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141 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Alliance Pipeline L.P. Docket No. IN13-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued November 30, 2012)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Alliance Pipeline L.P. (Alliance). This Order is in the public interest because it resolves on fair and reasonable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012), into whether Alliance violated the Commission's Standards of Conduct for Transmission Providers, 18 C.F.R. Part 358. Alliance agreed to pay a civil penalty of $500,000 to the United States Treasury and will make semi-annual compliance reports to Enforcement for a period of one year.

I. Background

2. As described in the Agreement, Alliance owns and operates a natural gas pipeline which provides open access transportation service subject to the jurisdiction of the Commission. Alliance is jointly owned by Enbridge Inc. (Enbridge) and Fort Chicago Pipeline II U.S. L.P. (now Veresen Inc.)

3. In March and April 2010, Alliance's Chief Executive Officer (CEO) and its Chief Compliance Officer (head of Compliance) considered in advance of a capacity auction the financial and other long-term market perception issues related to their attempts and inability to sell the capacity in two prior recent auctions. Alliance's customers who held capacity contracts on the same pipeline had the option to renew and extend those contracts later in the year, and Alliance feared that the customers would see the unsubscribed capacity as an indication of the pipeline capacity's reduction in value and a reason not to renew their contracts. Alliance's CEO and head of Compliance thus sought to have its parent companies purchase the unsubscribed capacity, even though it believed that doing so would likely increase the parents' financial losses, to avoid negative perceptions of Alliance that would result from non-placement of that capacity.

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4. The parent companies independently analyzed the economics of purchasing and using the capacity, initially agreeing with Alliance's analysis that it would lose money doing so. In the month before the auction, however, employees at the parent company discovered that purchasing the capacity would represent less of a loss to the corporate family than leaving the capacity unsubscribed and idle. The parents thus decided to purchase the capacity, but did not convey the analysis or reason for the purchase to any employees or executives at Alliance.

5. On May 21, 2010, an Alliance employee conveyed to employees of Alliance's parent companies information about additional capacity at valuable upstream receipt points, which additional capacity had not been available in the recent prior auctions. This information was material to the auction and all potential bidders. On May 25, 2010, an Enbridge employee relayed this information to employees at a marketing affiliate, Tidal Energy Marketing U.S., L.L.C. (Tidal US). On May 26, 2010, Alliance posted June 2010 pipeline capacity for auction without clearly and directly identifying to the market participants the change in the amount of capacity available at upstream receipt points. Alliance's parents created a new affiliate, Sable NGL Services L.P. (Sable), which bid for the capacity despite not appearing on Alliance's Approved Bidders List as required by Alliance's auction rules. Alliance awarded the capacity to Sable, which used Tidal US to manage it.

II. Investigation

6. Alliance filed with the Commission a negotiated rate agreement with Sable on June 3, 2010. BP Canada filed a protest. On July 2, 2010 the Commission approved the agreement and referred BP Canada's allegations to Enforcement.[1] Enforcement opened a non-public, preliminary investigation of Alliance.

7. Enforcement determined that Alliance violated multiple provisions of the Commission's Standards of Conduct for Transmission Providers, found at 18 C.F.R, Part 358.

8. Alliance violated the non-discrimination requirement, 18 C.F.R. § 358.4(b), when it communicated to its owners (and through its owners to marketing function employees at Tidal U.S.), five days before disclosing the information to other transmission customers, new, material, and non-public transmission function information about a large increase in available capacity at valuable receipt points. Enforcement finds that Alliance's actions also favored an affiliated entity by accepting Sable's bid in the auction even though the bid did not qualify according to Alliance's auction procedures and rules.

[1] *Alliance Pipeline L.P.*, 132 FERC ¶ 61,010 (2010).

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9. Enforcement determined that Alliance violated the Standards of Conduct for Transmission Providers no conduit rule, 18 C.F.R. § 358.6, by disclosing to marketing function employees at Tidal US, through the means of communications with the owners, non-public transmission function information about the availability of additional capacity at upstream receipt points.

10. Enforcement determined that Alliance violated the Standards of Conduct transparency rule, 18 C.F.R. § 358.7(a)(1), by failing to provide the information regarding the availability of additional capacity at upstream receipt points to other market participants at the time it provided the same information to the owners.

11. Enforcement determined that Alliance violated Section 42.3 of the General Terms and Conditions of its own tariff, which sets forth the procedural requirements for the bidding process of a capacity auction, by accepting Sable's bid when Sable failed to appear on Alliance's Approved Bidders List as required.

