season for natural gas transportation capacity on Cheyenne Plains violated any Commission statutes, rules or requirements.

10. On January 15, 2009, the Commission issued two Orders to Show Cause, one of which concerned Seminole Energy and its four affiliates.[2] That Order directed Seminole Energy and its four affiliates (Seminole Gas, High Plains, Lakeshore and Vanguard) to show cause why the Commission should not find that they (1) violated 18 C.F.R. § 1c.1 when Seminole Energy and its affiliates bid for capacity on Cheyenne Plains and obtained a larger allocation of Cheyenne Plains capacity than Seminole Energy could have acquired by itself and (2) violated the Commission's prohibition against buy/sell transactions. *See Seminole Energy Services, LLC, et al.*, 126 FERC ¶ 61,041 (2009) (Moeller, Comm'r dissenting) (Spitzer, Comm'r dissenting).

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[2] The other January 15, 2009 Order To Show Cause concerned NFM and its three affiliates. *See National Fuel Marketing Company, LLC, et al.*, 126 FERC ¶ 61,042 (2009) (Moeller, Comm'r dissenting) (Spitzer, Comm'r dissenting).

11. On February 17, 2009, Seminole filed an answer to the Commission's order, denying the alleged violations and arguing that: (1) the Commission did not provide adequate notice as to when multiple-affiliate bidding complies with Commission regulations; (2) Seminole made its multiple-affiliate bids in good faith reliance on advice of counsel; and (3) Seminole did not violate the Commission's buy/sell prohibition. Seminole Energy Services, LLC, et al., February 17, 2009 Response to Order to Show Cause at 1-2, 10. Seminole also filed a request for rehearing of the Commission's Seminole Order to Show Cause. Seminole Energy Services, LLC, et al., February 17, 2009 Petition for Rehearing at 2. On March 18, 2009, the Commission granted Seminole's request for rehearing for the purposes of further consideration.

12. Seminole has agreed to settle any and all civil and administrative disputes arising from Enforcement's investigation of its bidding for, and transactions related to, the capacity offered by Cheyenne Plains in the March 2007 open season. The Agreement provides that as of its effective date, Seminole's February 17, 2009 request for rehearing shall be deemed withdrawn and the docket closed. This Order Approving the Stipulation and Consent Agreement moots the Order To Show Cause described in paragraph 10 and terminates that docket.[3]

13. Seminole Energy is a privately-held entity that provides retail natural gas services in Oklahoma, Kansas, Texas, Arkansas, Missouri and Mississippi. Seminole Energy markets gas in thirteen states and purchases gas from approximately 350 producers. Seminole Gas, High Plans, Lakeshore and Vanguard are all subsidiaries of Seminole Energy. On March 13, 2007, Seminole Energy submitted bids on behalf of itself and four Seminole Energy affiliates for all of the available capacity, for the entire term, and at the maximum Cheyenne FERC Gas Tariff rate.

14. The Seminole entities transported gas using their five shares of the awarded capacity, representing approximately 10.6 percent of the total available capacity. Seminole Energy – the parent company – purchased gas in the market and sold *pro-rata* shares totaling four-fifths of the gas to its four affiliates (Seminole Gas, High Plains, Lakeshore and Vanguard) at the Cheyenne Plains receipt point. The five Seminole entities then transported the gas using the capacity each had acquired from Cheyenne Plains and, at the Cheyenne Plains delivery point, Seminole Gas, Lakeshore, and Vanguard sold their gas to High Plains which in turn sold the gas back to Seminole Energy. Seminole Energy then sold all of the gas into the market. Over the period April-May, and September-October 2007, Seminole and the four Seminole affiliates used their

[3] Separately, the Commission is today issuing in Docket No. RM11-15-000 a Notice of Proposed Rulemaking on *Bidding by Affiliates in Open Seasons for Pipeline Capacity*.

Cheyenne Plains capacity to transport up to 7,520 MMBtu/d and sold a total of 917,440 MMBtu under these transactions. Seminole earned profits of $271,315 on these transactions.

15. Enforcement concluded that Seminole Energy's affiliates (Seminole Gas, High Plains, Lakeshore and Vanguard) engaged in prohibited buy/sell transactions. Buy/sell transactions circumvent, and therefore frustrate, the Commission's open-access transportation policies requiring releases of capacity from one shipper to another so that the use of interstate pipeline capacity will be transparent to market participants.

