



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), 1/47<sup>th</sup> (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.<sup>1</sup>

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 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 10.6 percent of the available capacity and included Seminole Energy

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<sup>1</sup> 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.

Services, LLC, and its four affiliates, Seminole Gas Company, LLC, Seminole High Plains, LLC, Lakeshore Energy Services, LLC and Vanguard Energy Services, LLC (together, Seminole). The fifth group received 8.5 percent of the available capacity and included National Fuel and its three affiliates, Midstream, Texas Pipeline and Texas Gathering.

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 NFM and its three affiliates.<sup>2</sup> That Order directed National Fuel and its three affiliates (Midstream, Texas Pipeline and Texas Gathering) to show cause why the Commission should not find that they: (1) violated 18 C.F.R. § 1c.1 when National Fuel and its affiliates bid for capacity on Cheyenne Plains and obtained a larger allocation of Cheyenne Plains capacity than National Fuel could have acquired by itself; and (2) violated the Commission's shipper-must-have-title requirement. *See National Fuel Marketing Company, LLC, et al.*, 126 FERC ¶ 61,042 (2009) (Moeller, Comm'r dissenting) (Spitzer, Comm'r dissenting).

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<sup>2</sup> The other January 15, 2009 Order To Show Cause concerned Seminole and its four affiliates. *See Seminole Energy Services, LLC, et al.*, 126 FERC ¶ 61,041 (2009) (Moeller, Comm'r dissenting) (Spitzer, Comm'r dissenting).

11. On February 17, 2009, NFM 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) NFM's bids were legitimate and not made with requisite scienter to support a violation of 18 C.F.R. § 1c.1; and (3) NFM did not violate the Commission's shipper-must-have-title requirement. National Fuel Marketing Company, LLC, et al., February 17, 2009 Response to Order to Show Cause at 1-8. NFM also separately filed a request for rehearing of the Commission's NFM Order to Show Cause. National Fuel Marketing Company, LLC, et al., February 17, 2009 Petition for Rehearing. On March 18, 2009, the Commission granted NFM's request for rehearing for the purposes of further consideration.

12. NFM 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, NFM'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.<sup>3</sup>

13. National Fuel is a privately-held natural gas marketing company headquartered in Centennial, Colorado. National Fuel purchases physical natural gas in the Rockies from small and medium-sized producers and gas plants and then sells the gas to utilities, municipalities, local distribution companies, independent power producers, manufacturers and other end-users throughout the West and Mid-Continent regions. Midstream, Texas Pipeline and Texas Gathering are all subsidiaries of National Fuel. On March 13, 2007, National Fuel and its three affiliates each submitted bids for all of the available capacity, for the entire term, and at the maximum Cheyenne FERC Gas Tariff rate.

14. After the NFM Companies received their capacity allocations on Cheyenne Plains, National Fuel bought gas at the Cheyenne Hub. The NFM Companies then transported National Fuel's purchased gas on Cheyenne Plains using their four shares of the awarded capacity, representing approximately 8.4 percent of the total available capacity. National Fuel then sold this gas at the NGPL Mid-Continent pool. National Fuel and its affiliates transported a total of 366,624 MMBtu/d during the period April-May 2007 and

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<sup>3</sup> 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*.

September-October 2007. National Fuel lost \$28,553 on its Cheyenne Plains transactions during this period.

15. Enforcement concluded that National Fuel's three affiliates (Midstream, Texas Pipeline, and Texas Gathering) violated the shipper-must-have-title requirement when they used their Cheyenne Plains capacity allocations to ship gas titled to National Fuel. The shipper-must-have-title requirement is reflected in Original Sheet No. 251 of the General Terms and Conditions section of Cheyenne's FERC Gas Tariff.

16. National Fuel neither admits nor denies that Midstream, Texas Pipeline and Texas Gathering violated the Commission's shipper-must-have-title requirement. The attached Agreement resolves Enforcement's investigation of NFM's bidding on and use of the Cheyenne Plains interstate pipeline capacity from March 1, 2007 through October 31, 2007. The Agreement requires NFM to pay a \$290,000 civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. NFM also will make certain compliance reports.<sup>4</sup>

17. The civil penalty in this case is based on NFM's actions regarding the shipper-must-have-title requirement and takes into account several factors, including the involvement of NFM's senior management in the transactions, NFM's absence of profits from the transactions, and NFM'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 NFM in connection with the shipper-must-have-title requirement while recognizing, where appropriate, other company-specific considerations as stated above and in the attached Agreement.

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<sup>4</sup> Because NFM 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.