III. Stipulation and Consent Agreement

12. Enforcement staff and Alliance resolved Enforcement's investigation by means of the attached Agreement.

13. Alliance stipulates to the facts recited in the Agreement. Among other things, Alliance stipulates to the content of several communications between its executives, and also between Alliance executives and parent company executives, in March and April 2010. Alliance stipulates that its CEO and its head of Compliance discussed that the purchase of the capacity by the parent companies at a loss would have the effect of suggesting to its customers that the capacity had value they should consider when deciding to renew their contracts. Alliance admits that five days before the May 26, 2010, auction for June 2010 capacity, one of its employees summarized to Alliance's parent companies an analysis concluding that additional capacity was available at upstream receipt points, and that an Enbridge employee relayed this information to marketing function employees at Tidal US. Alliance admits that its auction sheet for the May 26, 2010 auction did not directly identify to other market participants the additional capacity available at the upstream receipt points. Finally, Alliance admits that it awarded the capacity to Sable despite Sable not contemporaneously appearing on Alliance's Approved Bidders List, which is one of the procedural requirements listed in Alliance's May 26, 2010, auction rules.

14. Alliance neither admits nor denies violations of the Commission's Standards of Conduct or its Tariff, but agrees to pay a civil penalty of $500,000, which it agrees not to pass through to any of its present or future customers or ratepayers. Alliance agrees to submit periodic compliance reports for one year following the Effective Date of the attached Agreement.

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IV. Determination of the Appropriate Sanctions

15. In determining the appropriate remedy for Alliance, Enforcement considered the seriousness of Alliance's actions pursuant to the Commission's Penalty Guidelines.[2] Alliance's conduct violated multiple provisions of the well-settled Standards of Conduct for Transmission Providers. In addition, Alliance's seeking to have its owners purchase capacity at a net loss to create a misleading impression with existing capacity customers about the value of Alliance's capacity was conduct that threatened market transparency. Enforcement also considered the following factors: Alliance's violations did not generate profits for Alliance nor cause actual financial harm to other market participants; and Alliance fully cooperated with Enforcement's investigation.

16. The Commission concludes that the Agreement is a fair and equitable resolution of this matter and is in the public interest, as it reflects the nature and seriousness of Alliance's conduct, and recognizes the company-specific considerations as stated above and in the attached Agreement.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[2] *Revised Policy Statement on Penalty Guidelines,* 132 FERC ¶ 61,216 (2010).

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Alliance Pipeline L.P.) Docket No. IN13-3-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Alliance Pipeline L.P. (Alliance) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2011). The investigation proceeded from allegations about Alliance's May 26, 2010 capacity auction which the Commission referred to Enforcement for further inquiry. Enforcement concludes that Alliance violated the Commission's Standards of Conduct for Transmission Providers, 18 C.F.R. Part 358. Enforcement and Alliance agree that Alliance will pay a civil penalty of $500,000 to the United States Treasury and also commit to improving compliance going forward, subject to compliance monitoring, as detailed in the following paragraphs of this Agreement.

II. STIPULATIONS

2. Enforcement and Alliance hereby stipulate and agree to the following facts.

A. Background

3. Alliance owns and operates a 36-inch, 887-mile gas pipeline that extends from receipt points in North Dakota and at the international boundary with Canada in North Dakota to delivery points in North Dakota, Iowa, and Illinois. On September 17, 1998, the Commission issued a certificate of public convenience and necessity to Alliance authorizing it to provide open access transportation service on the pipeline for both firm and interruptible service. Enbridge Inc. (Enbridge) and Fort Chicago Pipeline II U.S. L.P. (now Veresen Inc.) are joint owners of Alliance (collectively, the owners). Following FERC's 1998 certificate order, Alliance executed firm transportation agreements (FTAs) totaling 1325 MMcfd. Alliance's FTAs with its original shippers expire in December 2015, but the shippers had an option in December 2010 to extend their contracts for one year (through 2016) and maintain the negotiated rate structure in their contracts.

4. In March 2006, Calpine Energy Services Canada Partnership ("Calpine"), a shipper on Alliance, repudiated its FTA for 20 MMcf/d of capacity (the Calpine capacity). Alliance subsequently filed, and the Commission approved, tariff sheets to

establish an auction mechanism for awarding capacity that becomes available on Alliance. Several shippers subsequently contracted for the Calpine capacity through March 2010. When Alliance held auctions on February 16, 2010 and March 4, 2010 for that capacity, however, the auctions failed to attract compliant bids.