16. Seminole Energy neither admits nor denies that Seminole Gas, High Plains, Lakeshore and Vanguard violated the Commission's prohibition of buy/sell transactions. The attached Agreement resolves Enforcement's investigation of the Seminole entities' bidding on and use of the Cheyenne Plains interstate pipeline capacity from March 1, 2007 through October 31, 2007. The Agreement requires Seminole to pay a $300,000 civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. Seminole will also disgorge $271,315, plus interest. Seminole also will make certain compliance reports.[4]

17. The civil penalty in this case is based on Seminole's actions regarding the buy/sell transactions and takes into account several factors, including the involvement of Seminole's senior management in the transactions, Seminole's full cooperation with Enforcement's investigation, and Seminole's interest in resolving the matter without further proceedings.

Determination of the Appropriate Sanctions and Remedies

18. We conclude that the penalties and other terms set forth in the Agreement are fair and equitable resolutions of the matters concerned and are in the public interest, as they reflect the nature and seriousness regarding Enforcement's conclusions concerning the conduct of Seminole while recognizing, where appropriate, cooperation with Enforcement's investigations in connection with the buy/sell transactions and other company-specific considerations as stated above and in the attached Agreement.

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[4] Because Seminole and staff commenced settlement negotiations prior to the issuance of the Commission's Policy Statement on Penalty Guidelines, *Enforcement of Statutes, Orders, Rules and Regulations,* 130 FERC ¶ 61,220 at P 62 (2010), the settlement amounts are not based on those guidelines.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission. Commissioner Moeller concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Seminole Energy Services, LLC	)	
Seminole Gas Company, LLC	)	
Seminole High Plains, LLC	)	Docket No. IN09-9-000
Lakeshore Energy Services, LLC	)	
Vanguard Energy Services, LLC	)	

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Seminole Energy Services, LLC (Seminole Energy), Seminole Gas Company, LLC (Seminole Gas), Seminole High Plains, LLC (High Plains), Lakeshore Energy Services, LLC (Lakeshore) and Vanguard Energy Services, LLC (Vanguard) (referred to collectively as Seminole) 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 (2010), into whether Seminole's bidding for interstate natural gas pipeline transportation capacity in an open season on Cheyenne Plains Gas Pipeline Company, LLC (Cheyenne Plains), held on March 13, 2007, violated any Commission statutes, rules or requirements.

II. STIPULATED FACTS

Enforcement and Seminole hereby stipulate and agree to the following:

A. Background

2. Seminole Energy was created in 1998 and is a privately-held entity that provides retail natural gas services in Oklahoma, Kansas, Texas, Arkansas, Missouri and Mississippi. Seminole Energy markets gas in thirteen states and purchases gas from approximately 350 producers. Seminole Gas, High Plains, Lakeshore, and Vanguard are all subsidiaries of Seminole Energy. Seminole Gas gathers, compresses and treats wellhead natural gas on behalf of producing companies. High Plains, formerly known as Post Rock Gas, provides retail natural gas services in Colorado, Wyoming, Nebraska and Kansas. Lakeshore provides retail natural gas services in Michigan and Ohio. Vanguard provides retail natural gas services in Illinois and Ohio.

3. Enforcement's investigation of Seminole, among other companies, followed the open season bidding for natural gas transportation capacity on Cheyenne Plains on March 13, 2007. Cheyenne Plains, a subsidiary of El Paso Corporation, is a 380-mile long, 36-inch natural gas pipeline extending from the Cheyenne Plains Hub, near the Wyoming-Colorado border, to south-central Kansas, with a total certificated capacity of 780,000 Dth/d. Cheyenne Plains is an interstate pipeline regulated under Part 284 of the Commission's regulations. The Cheyenne Plains system serves markets in the Midwest using delivery interconnections with several mid-continent pipelines near Greensburg, Kansas. In March 2007, the difference between the price at which natural gas could be bought at the Cheyenne Plains Wyoming receipt points and sold at the Cheyenne Plains Kansas delivery point significantly exceeded the transportation costs, which meant the Cheyenne Plains capacity was valuable and in high demand.

