

127 FERC ¶ 61,320
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

In re Sequent Energy Management, L.P.
and Sequent Energy Marketing, L.P.

Docket No. IN09-19-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued June 30, 2009)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Sequent Energy Management, L.P. (Sequent Management) and Sequent Energy Marketing, L.P. (Sequent Marketing). This order is in the public interest, because it resolves the investigation into certain self-reported violations by Sequent Management and Sequent Marketing of the Commission's capacity release policies, including circumvention of the posting and bidding requirements for released capacity and violations of the shipper-must-have-title requirement, and resolves Sequent Management's self-report of certain buy/sell transactions. Sequent Management and Sequent Marketing have agreed to pay a civil penalty of \$5,000,000 and to disgorge \$53,728.18, plus interest, such amount representing the unjust profits from the flipping violations. In addition, Sequent Management and Sequent Marketing have agreed to submit compliance monitoring reports.

Background

2. Sequent Management and Sequent Marketing are wholly-owned subsidiaries of AGL Resources Inc., an energy services holding company whose principal business is the distribution of natural gas in six Eastern states. Sequent

Management is engaged in the full range of activities of a natural gas wholesaler, including the marketing, trading, storage, and transportation of natural gas. As of May 2008, Sequent Management sold approximately 2.5 Bcf/day of natural gas, executed approximately 70,000 transactions per year, and did business on approximately 60 different interstate pipelines with over 275 counterparties. Sequent Marketing was engaged primarily in capacity release transactions, and was used by Sequent Management to carry out alternating, short-term, discounted capacity release transactions. The business operations of Sequent Marketing, including the management of Sequent Marketing's capacity releases, were performed by employees of Sequent Management.

3. In late 2007, Enforcement staff opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008), into possible "flipping" activities of natural gas participants in the capacity release market.¹ During the pendency of Enforcement's staff's review and identification of investigative subjects but before staff had notified the Sequent companies of the investigation, counsel for Sequent Management and Sequent Marketing self-reported to Enforcement staff that Sequent Management and Sequent Marketing had released and/or acquired short-term discounted rate firm pipeline capacity in flipping transactions. Counsel for Sequent Management and Sequent Marketing also advised Enforcement staff that the companies were conducting an extensive review of their capacity release transactions and would report the results of the review when completed.

Violations

A. Flipping Transactions

4. Section 284.8(h) of the Commission's regulations requires that a shipper releasing firm capacity for a term longer than 31 days and at a price less than the maximum tariff rate must post the capacity for competitive bidding on the

¹ Flipping is a term that describes transactions that avoid the posting and bidding requirements for discounted rate firm capacity at 18 C.F.R. § 284.8 (2008). Flipping is typically a series of short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis, without complying with the posting and bidding requirements, that creates a long-term, noncompetitive discounted rate release. *See, e.g., In re Puget Sound Energy, Inc.*, 127 FERC ¶ 61,070 (2009); *In re Anadarko Petroleum Corporation*, 127 FERC ¶ 61,069 (2009); *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008); *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007).

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. 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 posting and bidding requirements.

5. 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 interstate natural gas pipeline open-access program, and promote transparency, market efficiency, and the elimination of undue preference and discrimination in the natural gas transportation market.

6. Enforcement concluded that Sequent Management and Sequent Marketing both improperly released and acquired discounted rate capacity through flipping transactions, the result of which was that the companies avoided the requirement to post or obtain such capacity through competitive bidding.² The flipping transactions occurred over a 28-month period between August 1, 2005 and November 30, 2007. Through these transactions, Sequent Management and Sequent Marketing either released or acquired 30.49 Bcf of transportation capacity on Texas Eastern Transmission, LP, Texas Gas Transmission LLC, Transcontinental Gas Pipe Line Corporation, Destin Pipeline Company LLC, and Florida Gas Transmission Company LLC in flipping transactions. The flipping transactions in which Sequent Management and Sequent Marketing were replacement shippers occurred with six different releasing shippers. The Sequent companies earned unjust profits of \$53,728.18 as a result of the flipping transactions.

7. Enforcement staff concluded that the flipping transactions by Sequent Management and Sequent Marketing caused harm to natural gas transportation markets, because they impeded transparency and 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.

² *Constellation*, 122 FERC ¶ 61,220 at P 21.

B. Shipper-Must-Have-Title Requirement Violations

8. Sequent Management and Sequent Marketing, after their voluntary internal review of their capacity release transactions, also self-reported certain other transactions in violation of the Commission's natural gas open-access transportation requirements. Sequent Management and Sequent Marketing self-reported that, between August 2005 and November 2007, Sequent Marketing shipped 14.37 Bcf of natural gas that was titled to Sequent Management on capacity held by Sequent Marketing.