B. Preparation for May 26, 2010, Capacity Auction

5. In March and April 2010, Alliance's Chief Executive Officer (CEO) and its Chief Compliance Officer (head of Compliance) considered the business issues implicated by the lack of shipper interest in the Calpine capacity. In an internal email dated March 11, 2010, the head of Compliance advised the CEO and other Alliance executives that "there is a very solid case for having an owner pick-up of the Calpine capacity," based on a rough estimate that "the additional exposure looks to be around $1.1 million to the owners." He went on to say that "[t]his $1.1 million seems like a reasonable price to pay to avoid the Alliance and owner issues of stranded capacity and if the differential improves the enterprise gains (and there is hopefully not much more room for the differential to go down given where it's at now)." In a follow-up email on March 12, 2010, the head of Compliance stated, "we have seen that we can avoid the problem of stranded capacity for an extra $1.1 million."

6. Alliance subsequently exchanged several e-mails with its owners' executives about the effects of "stranded capacity," which discussed both financial and longer-term considerations. The latter were referred to as "soft issues." On March 17, 2010, for example, Alliance's head of Compliance described the soft issues as follows: the "[p]erception that [Alliance] capacity [is] under water with differential and NGL value," the "issue with debt and equity analysts down-rating [Alliance]/owners," and the "[a]rgument against contract renewal decision" (referring to the December 2010 contract renewal decision by existing FTA holders).

7. On March 19, 2010, Alliance's CEO emailed its owners' executives and stated with regard to the Calpine capacity,

> The owners will have to advise us of the best approach economically as we only look at Alliance. You are better suited to look at after-tax and [Aux Sable, an affiliate of Alliance] impacts to give the overall view for the owners. My concern is primarily the re-contracting optics for the analysts and the potential write-down of the Alliance regulatory asset. . . . If we put something in place temporarily with [an affiliate named Tidal] it would take the heat off the analysis and allow us time to both think it all through and get the best competitive tension when we are ready to go. It

> would also avoid all the soft issues while we debate the best approach.

8. In an April 22, 2010 email, an Enbridge official told Alliance's head of Compliance that based on Enbridge's review to date, "there is not a strong financial reason (based only on the incremental value of richer gas) to take up the capacity instead of allowing it to [be available to existing shippers under their existing contracts at no cost]. Therefore, we find ourselves focusing on the soft issues. . . . We need to understand the impacts (financial or otherwise, ignoring the NGL value) of not taking up the capacity." Enbridge asked Alliance to provide more information about the potential impacts of uncontracted capacity, including, among other things, the "[n]egative response of US shippers" and the "[n]egative perception of the value of Alliance capacity as we enter a re-contracting year."

9. On April 23, 2010, Alliance's head of Compliance replied, stating that "[h]aving the Calpine capacity empty at a time of high frac spreads, . . . signals a very low energy value to our transportation (even though this capacity may likely be picked up on an economic basis if not for the free [extra capacity available to existing shippers under their existing contracts] on Alliance)." He discussed the "[n]egative perception of the value of Alliance capacity as we enter a re-contracting year," referred to the auction of Calpine capacity as "a microcosm of the renewal decision" faced by other shippers, and said that non-placement of the capacity "has an immediacy and detrimental aspect to our energy value equation that adds a more negative slant to our overall competitiveness."

10. On April 28, 2010, Alliance's head of Compliance sent an email to an Enbridge executive regarding the economics of contracting for the Calpine capacity, stating, "If Sable NGL can roll up all this to [Enbridge Income Fund, or EIF] then EIF loss is the $3.1 million. If forecasts bear out then a little saving for EIF over their $3.25 million exposure if capacity not placed." The Enbridge executive responded,

> The numbers make sense and it appears that you have reached the same conclusion in a different way. It still requires a transfer of [money from one owner to the other], which would be a related party transaction. I'm not suggesting that this is fatal but it does come with complexity and some risk. You are correct that the $$ savings are minimal and I understand your desire to avoid the 'soft issues,' including the risk of losing on the US toll pick up by the existing shippers. By contracting we also avoid losing the PRPDs, which I understand are important.

11. Between April 30 and May 17, 2010, Alliance executives had several additional communications with the owners about the option of having an affiliate acquire the Calpine capacity.

12. Ultimately, the owners independently analyzed the Calpine capacity and found that they could derive net economic benefit by using the capacity as compared to leaving it idle. For example, in a May 27, 2010 internal memorandum, the owners noted that the "primary motivation for subscribing the available capacity on Alliance pipeline [was] to reduce exposure to a revenue shortfall." The owners did not share their own analysis with Alliance.

13. In the auctions held in February and March 2010, Alliance identified specific upstream Canadian receipt points and the specific volume of capacity offered at each receipt point. Alliance offered bidders to "submit a bid for the entire 20,000 Mcf/d, or for one or more of the constituent tranches of capacity identified" in an attached schedule. In the auction held in March, for example, the bid sheet for a receipt point called "Highway" showed the volume at that point as 706.0 Mcf/d.