4. On March 6, 2007, Cheyenne Plains posted a notice of the open season on its electronic bulletin board (EBB) for unsubscribed, seasonal capacity available in the amounts of 70,000 Dth/d for April and October 2007, and 45,000 Dth/d for May and September 2007. Cheyenne Plains posted instructions that interested parties should bid by March 13, 2007, and stated that Cheyenne Plains would evaluate all open season bids based on the net present value (NPV) of the monthly reservation charges for each bid consistent with Cheyenne Plains' FERC Gas Tariff. In the event there was not sufficient capacity to meet all winning bids, Cheyenne Plains stated in its EBB posting that capacity would be allocated *pro rata* based on the maximum delivery quantity of the winning bids. The notice also required that the shipper provide evidence of creditworthiness as required by Cheyenne Plains' FERC Gas Tariff. Neither the notice nor the Cheyenne Plains tariff restricted the submission of bids by affiliated companies.

5. Between March 7, 2007 and March 13, 2007, Seminole employees communicated with each other about the means and manner by which Seminole and its affiliates would and did bid in the Cheyenne Plains open season, including but not limited to discussions about the *pro rata* allocation mechanism employed by Cheyenne Plains to allocate capacity, the number of affiliates Seminole would bid in the open season, and the use of a common bid template prepared by a single Seminole employee. In these and other discussions, Seminole sought the advice of counsel.

6. On March 13, 2007, Seminole Energy, Seminole Gas, High Plains, Lakeshore, and Vanguard each submitted bids for all of the available capacity, for the entire term, and at the maximum Cheyenne Plains FERC Gas Tariff rate. On March 14, 2007, Cheyenne Plains notified Seminole Energy and its affiliates that they were "winning" bidders. The results of the open season showed that Cheyenne Plains received 47 "winning" bids. Each of these winning bidders submitted a bid at the highest allowable NPV of the monthly reservation charges, that is, for all of the available capacity, throughout the entire term, and at the maximum Cheyenne Plains FERC Gas Tariff rate. Using the *pro*

rata allocation mechanism specified in the notice of the open season, Cheyenne Plains allocated each winning bidder 1,489 Dth/d for the April/October capacity and 957 Dth/d for the May/September capacity, which amounts to 1/47th or approximately 2.1 percent of the total available capacity.

7. The Seminole entities transported gas using five shares of the awarded capacity, representing approximately 10.6 percent of the total available capacity. Seminole Energy – the parent company – purchased gas in the market and sold *pro-rata* shares totaling four-fifths of the gas to its four affiliates (Seminole Gas, High Plains, Lakeshore, Vanguard) at the Cheyenne Plains receipt point. The five Seminole entities then transported the gas using the capacity each had acquired from Cheyenne Plains and, at the Cheyenne Plains delivery point, Seminole Gas, Lakeshore, and Vanguard sold their gas to High Plains which in turn sold the gas back to Seminole Energy. Seminole Energy then sold all of the gas into the market.

8. Shortly after the close of the March 2007 Cheyenne open season, staff received several calls to the FERC Enforcement Hotline from other bidders complaining that Commission rules or requirements might have been violated.

B. Buy/Sell Transactions

9. The Commission has prohibited certain buy/sell transactions. 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, ships that gas through its interstate pipeline capacity, and then resells an equivalent quantity of gas to the downstream entity at the delivery point. *See Williams Energy Marketing & Trading Co.*, 92 FERC ¶ 61,219, at 61,715 (2000). 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.

10. Enforcement concluded that Seminole Energy's affiliates (Seminole Gas, High Plains, Lakeshore, and Vanguard) engaged in prohibited buy/sell transactions. These buy/sell transactions circumvent, and therefore frustrate, the Commission's open-access transportation policies requiring releases of capacity from one shipper to another so that the use of interstate pipeline capacity will be transparent to market participants.

C. Related Settlements & Filings

11. In December 2008, Enforcement settled with four groups of affiliated companies to resolve Enforcement's investigations into their bidding in the March 2007 open season

for natural gas transportation capacity on Cheyenne Plains. On January 15, 2009, the Commission issued an order approving four stipulation and consent agreements, with two Commissioners dissenting. *See In re Tenaska Marketing Ventures, et al.*, 126 FERC ¶ 61,040 (2009) (Moeller, Comm'r dissenting) (Spitzer, Comm'r dissenting). While Enforcement was unable at that time to reach a settlement agreement with Seminole or its four affiliates, the Seminole companies have at all times fully cooperated with the investigation.