9. The shipper-must-have-title requirement provides that the holder of title to the gas must be the capacity holder for the transportation as well. Without the shipper-must-have-title requirement, it is unlikely that shippers would need to use capacity release, since capacity holders could simply transport gas over the pipeline for another entity. Thus, transactions would not be subject to any of the capacity release requirements, such as the reporting requirements or the allocation through competitive bidding. Without the shipper-must-have-title requirement, the identity of the true users of the pipeline's transportation and the conditions under which they moved gas would not be known.³ The shipper-must-have-title requirement is reflected in the FERC gas tariffs of interstate pipelines providing open-access transportation and storage service.⁴

10. Enforcement staff concluded that between 2005 and 2007, Sequent Management and Sequent Marketing violated the Commission's shipper-must-have-title requirement, resulting in 14.37 Bcf of gas being transported in violation of such requirement. Enforcement staff also concluded that, like flipping, violations of the shipper-must-have-title requirement cause harm to natural gas transportation markets because they impede transparency and impact the Commission's oversight of the natural gas market. The Sequent companies did not earn unjust profits as a result of these transactions.

³ Matching ownership of the gas with the capacity used to transport the gas assures that capacity holders will not engage in capacity assignment, but will instead use the capacity release mechanism when another party wishes to transport its gas, and thus increases transparency in the transportation market.

⁴ Although the specific language of pipeline 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. See *Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

C. Prohibited Buy/Sell Transactions

11. Sequent Management also self-reported that it engaged in certain transactions that may be buy/sell transactions. Sequent Management identified a limited number of transactions that involved a single counterparty on one pipeline, in which Sequent Management structured a concurrent purchase and sale of gas pursuant to a standard netting agreement with the counterparty as a way to enable the counterparty to transact with Sequent Management, while minimizing Sequent Management's credit exposure with the counterparty. The arrangement involved the transportation of 1.06 Bcf gas over four months (November and December of 2006, December 2007, and January of 2008).

12. The Commission has prohibited 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 (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. *See Williams Energy Marketing & Trading Co.*, 92 FERC ¶ 61,219, at 61,715-16 (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. This prohibition was intended to prevent circumvention of the Commission's open access transportation policy and regulations which require released capacity to be posted and bid on a nondiscriminatory basis.

13. Enforcement staff concluded that in November and December of 2006, December 2007, and January of 2008, Sequent Management violated the Commission's prohibition of buy/sell transactions, resulting in 1.06 Bcf of gas being transported in violation of the buy/sell prohibition. Enforcement staff also concluded that, like flipping, violations of the Commission's prohibition on buy/sell transactions cause harm to natural gas transportation markets because they impede transparency and impact the Commission's oversight of the natural gas market. Sequent Management did not earn unjust profits as a result of these transactions.

Stipulation and Consent Agreement

14. Enforcement and Sequent Management and Sequent Marketing resolved Enforcement's investigation of Sequent Management's and Sequent Marketing's violations by means of the attached Agreement. Sequent Management and Sequent Marketing admit that they engaged (i) in the flipping transactions and that those discounted rate capacity releases and acquisitions of released capacity constitute a violation of Commission rules or regulations and (ii) in transactions which violated the shipper-must-have-title requirement. Sequent Management

admits entering into the buy/sell transactions in question, but neither admits nor denies Enforcement staff's conclusions that these transactions violated the Commission's prohibition against buy/sell transactions.

15. The Agreement requires Sequent Management and Sequent Marketing to pay a \$5 million civil penalty to the United States Treasury within ten days of this order accepting and approving the Agreement. Sequent Management and Sequent Marketing will disgorge \$53,728.18, plus interest, such amount representing the unjust profits from the flipping violations, to certain energy assistance programs that receive and distribute funds from the Department of Health and Human Services. Sequent Management and Sequent Marketing also will submit semi-annual monitoring reports to Enforcement for a period of one year with the option of a second year at Enforcement staff's discretion. Each compliance report shall describe any new and existing compliance program measures, including training, and alert staff to any additional violations of the capacity release requirements that may occur.

Determination of the Appropriate Civil Penalty

16. 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.⁵ 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 the Revised Policy Statement on Enforcement.⁶ 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 nature and scope of Sequent Management's and Sequent Marketing's violations and Enforcement staff's conclusions regarding the buy/sell transactions. Although the flipping transactions occurred over a 28-month period and involved 30.49 Bcf of transportation capacity, Sequent Management and Sequent Marketing have been given credit for their exemplary cooperation throughout the investigation and for self-reporting the flipping and shipper-must-have-title requirement violations as well as the buy/sell transactions.

⁵ 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")*).

⁶ *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 54 -71 (2008).

17. We conclude that the civil penalty, disgorgement relief, and the compliance monitoring reports 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 Sequent Energy Management, L.P.)
Sequent Energy Marketing, L.P.)