14. On May 21, 2010, Alliance's Manager of System Planning and Analysis distributed an engineering analysis to Alliance employees. According to the analysis, many more receipt points – including Highway – could accommodate the full 20 MMcf/d of the Calpine capacity. Later that day, an employee at Alliance summarized the engineering study in an email to its owners' employees. He explained that Alliance "can offer the full 20Mcf/d at any location or combination of locations excluding McMahon, Younger, Gold Creek and Carson Creek. Consequently you could take all 20 Mcf/d at Highway in the TAC zone and have the flexibility to flow at any point downstream except for the four locations noted above." On May 25, 2010, an Enbridge employee relayed this information by email to marketing function employees at Tidal Energy Marketing U.S., L.L.C. (Tidal US), an affiliate of Alliance. On May 26, 2010, Tidal US employees further relayed the information to employees at Aux Sable.

15. The same Alliance employee who emailed employees at Alliance's parent companies also conveyed the news about capacity at Highway to Alliance's Manager of Customer Service during a phone call on May 25, 2010. During this phone call, the Customer Service Manager expressed surprise that 20 MMcf/d of capacity (about 29 times the amount shown on the April 2010 bid sheet) was available at Highway. During the phone call, the two Alliance employees also agreed that Highway was one of the most valuable receipt points in Canada. The Alliance manager spoke by phone with a Tidal employee that day, and the Tidal employee showed a strong interest in the Highway receipt point.

16. The May 26, 2010 auction sheet listed 41 upstream Canadian receipt points as available but did not list the volume of capacity available at each receipt point. Although

Alliance had explicitly highlighted the change in capacity at Highway to its owners five days before, the auction sheet did not as clearly and directly identify that the amount of capacity available at Highway was 20,000 Mcf/d.

C. Implementation of May 26, 2010 Capacity Auction

17. On May 27, 2010, the owners created Sable NGL Services L.P. (Sable) to bid for the Calpine capacity. Section 42.3 of the General Terms and Conditions of Alliance's tariff required it to conduct each auction in conformity with the procedural requirements for "the bidding process" set forth in an auction posting. In its May 26, 2010 posting, Alliance stated that the successful bidder "must be listed on Alliance's Approved Bidders List." Sable represented through its May 28, 2010 Bid Sheet that it was on the Alliance U.S. Approved Bidders List when, in fact, Sable's name did not appear on the Approved Bidders List at that time. Alliance accepted Sable's bid.

18. Alliance held an auction on May 26, 2010 to award the Calpine capacity for the month of June 2010. Sable was the only bidder, and it requested the full volume at the Highway receipt point.

19. Alliance awarded the June 2010 capacity to Sable and on May 28, 2010, posted notice of the award of capacity on its website showing the rate that Sable bid, the economic value of the awarded bid, and the contracted delivery points. The report of "Firm Transportation" for June 1, 2010 posted on Alliance's website listed Sable's contract identifying the quantity, duration, and rate, and also that Sable was an affiliate of Alliance. Tidal US had executed an Asset Management Agreement to manage the capacity for Sable.

20. Alliance filed with the Commission a negotiated rate agreement with Sable on June 3, 2010. BP Canada filed a protest. On July 2, 2010 the Commission approved the agreement and referred BP Canada's allegations to Enforcement. This Agreement resolves the issues referred to Enforcement.

III. VIOLATIONS

21. Enforcement determined that Alliance, in preparing for and implementing the May 26, 2010 auction for the Calpine capacity, violated multiple provisions of the Standards of Conduct for Transmission Providers in the Commission's regulations in a manner that threatened market transparency, and also violated the terms of its own FERC Tariff.

A. Standards of Conduct Violations

22. Enforcement finds that Alliance violated the non-discrimination requirement, 18 C.F.R. § 358.4(b), by communicating to its owners (and through its owners to Tidal U.S.,

a marketing affiliate), five days before disclosing the information to other transmission customers, new, material, and non-public information about a large increase in available capacity at a valuable upstream receipt point in Canada. Enforcement finds that Alliance also favored an affiliated entity by accepting Sable's bid in the auction even though the bid did not qualify according to Alliance's auction procedures and rules.

23. Enforcement finds that Alliance violated the no conduit rule, 18 C.F.R. § 358.6, by disclosing to marketing function employees at Tidal US, through the means of communications with the owners, non-public transmission function information about the availability of capacity at upstream Canadian receipt points.

