



March 15, 2012

Chairman Jon Wellinghoff

**STATEMENT**

## Statement of Chairman Jon Wellinghoff on The Constellation Energy Commodities Group Investigation

"Last Friday, we unanimously approved a Stipulation and Consent Agreement between the Commission's Office of Enforcement and Constellation Energy Commodities Group. Our order concluded a lengthy and complex investigation. I commend and thank our Office of Enforcement, including the team that worked on the investigation, for its tremendous work on behalf of consumers. It is a landmark case that will have long term benefits for all electric market consumers.

As detailed in the order, Enforcement Staff determined that Constellation engaged in manipulation that resulted in economic losses to market participants who bought and sold energy in the day-ahead markets of ISO New England and the New York Independent System Operator. Enforcement Staff also determined that this manipulation distorted price discovery for all market participants.

The severity of Constellation's conduct is demonstrated by its agreement to pay a civil penalty of \$135 million and to disgorge unjust profits of \$110 million or a total settlement amount of \$245 million. This total reflects the largest penalty that the Commission has imposed under the expanded enforcement authority that Congress assigned to us in 2005. Furthermore, the employees involved in the subject trading activities have been removed from any position that performs any duties related to managing, directing, or engaging in wholesale physical and financial energy trading. It is my hope and belief that this order again reinforces this Commission's commitment to protecting the integrity of the markets that are subject to our oversight and protecting the interests of consumers dependent on those markets.

Compliance, not penalties, remains my primary goal. To that end, the Stipulation and Consent Agreement is instructive regarding the characteristics of a robust compliance program. Now based on that agreement, Constellation will institute a policy and process to monitor profit and loss concentrations in virtual transactions and physical schedules of electric energy and to review and document the purpose of virtual transactions.

In addition, Constellation will develop and enforce policies which require that communications by its traders, including but not limited to instant messaging (IMs), email, and phone calls be preserved and a system should be set up whereby such communications will be regularly monitored by its compliance group for potential irregularities or illegalities.

Constellation also must adopt or maintain compliance measures and procedures related to its trading of jurisdictional products, including virtual transactions, scheduling of physical power, TCCs and FTRs. These measures shall include improved training for its traders, supervisors, and managers regarding the Commission's regulations prohibiting manipulation of jurisdictional energy markets and the Commission's regulations governing energy trading, including the adherence to the tariffs in the organized markets in which it participates and providing accurate information to the Commission, RTOs and ISOs.

I urge all companies to include these components in their compliance program.

In my view, all wholesale market participants should focus on four main points.



First, do not trade uneconomically on one position in order to benefit the value of another. Second, senior management will be held accountable. Senior management has an obligation to proactively monitor for market manipulation and to pursue concerns once brought to their attention. Third, tell the truth, the whole truth, and nothing but the truth when questioned. Finally, understand that the Commission will be vigorous in using its anti-manipulation authority to protect consumers.

As a final point, I note that since the issuance of the Commission's order, a senior Constellation official has stated publicly that the company's practices at issue here were "lawful portfolio risk management transactions." In my opinion, clearly that is not the case. The Stipulation and Consent Agreement sets forth a detailed description of the transactions that I believe Constellation knowingly and willfully engaged in that form the basis of Enforcement Staff's conclusion that Constellation engaged in market manipulation, fraud, and misrepresentation. I urge anyone who has any question as to Constellation's actions in this case to read that Stipulation and Consent Agreement."