Docket No. IN09-10-000

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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

National Fuel Marketing Company, LLC     )  
NFM Midstream LLC                             )  
NFM Texas Pipeline LLC                     )  
NFM Texas Gathering LLC                 )                     Docket No. IN09-10-000

STIPULATION AND CONSENT AGREEMENT

**I. INTRODUCTION**

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and National Fuel Marketing Company, LLC (National Fuel), NFM Midstream, LLC (Midstream), NFM Texas Pipeline, LLC (Texas Pipeline) and NFM Texas Gathering, LLC (Texas Gathering) (referred to collectively as the NFM Companies or NFM) 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 the NFM Companies' 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, and the subsequent use of that capacity, violated any Commission statutes, rules or requirements.

**II. STIPULATED FACTS**

Enforcement and the NFM Companies hereby stipulate and agree to the following:

2. National Fuel is a privately-held natural gas marketing company headquartered in Centennial, Colorado. National Fuel purchases physical natural gas in the Rockies and sells the gas to a variety of entities throughout the West and Mid-Continent regions. Midstream, Texas Pipeline and Texas Gathering are all subsidiaries of National Fuel. Midstream, formed in 2005, was established to serve as a holding company for entities engaged in the business of owning, operating and managing natural gas gathering systems. Texas Pipeline, a subsidiary of Midstream, was formed in 2005 to market gas in Texas. Texas Gathering, also a subsidiary of Midstream, was formed in 2006 to acquire, own, operate and manage natural gas gathering systems in Texas and elsewhere.

3. Enforcement's investigation of the NFM Companies, 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.

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. On March 13, 2007, National Fuel, Midstream, Texas Pipeline and Texas Gathering 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 National Fuel and its three 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 capacity subject to the open season.

6. After receiving these capacity allocations on Cheyenne Plains, National Fuel bought gas at the Cheyenne Hub. The NFM Companies then transported National Fuel's purchased gas on Cheyenne Plains using their four shares of the awarded capacity, representing approximately 8.4 percent of the total capacity subject to the open season.

National Fuel then sold this gas at the NGPL Mid-Continent pool. National Fuel lost \$28,553 on its transactions during this period.

7. In order to promote pipeline open-access and to prevent undue discrimination in the primary and secondary markets for capacity, the Commission has adopted a number of specific capacity release policies. Among them is the shipper-must-have-title requirement, under which a shipper must hold title to the gas being transported on the shipper's pipeline capacity. *Rendezvous Gas Services LLC*, 113 FERC ¶ 61,169, at P 40 (2005); *Enron Energy Services, Inc.*, 84 FERC ¶ 61,222, at 60,063 (1998); *Consolidated Gas Transmission Corp.*, 38 FERC ¶ 61,150, at 61,408 (1987) (citing *Texas Eastern Transmission Corp.*, 37 FERC ¶ 61,260, at 61,683-85 (1986)). The shipper must have title requirement is reflected in Original Sheet No. 251 of the General Terms and Conditions section of Cheyenne's FERC-approved Gas Tariff which provides, in pertinent part, that "By tendering gas to Transporter, Shipper warrants that it has title to, or the right to ship, the gas it has delivered."

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.

9. 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).

10. On January 15, 2009, at the request of Enforcement staff, the Commission issued an order directing National Fuel and its three affiliates (Midstream, Texas Pipeline and Texas Gathering) to show cause why the Commission should not find that National Fuel and its affiliates (1) violated 18 C.F.R. § 1c.1 when National Fuel and its affiliates bid for capacity on Cheyenne Plains and obtained a larger allocation of Cheyenne Plains capacity than National Fuel could have acquired by itself and (2) violated the Commission's shipper-must-have-title requirement. *See National Fuel Marketing Company, LLC, et al.*, 126 FERC ¶ 61,042 (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 that multiple-affiliate bidding in an open season could subsequently be considered as a violation of 18 C.F.R. § 1c.1.

11. On February 17, 2009, the NFM Companies filed an answer to the Commission's order and an alternate motion for a formal evidentiary trial-type hearing before an administrative law judge. In the answer, the NFM Companies denied the alleged violations and argued that no further action should be taken pursuant to the Order To Show Cause because, among other reasons, (1) the Commission has not provided adequate notice or fair warning as to when multiple-affiliate bidding complies with Commission regulations; (2) the NFM Companies' bids were legitimate and neither deceptive nor manipulative; (3) the NFM Companies did not act with requisite scienter to support a violation of 18 C.F.R. § 1c.1; and (4) the NFM Companies' actions did not constitute a violation of the shipper-must-have-title requirement. National Fuel Marketing Company, LLC, et al., February 17, 2009 Response to Order to Show Cause at 1-8; 49. The NFM Companies also separately filed a request for rehearing of the Commission's Order to Show Cause. National Fuel Marketing Company, LLC, et al., February 17, 2009 Petition for Rehearing. On March 18, 2009, the Commission granted NFM's request for rehearing solely for the purposes of further consideration, but has not yet ruled upon that request.