24. Enforcement finds that Alliance violated the transparency rule, 18 C.F.R. § 358.7(a)(1), by failing to provide non-public transmission function information about the availability of capacity at upstream Canadian receipt points to other market participants in an Internet posting immediately upon providing the information to the owners. Enforcement therefore finds that Alliance's conduct presented a threat to market transparency.

25. Enforcement finds that during March and April 2010, Alliance sought to have its owners purchase the Calpine capacity, even though it believed that doing so would likely increase the owners' losses. Had the owners then implemented this plan, it could have created a misleading impression with existing shippers on Alliance about the value of Alliance's overall capacity. The threat was ultimately alleviated because, by the time of the auction in late May 2010, the owners concluded that they would reduce, rather than increase, their losses by having an affiliate engage in the transaction.

B. Tariff Violation

26. Enforcement finds that Alliance violated Section 42.3 of the General Terms and Conditions of its own tariff, which sets forth the procedural requirements for the bidding process of a capacity auction, by accepting Sable's bid when Sable failed to appear on Alliance's Approved Bidders List as required.

C. Other Considerations

27. Enforcement finds that Alliance's violations presented a serious threat to market transparency. However, Enforcement also finds that Alliance's violations did not generate profits for Alliance nor cause actual financial harm to other market participants. Alliance fully cooperated with Enforcement's investigation.

IV. REMEDIES AND SANCTIONS

28. For purposes of settling any and all civil and administrative disputes arising from this investigation without further proceedings, and in view of the costs and risks of litigation, Alliance agrees with the facts as stipulated in Section II of this Agreement but neither admits nor denies the alleged violations described in Section III of this Agreement. Alliance additionally agrees to undertake the payment and performance obligations set forth below.

A. Civil Penalty

29. Alliance shall pay a civil penalty in the total amount of five hundred thousand dollars ($500,000) to the United States Treasury, by wire transfer, and submit proof of payment to the Commission, within ten (10) days of the Commission issuing an order approving this Agreement in its entirety without material modification.

30. Alliance shall not pass through the civil penalty, directly or indirectly, to any present or future customers or ratepayers.

B. Compliance and Compliance Monitoring

31. Alliance agrees to submit semi-annual compliance monitoring reports to Enforcement for one (1) year following the Effective Date of this Agreement, with the option of a second year at Enforcement's discretion. Each compliance report will describe any new and existing compliance program measures, including training, and alert Enforcement to any violations that may occur.

V. TERMS

32. 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 all matters raised by the investigation and resulting in this Agreement as to Alliance and its affiliates, parents, owners, subsidiaries, related parties and any of their principals, directors, officers, employees, agents, representatives and attorneys, both past and present, and any successor in interest to Alliance.

33. Commission approval of this Agreement in its entirety and without material modification shall fully and finally release, individually and collectively, Alliance, its affiliates, parents, owners, subsidiaries, and any of their principals, directors, officers, employees, agents, representatives and attorneys, both past and present, and any successor in interest to Alliance (collectively, Released Parties) from, and forever bar the Commission from holding the Released Parties liable for, any and all administrative or

civil claims, actions, remedies or penalties known or unknown, arising from, related to, or connected with the investigation and/or conduct addressed in this Agreement and occurring on or before the effective date of this Agreement.

34. Neither the stipulated facts nor the existence of this Agreement constitutes an admission of liability by the Released Parties that their conduct unfairly or inappropriately affected any third party.

35. Alliance's failure to: (a) make a timely civil penalty payment; (b) comply with the compliance reporting requirements agreed to herein; or (c) comply with 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 Alliance to additional action under the enforcement and penalty provisions of the NGA.

36. If Alliance does not timely make the civil penalty payment at the time agreed to 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) (2011) from the date that payment is due, in addition to the penalty specified above.

37. This Agreement binds the Released Parties. This Agreement does not create any additional or independent obligations on the Released Parties other than the obligations identified in this Agreement.

38. 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 Alliance has been made to induce the signatories or any other party to enter into the Agreement.

39. Unless the Commission issues an order approving the Agreement in its entirety without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Alliance shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Alliance.

40. In connection with the payment of the civil penalty provided for herein, Alliance agrees that the Commission's order approving the Agreement without material modification shall be a final and nonappealable order assessing a civil penalty under section 22(a) of the NGA, 15 U.S.C. § 717t-1(a). Alliance 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.

41. 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.

42. The undersigned representative of Alliance affirms that he or she has read the Agreement, that the facts as stipulated in Section II of this Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on these representations.

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

Agreed to and Accepted:

Norman Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: 11-14-12

Keith Palmer
Senior Vice President & Chief Financial Officer
Alliance Pipeline L.P.

Date: November 13, 2012

Document Content(s)