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STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Sequent Energy Management, L.P. (Sequent Management) and Sequent Energy Marketing, L.P. (Sequent Marketing) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008), into whether Sequent Management and Sequent Marketing violated provisions of the Commission's open access transportation program, including the competitive bidding requirements for long-term, discounted rate capacity releases set forth at 18 C.F.R. § 284.8 (2008), the shipper-must-have-title requirement, and the Commission's prohibition of buy/sell transactions.

II. STIPULATED FACTS

Enforcement and Sequent Management and Sequent Marketing hereby stipulate and agree to the following:

1. Sequent Management and Sequent Marketing are wholly-owned subsidiaries of AGL Resources Inc., an energy services holding company whose principal business is the distribution of natural gas in six Eastern states. Sequent Management is engaged in the full range of activities of a natural gas wholesaler, including the marketing, trading, storage, and transportation of natural gas. As of May 2008, Sequent Management sold approximately 2.5 Bcf/day of natural gas, executed approximately 70,000 transactions per year, and did business on approximately 60 different interstate pipelines with over 275 counterparties. Sequent Marketing was engaged primarily in capacity release transactions, and was used by Sequent Management to carry out alternating, short-term, discounted capacity release transactions. The business operations of Sequent Marketing, including the management of Sequent Marketing's capacity releases, were performed by employees of Sequent Management.

2. In late 2007, Enforcement staff opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008), into possible "flipping" activities of natural gas participants in the capacity release market.¹ During the pendency of Enforcement's staff's review and identification of investigative subjects but before staff had notified the Sequent companies of the investigation, counsel for Sequent Management and Sequent Marketing self-reported to Enforcement staff that Sequent Management and Sequent Marketing had released and/or acquired short-term discounted rate firm pipeline capacity in flipping transactions. Counsel for Sequent Management and Sequent Marketing also advised Enforcement staff that the companies were conducting an extensive review of their capacity release transactions and would report the results of the review when completed.

3. Between August 1, 2005 and November 30, 2007, Sequent Management and Sequent Marketing, as affiliated replacement shippers released and/or acquired a total of 30.49 Bcf of transportation capacity on Texas Eastern Transmission, LP, Texas Gas Transmission LLC, Transcontinental Gas Pipe Line Corporation, Destin Pipeline Company LLC, and Florida Gas Transmission Company LLC in flipping transactions. The flipping transactions in which Sequent Management and Sequent Marketing were replacement shippers occurred with six different releasing shippers.

4. The Commission's regulations at 18 C.F.R. § 284.8(h)(1) (2008) require that a shipper releasing firm capacity for a term longer than 31 days and at a price less than the maximum tariff rate must post the capacity for competitive bidding on the pipeline's EBB. 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. 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 posting and bidding requirements.

¹ Flipping is a term that describes transactions that avoid the posting and bidding requirements for discounted rate firm capacity at 18 C.F.R. § 284.8 (2008). Flipping is typically a series of short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis, without complying with the posting and bidding requirements, that creates a long-term, noncompetitive discounted rate release. *See, e.g., In re Puget Sound Energy, Inc.*, 127 FERC ¶ 61,070 (2009); *In re Anadarko Petroleum Co.*, 127 FERC ¶ 61,069 (2009); *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008); *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007).

5. Enforcement staff determined that Sequent Management's and Sequent Marketing's releases and/or acquisitions of short-term, discounted rate capacity were flipping transactions that improperly avoided the requirement that discounted rate capacity be obtained through competitive bidding.

6. Sequent Management and Sequent Marketing, after their voluntary internal review of their capacity release transactions, also self-reported certain other transactions in violation of the Commission's natural gas open access transportation requirements. Sequent Management and Sequent Marketing self-reported that, between August 2005 and November 2007, Sequent Marketing shipped 14.37 Bcf of natural gas that was titled to Sequent Management on capacity held by Sequent Marketing.

7. A central requirement of the Commission's open access transportation 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 tariff 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).

8. Enforcement staff determined that between 2005 and 2007, Sequent Management and Sequent Marketing violated the Commission's shipper-must-have-title requirement, resulting in 14.37 Bcf of gas being transported in violation of such requirement.

9. Sequent Management also self-reported that it engaged in potential buy/sell transactions. Sequent Management identified a limited number of transactions that involved a single counterparty on one pipeline, in which Sequent Management structured a concurrent purchase and sale of gas pursuant to a standard netting agreement with the counterparty as a way to enable the counterparty to transact with Sequent Management, while minimizing Sequent Management's credit exposure with the counterparty. The arrangement involved the transportation of 1.06 Bcf gas over four months (November and December of 2006, December 2007, and January of 2008).

10. The Commission has prohibited 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 (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. *See Williams Energy Marketing & Trading Co.*, 92 FERC ¶ 61,219, at 61,715-16 (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. This prohibition was intended to prevent circumvention of the Commission's open access transportation policy and regulations which require released capacity to be posted and bid on a nondiscriminatory basis.