12. On January 15, 2009, at the request of Enforcement staff, the Commission issued an order directing Seminole and its four affiliates (Seminole Gas, High Plains, Lakeshore, Vanguard) to show cause why the Commission should not find that Seminole Energy and its affiliates (1) violated 18 C.F.R. § 1c.1 when Seminole Energy and its affiliates bid for capacity on Cheyenne Plains and obtained a larger allocation of Cheyenne Plains capacity than Seminole Energy could have acquired by itself and (2) violated the Commission's prohibition against buy/sell transactions. *See Seminole Energy Services, LLC, et al.*, 126 FERC ¶ 61,041 (2009) (Moeller, Comm'r dissenting) (Spitzer, Comm'r dissenting). The order to show cause was accompanied by a staff investigative report that recommended a civil penalty and disgorgement of unjust profits. Commissioners Moeller and Spitzer dissented to the show cause order on the grounds that the regulated industry did not have fair notice regarding the Commission's policy on multiple-affiliate bidding practices.

13. On February 17, 2009, Seminole filed an answer to the Commission's order, denying the alleged violations and arguing that no further action should be taken pursuant to the Order To Show Cause because (1) the Commission has not provided adequate notice or fair warning as to when multiple-affiliate bidding complies with Commission regulations and (2) Seminole submitted multiple-affiliate bids in the Cheyenne Plains open season in good faith reliance on advice of counsel. Seminole Energy Services, LLC, et al., February 17, 2009 Response to Order to Show Cause at 1-2. Seminole also filed a request for rehearing of the Commission's Order To Show Cause, again arguing a lack of fair notice that the submission of multiple-affiliate bids in the March 2007 open season on the Cheyenne Plains pipeline violated any Commission statute, rule, or requirement. Seminole Energy Services, LLC, et al., February 17, 2009 Petition for Rehearing at 2. On March 18, 2009, the Commission granted Seminole's request for rehearing solely for the purposes of further consideration, but has not yet ruled upon that request.

III. REMEDIES AND SANCTIONS

14. For the purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation of the Cheyenne Plains open season bidding, Seminole agrees with the facts as stipulated in paragraphs 2 through 13, but neither admits nor denies that Seminole Gas, High Plains, Lakeshore, and Vanguard's transactions violated

the Commission's prohibition of buy/sell transactions. This Agreement resolves, as to Seminole Energy and its affiliates (Seminole Gas, High Plains, Lakeshore, Vanguard), all claims actually brought or that could have been brought in the matter as to them, their parents, subsidiaries, affiliates, principals, employees, agents, representatives and attorneys regarding their acquisition of and use of the Cheyenne Plains interstate pipeline capacity from March 1, 2007 through October 31, 2007.

15. Neither the stipulated facts nor the existence of this Agreement constitutes an admission of liability by Seminole Energy or its affiliates that their conduct unfairly or inappropriately affected any third party. Moreover, the parties hereto agree that this settlement does not constitute evidence of, and should be given no weight with regard to, any question or issue other than the decision by Enforcement and Seminole to settle their disagreement related to the issues addressed herein. Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving any dispute between Enforcement and Seminole without further proceedings, Seminole agrees to undertake the obligations set forth in this Agreement.

A. Civil Penalty

16. Seminole shall pay a civil penalty of $300,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

B. Disgorgement

17. Seminole shall disgorge $271,315.00, plus interest, such amount representing unjust profits from the transactions that violated the prohibition on buy/sell transactions, to energy assistance programs administered by States, territories, or Indian tribes and tribal organizations that 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 thirty days of the Effective Date of this Agreement.

C. Withdrawal of Request for Rehearing

18. On the Effective Date, Seminole's request for rehearing filed February 17, 2009 shall be deemed withdrawn and this docket shall be closed.

D. Compliance Monitoring

19. Seminole shall make semi-annual compliance monitoring reports to Enforcement 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 period covered by the report shall consist of the six months ending one calendar month prior to the date of such report. The second report shall be submitted six months thereafter for the six month period succeeding the prior reporting period. Each compliance report shall: (1) advise Enforcement whether additional violations of the Commission's open-access pipeline transportation 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 open-access pipeline transportation policies, and a statement of the personnel or other evidence demonstrating that the personnel have received such training and when the training took place; and (3) include an affidavit executed by an officer of Seminole that the compliance reports are true and accurate. Upon request by Enforcement, Seminole shall provide to Enforcement documentation to support its reports. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require Seminole to submit semi-annual reports for one additional year.