12. National Fuel's three affiliates used their Cheyenne Plains capacity allocations to ship gas titled to National Fuel. Enforcement concluded that these transactions violate the shipper must have title requirement, and circumvent 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. In the interest of resolving this dispute, the NFM Companies neither admit nor deny a violation of the shipper-must-have-title requirement, and agree to the terms and conditions of this Agreement.

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

13. For the purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation of the Cheyenne Plains open season bidding, the NFM Companies agree with the facts as stipulated in paragraphs 2 through 12, but neither admit nor deny that these transactions violated the shipper-must-have-title requirement. This Agreement resolves, as to National Fuel and its affiliates (Midstream, Texas Pipeline, and Texas Gathering), all claims actually brought or that could have been brought as to them, their parents, subsidiaries, affiliates, principals, employees, agents, representatives and attorneys regarding their acquisition of and use of interstate pipeline capacity during the period March 1, 2007 through October 31, 2007.

14. Neither the stipulated facts nor the existence of this Agreement constitutes an admission of liability by the NFM Companies 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 the NFM Companies to settle their disagreement related to the issues addressed herein. In view of the costs and risks of litigation, and in the interest of resolving any dispute between Enforcement and the NFM Companies without further proceedings, the NFM Companies agree to undertake the obligations set forth in this Agreement.

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

15. National Fuel, on behalf of the NFM Companies, shall pay a civil penalty of \$290,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

#### **B. Withdrawal of Request for Rehearing**

16. On the Effective Date, the NFM Companies' request for rehearing filed February 17, 2009 shall be deemed withdrawn and this docket shall be closed.

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

17. National Fuel, on behalf of the NFM Companies, shall make semi-annual compliance monitoring reports to Enforcement for one year following the Effective Date of this Agreement. The reports shall be due October 15, 2011 for the period March 1-September 30, 2011 and April 15, 2012 for the period October 1, 2011-March 31, 2012. Each compliance report shall: (1) advise Enforcement whether violations of the Commission's open access 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 transportation requirements, 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 NFM that the compliance reports are true and accurate. Upon request by Enforcement, the NFM Companies 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 NFM to submit semi-annual reports for one additional year.

### **IV. TERMS**

18. 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 National Fuel and its affiliates (Midstream, Texas Pipeline and

Texas Gathering), its agents, representatives, attorneys, officers, directors and employees, both past and present, and any successor in interest to the NFM Companies.

19. Commission approval of this Agreement in its entirety and without material modification shall release the NFM Companies and forever bar the Commission from holding the NFM Companies, their affiliates, agents, representatives, attorneys, 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. 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 10, and terminate this docket.

20. 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), 15 U.S.C. 717 *et seq.*, and may subject the NFM Companies to additional action under the enforcement and penalty provisions of the NGA.

21. If the NFM Companies 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) (2010) from the date that payment is due, in addition to the penalty specified above.

22. The Agreement binds the NFM Companies and their affiliates, agents, successors, and assigns. The Agreement does not create any additional or independent obligations on NFM, or any affiliated entity, its agents, representatives, attorneys, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

23. 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 the NFM Companies has been made to induce the signatories or any other party to enter into the Agreement.

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

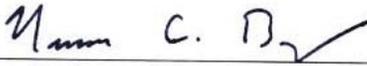
25. In connection with the payment of the civil penalty provided for herein, the NFM Companies agree that the Commission's order approving the Agreement in its entirety and without material modification shall be a final and unappealable order assessing a civil penalty under section 22(a) of the NGA, 15 U.S.C. § 717t-1(a). The NFM Companies 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.

26. 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.

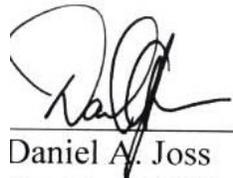
27. The undersigned representative of the NFM Companies affirms that he has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

28. 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, Director  
Office of Enforcement  
Federal Energy Regulatory Commission

3.16.11  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Daniel A. Joss  
President/CEO  
National Fuel Marketing Company, LLC and on behalf of  
NFM Midstream, LLC  
NFM Texas Pipeline, LLC  
NFM Texas Gathering, LLC

3/10/11  
\_\_\_\_\_  
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.”<sup>1</sup> 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.”<sup>2</sup> 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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<sup>1</sup> *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).

<sup>2</sup> *Id.*

Docket Nos. IN09-09-000 and IN09-10-000 (not consolidated)

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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.<sup>3</sup>

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Philip D. Moeller  
Commissioner

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<sup>3</sup> 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)

IN09-10-000.DOC.....1-16