11. Enforcement staff determined that in November and December of 2006, December 2007, and January of 2008, Sequent Management violated the Commission's prohibition of buy/sell transactions, resulting in 1.06 Bcf of gas being transported in violation of the buy/sell prohibition. Sequent Management admits entering into the transactions in question but neither admits nor denies Enforcement staff's conclusions that these transactions violated the Commission's prohibition against buy/sell transactions.

12. Enforcement staff concluded that Sequent Management's and Sequent Marketing's flipping transactions caused harm to natural gas transportation markets because they impeded transparency and 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. Additionally, staff concluded that, like flipping, violations of the shipper-must-have-title requirement and policy prohibiting buy/sell arrangements cause harm to natural gas transportation markets because they impede transparency and impact the Commission's oversight of the natural gas market.

13. Prior to the Commission's Order in *BP Energy Company*², Sequent Management did not have controls in place to identify and prevent the transactions at issue here. Subsequently, AGL Resources Inc. and Sequent Management have taken remedial measures to improve compliance with the Commission's open access transportation requirements. Since December 2007, employees at Sequent Management have been provided additional training on open access transportation compliance, including the prohibitions on tying arrangements and buy/sell transactions, the shipper-must-have-title requirement, and flipping.

14. Enforcement staff determined that Sequent Management and Sequent Marketing earned \$53,728.18 in unjust profits as a result of the flipping transactions that are the subject of this Agreement. There were no unjust profits as a result of the shipper-must-have-title or buy/sell transactions. Throughout the

² 121 FERC ¶ 61,088 (2007).

course of the investigation, the cooperation by Sequent Management and Sequent Marketing was exemplary.

III. REMEDIES AND SANCTIONS

15. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation into the self-reported open access transportation violations, Sequent Management and Sequent Marketing agree to take the following actions:

A. Civil Penalty

16. Sequent Management and Sequent Marketing 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 below.

B. Disgorgement

17. Sequent Management and Sequent Marketing shall disgorge \$53,728.18, plus interest, such amount representing unjust profits from Sequent Management's and Sequent Marketing's flipping 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, 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 the alternative of distribution to the counterparties in the flipping transactions would likely create a windfall benefit to the counterparty.

C. Compliance Monitoring

18. Sequent Management and Sequent Marketing shall make semi-annual reports to Enforcement staff for one year following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The second report shall be submitted six months thereafter. Each compliance report shall: (1) advise staff whether additional violations by Sequent Management and Sequent Marketing of open access transportation requirements of have occurred; (2) provide a detailed update of all natural gas-related compliance training administered and natural gas-related compliance measures instituted in the applicable period, including a description of the training provided to all relevant personnel concerning the Commission's open access transportation policies, and a list of the personnel that have received such training and when the training took place; and (3) include an affidavit executed by

an officer of Sequent Marketing and Sequent Management that the compliance reports are true and accurate. Upon request by staff, Sequent Management and Sequent Marketing shall provide to staff documentation to support its reports. After the receipt of the second semi-annual report, Enforcement staff may, at its sole discretion, require Sequent Management and Sequent Marketing to submit semi-annual reports for one additional year.

IV. TERMS

19. 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 Sequent Management and Sequent Marketing and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to Sequent Management and Sequent Marketing.

20. Commission approval of this Agreement in its entirety and without material modification shall release Sequent Management and Sequent Marketing and forever bar the Commission from holding Sequent Management and Sequent Marketing, their affiliates, agents, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the investigation addressed in this Agreement.

21. Failure to make a timely civil penalty 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), and may subject Sequent Marketing or Sequent Management to additional action under the enforcement and penalty provisions of the NGA.

22. If Sequent Marketing or Sequent Management do 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.

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

24. 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 Sequent Management and Sequent Marketing has been made to induce the signatories or any other party to enter into the Agreement.

25. 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 Sequent Marketing or Sequent Management shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Sequent Marketing or Sequent Management.

26. In connection with the payment of the civil penalty provided for herein, Sequent Management and Sequent Marketing 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). Sequent Management and Sequent Marketing 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.

27. 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.

28. The undersigned representative of Sequent Management and Sequent Marketing 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.

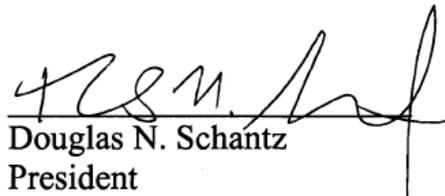
29. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



Susan Court
Director
Office of Enforcement
Federal Energy Regulatory Commission

Date 6/19/09



Douglas N. Schantz
President
Sequent Energy Management, L.P.
Sequent Energy Marketing, L.P.

Date 6/16/09