IV. TERMS

20. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement in its entirety and without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to Seminole Energy and its affiliates (Seminole Gas, High Plains, Lakeshore, Vanguard), its agents, representatives, attorneys, officers, directors and employees, both past and present, and any successor in interest to Seminole.

21. Commission approval of this Agreement in its entirety and without material modification shall release Seminole and forever bar the Commission from holding Seminole, its affiliates, agents, representatives, attorneys, officers, directors and employees, both past and present, liable for any and all administrative, civil claims arising out of, related to, or connected with the investigation addressed in this Agreement. Commission approval of this Agreement in its entirety and without material modification will resolve this Docket in its entirety, shall be deemed to render moot the Order to Show Cause described in paragraph 12, and terminate this docket.

22. Failure to make a timely civil penalty, disgorgement payment, or to comply with the compliance reporting requirements 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), 15 U.S.C. 717 *et seq.*, and may subject Seminole to additional action under the enforcement and penalty provisions of the NGA.

23. If Seminole 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) (2010) from the date that payment is due, in addition to the penalty specified above.

24. The Agreement binds Seminole and its affiliates, agents, successors, and assigns. The Agreement does not create any additional or independent obligations on Seminole, or any affiliated entity, its agents, representatives, attorneys, 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 Seminole 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 Seminole shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Seminole.

27. In connection with the payment of the civil penalty provided for herein, Seminole agrees that the Commission's order approving the Agreement in its entirety and 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). Seminole 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 Seminole 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. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:

Norman C. Bay

Norman C. Bay, Director
Office of Enforcement
Federal Energy Regulatory Commission

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Date

Alex Goldberg

Alex Goldberg
General Counsel
Seminole Energy Services, LLC and on behalf of
Seminole Gas Company, LLC
Seminole High Plains, LLC
Lakeshore Energy Services, LLC
Vanguard Energy Services, LLC

3/8/11

Date

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

In re Seminole Energy Services, LLC Seminole Gas Company, LLC Seminole High Plains, LLC Lakeshore Energy Services, LLC Vanguard Energy Services, LLC	Docket No. IN09-9-000
National Fuel Marketing Company, LLC NFM Midstream, LLC NFM Texas Pipeline, LLC NFM Texas Gathering, LLC	Docket No. IN09-10-000 (not consolidated)

(Issued April 7, 2011)

MOELLER, Commissioner, *concurring*:

My long-time policy has been that, "[t]hose who are subject to Commission penalties need to know, in advance, what they must do to avoid a penalty."[1] Moreover, "[t]his Commission should not impose penalties in the range of millions of dollars for conduct that reasonably may be viewed as consistent with Commission policy."[2] The settlements before us today are consistent with this long-time policy.

Although I had dissented in the earlier orders related to this matter, my dissents related to whether or not Seminole Energy and National Fuel Marketing violated our rule against market manipulation. The settlements before us, however, concern shipper-must-have-title and buy-sell violations. Based on Commission precedent, it is difficult to argue that there was inadequate notice as to those violations, and I have never asserted as much. The settlements contain terms that are fair and equitable, and in the public interest.

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[1] *National Fuel Mktg. Co., LLC.*, 126 FERC ¶ 61,042 (2009) (Moeller and Spitzer, Comm'rs, dissenting); *Seminole Energy Serv., LLC, et al.*, 126 FERC ¶ 61,041 (2009) (Moeller and Spitzer, Comm'rs, dissenting). *See also*, my concurring opinions on *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008) and *Compliance with Statutes, Regulations, and Orders*, 125 FERC ¶ 61,058 (2008).

[2] *Id.*

(not consolidated).

As explained in my dissents at the time, I agreed that certain affiliate bidding rules for pipelines needed to be changed, and I said that, "we should change our existing policy so that bidders have advance notice of when they can legitimately submit bids during an open season." I look forward to considering the viewpoints of the public on the best ways to improve Commission policy. For this reason, I support our Notice of Proposed Rulemaking on this very topic.[3]

Philip D. Moeller
Commissioner

[3] Separately, the Commission is today issuing in Docket No. RM11-15-000 a Notice of Proposed Rulemaking on *Bidding by Affiliates in Open Seasons for Pipeline Capacity*.

Document Content(s)