

125 FERC ¶ 61,234
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 Cornerstone Energy, Inc.

Docket No. IN09-5-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued November 26, 2008)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Cornerstone Energy, Inc. (Cornerstone). This Order is in the public interest because it resolves the investigation into self-reported violations by Cornerstone of the Commission's capacity release policies, specifically violations of the shipper-must-have-title (SMHT) requirement. Cornerstone has agreed to pay a civil penalty of \$325,000 and to disgorge \$121,825.11, plus interest, in unjust profits.

Background

2. Cornerstone is a natural gas marketing company that provides natural gas commodity and energy-related services to commercial and industrial end-users throughout the Midwest. Cornerstone has been acquired by Constellation NewEnergy – Gas Division (CNE), a subsidiary of Constellation Energy, Inc. The due diligence for the acquisition of Cornerstone by CNE led to the discovery of SMHT violations and Cornerstone's self-report. Cornerstone looked into all transactions in which Cornerstone managed capacity for others from October 2002 through May 2007 and identified multiple contracts as potentially being in violation of the SMHT requirement.

Violations

3. 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 five interstate pipelines, and involved the transportation of approximately 12.2 Bcf of natural gas from October 2002 through May 2007.

4. 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)

5. Cornerstone violated the SMHT requirement during the period October 2002 through May 2007 by improperly transporting approximately 12.2 Bcf of gas owned by Cornerstone on capacity held by customers, which was then delivered to third parties. To comply with the SMHT requirement when transporting Cornerstone-owned gas, Cornerstone 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.

6. The primary cause of the violations was lack of adequate knowledge of the Commission's legal and regulatory requirements by company personnel.

Stipulation and Consent Agreement

7. Enforcement and Cornerstone resolved Enforcement's investigation of Cornerstone's violations by means of the attached Agreement. The Agreement requires Cornerstone to pay a \$325,000 civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. Cornerstone will also disgorge unjust profits from its SMHT violations of \$121,825.11, plus interest. Cornerstone will distribute the disgorged funds to certain energy assistance programs that receive and distribute funds from the federal Department of Health and Human Services because staff is unable to identify specifically harmed parties.

Determination of the Appropriate Civil Penalty

8. 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.¹ 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.² 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 Cornerstone's violations while recognizing that Cornerstone took the initiative both to report and to remedy the SMHT violations.

9. In determining the civil penalty we took into account that Cornerstone discovered the SMHT violations through an internal investigation and investigated, reported, and corrected the SMHT violations it found. Further, Cornerstone's cooperation throughout the investigation was exemplary.

10. Cornerstone's SMHT violations involved 12.2 Bcf of gas over a period of approximately four-and-a-half years. Compared with prior settlements in cases involving SMHT violations, the civil penalty amount appropriately addresses the extent of the violations and Cornerstone's efforts to report and remedy the violations.

11. As noted above, Cornerstone is now owned by CNE, which recently entered into a settlement of similar violations that includes a compliance monitoring plan.³ The CNE compliance monitoring plan applies to all of CNE's wholesale natural gas business, including Cornerstone; therefore, a separate or additional compliance monitoring plan for Cornerstone is not necessary.

12. We conclude that the civil penalty and the disgorgement plan specified in the Agreement are fair and equitable, and in the public interest.

¹ 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"*).

² *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156, at P 54-71 (2008).

³ *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220, at P 18 (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.

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).

4. Cornerstone often acts as agent for customers that hold pipeline capacity and delivers gas to those customers. In some instances, however, Cornerstone used such capacity to deliver gas to third parties without either obtaining pipeline capacity in its own name, such as by capacity release, or without transferring title of the gas to the shipper whose capacity was used.

5. Staff confirmed Cornerstone violated the SMHT requirement during the period October 2002 through May 2007 by improperly transporting approximately 12.2 Bcf of gas owned by Cornerstone on capacity held by its customers but delivered the gas to third parties.

6. Cornerstone's SMHT violations avoided compliance with the Commission's capacity release requirements. Cornerstone's violations of the SMHT requirement reduced market transparency in the natural gas transportation market and impacted the Commission's oversight of that market.

7. The primary reason these violations occurred is because Cornerstone senior management was unaware of the SMHT requirements and did not know that the company's contracting actions were in violation of those requirements.

8. From the information that Cornerstone provided, Enforcement was able to determine that Cornerstone earned an unjust profit of \$121,825.11. Cornerstone credited the customer whose capacity Cornerstone used with Cornerstone's calculation of the market value of the capacity, referred to by Cornerstone as the representative capacity release rate, minus \$0.01/Mcf, which Cornerstone retained. Staff reviewed Cornerstone's methodology for estimating these market values and believes that the methodology resulted in reasonable approximations of market value of the capacity used by Cornerstone. Cornerstone's retention of \$0.01/Mcf for 12,182,511 Mcf of gas transactions, however, is money by which Cornerstone profited unjustly.

C. Self-Corrective Action

9. After discovering potential violations of the SMHT requirement, Cornerstone hired outside counsel to perform a review of its compliance and advise Cornerstone concerning any possible violations. Cornerstone also requested that its outside counsel assist in developing plans to comply with the SMHT requirement, restructure transactions and business practices to avoid a recurrence of those violations, and train Cornerstone's employees on the SMHT requirement. Senior management fully

supported Cornerstone's review. Cornerstone 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.

III. REMEDIES AND SANCTIONS

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

A. Civil Penalty

11. Cornerstone shall pay a civil penalty of \$325,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

B. Disgorgement

12. Cornerstone shall disgorge \$121,825.11, plus interest, such amount representing unjust profits from Cornerstone's SMHT violations, 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, within the region which Cornerstone marketed the gas at issue, 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 appropriate because distribution of unjust profits to the customer whose capacity was used by Cornerstone is inappropriate, inasmuch as that customer should have released capacity to Cornerstone.

IV. TERMS

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

14. Commission approval of this Agreement without material modification shall release Cornerstone and forever bar the Commission from holding Cornerstone and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to Cornerstone, 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.

15. Failure to make a timely civil penalty payment or disgorgement payment

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 Cornerstone to additional action under the enforcement and penalty provisions of the NGA.

16. If Cornerstone 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.

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

18. 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 Cornerstone has been made to induce the signatories or any other party to enter into the Agreement.

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

20. In connection with the payment of the civil penalty provided for herein, Cornerstone 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). Cornerstone 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.

21. 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.

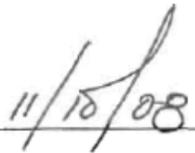
22. The undersigned representatives of Cornerstone affirm that they have read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of their knowledge, information and belief, and that they understand that the Agreement is entered into by Enforcement in express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

23. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original. The Agreement may be signed in counterparts.

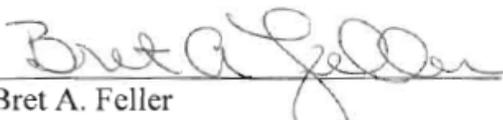
Agreed to and accepted:



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



Date



Bret A. Feller
Co-Chief Commercial Officer
Cornerstone Energy LLC



Date