

130 FERC ¶ 61,175  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

In re Noble Energy, Inc.  
Noble Energy Marketing, Inc. and  
Noble Gas Pipeline, Inc.

Docket No. IN10-1-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued March 12, 2010)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Noble Energy, Inc. (NEI), the parent company of Noble Energy Marketing, Inc. (NEMI) and Noble Gas Pipeline, Inc. (Noble Gas). This order is in the public interest, because it resolves the investigation of NEMI and Noble Gas regarding the Commission's open access transportation policies, including circumvention of the posting and bidding requirements for released capacity, the shipper-must-have-title requirement, and the Commission's prohibition against certain buy/sell transactions. NEI has agreed to pay a civil penalty of \$4,000,000 and to disgorge \$160,486.98, plus interest, such amount representing the unjust profits from the flipping violations. In addition, NEI has agreed to submit a one-time compliance monitoring report should it or any of its affiliates or subsidiaries become involved in certain interstate natural gas operations within four years of the effective date of this order.

**Background**

2. In late 2007, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2009), into possible "flipping" activities of natural gas participants in the capacity release market, including transactions involving NEMI and Noble Gas.<sup>1</sup> During the course of the investigation, NEI conducted an

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<sup>1</sup> 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

(continued...)

internal examination of NEMI's and Noble Gas' natural gas transportation activities and subsequently voluntarily reported transactions regarding the Commission's shipper-must-have-title requirement and ban on buy/sell arrangements.

3. At the relevant time, NEMI and Noble Gas were wholly-owned subsidiaries of NEI, an independent exploration and production company. NEI formed NEMI for the primary purpose of marketing NEI's gas production and, until a recent restructuring of NEI, that function served as NEMI's primary business purpose. Similarly, until the recent restructuring, Noble Gas was a wholly-owned subsidiary of NEMI and an asset holding company for gas gathering systems built to provide flow assurance and access to gas markets for equity gas owned by NEI. In 2009, NEI restructured its marketing business function to focus on sales of equity production, which involved terminating the separate corporate existence of both NEMI and Noble Gas by a merger/roll-up into NEI, thus significantly decreasing the operations of NEI subject to Commission regulation. NEI terminated NEMI's marketing agreements with third parties and focused on core capabilities and businesses (*i.e.*, oil and gas production), and NEI now sells its equity gas production at the wellhead or upstream liquid trading points and only acquires interstate pipeline capacity where necessary to transport equity gas production (including related working interest owner production) to a liquid trading point. NEI does not anticipate otherwise engaging in new downstream marketing or capacity transactions. The last package of released capacity NEMI purchased terminated in September 2009.

## **Violations**

### **A. Circumvention of the Competitive Bidding Requirements for Released Capacity**

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 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.

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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. 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 NEMI and Noble Gas improperly acquired discounted rate capacity through flipping transactions, the result of which was that NEMI and Noble Gas avoided the requirement to post or obtain such capacity through competitive bidding.<sup>2</sup> The flipping transactions occurred over a 28-month period between August 1, 2005 and October 31, 2007. Through these transactions, NEMI and Noble Gas acquired 33.35 Bcf of transportation capacity on various pipelines, and used this capacity to transport 20.79 Bcf on those pipelines. Approximately 95 percent of the flipping volumes acquired were released by one customer of NEMI in an asset management context. The financial gain on the flipping transactions was \$160,486.98.

7. Enforcement concluded that the flipping transactions by NEMI and Noble Gas were violations of the requirement that long-term discount rate capacity be acquired through competitive bidding, and that the 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.

#### **B. Shipper-Must-Have-Title Requirement Violations**

8. NEMI and Noble Gas, after their internal review of their capacity release transactions, voluntarily reported certain other transactions relating to the Commission's natural gas open-access transportation requirements. NEMI and Noble Gas voluntarily reported that between September 2005 and September 2007, Noble Gas shipped 9.5 Bcf of natural gas that was titled to NEMI on capacity held by Noble Gas.

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

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<sup>2</sup> *Constellation, supra*, 122 FERC ¶ 61,220 at P 21.

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.<sup>3</sup> The shipper-must-have-title requirement is reflected in the FERC gas tariffs of interstate pipelines providing open-access transportation and storage service.<sup>4</sup>

10. Enforcement concluded that between 2005 and 2007, Noble Gas violated the Commission's shipper-must-have-title requirement, resulting in 9.5 Bcf of gas being transported in violation of such requirement. Enforcement 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. Noble Gas did not earn unjust profits as a result of these transactions.

**C. Violations of the Commission Prohibition against Buy/Sell Transactions**

11. NEMI also voluntarily reported that it engaged in buy/sell transactions. NEMI identified a limited number of transactions that involved a single counterparty on one pipeline, in which NEMI purchased gas at the pooling point from one counter-party, and that same counter-party in turn purchased gas from NEMI at other delivery points within the same market area. The arrangement involved the transportation of 0.6 Bcf gas in April 2006.

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

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<sup>3</sup> 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.

<sup>4</sup> 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).

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 concluded that in April of 2006, NEMI violated the Commission's prohibition of buy/sell transactions, resulting in 0.6 Bcf of gas being transported in violation of the buy/sell prohibition. Enforcement 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. NEMI did not earn unjust profits as a result of these transactions.

### **Stipulation and Consent Agreement**

14. Enforcement and NEI resolved Enforcement's investigation of NEMI and Noble Gas by means of the attached Agreement. NEI admits to the stipulated facts that NEMI and/or Noble Gas entered into flipping transactions and transactions inconsistent with the Commission's shipper-must-have-title requirement and ban on certain buy/sell transactions, but NEI neither admits nor denies Enforcement's conclusions that these transactions violated the Commission's rules, regulations, or policies.

15. The Agreement requires NEI to pay a \$4 million civil penalty to the United States Treasury within ten days of this order accepting and approving the Agreement. NEI will disgorge \$160,486.98, 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.

16. The Agreement requires NEI to inform Enforcement promptly if it or one of its subsidiaries or affiliates become involved in interstate gas transmission operations in the future as a shipper, other than those necessary to transport NEI's equity gas production and the production of related working interest owners in its capacity as well operator. If NEI or one of its subsidiaries or affiliates resumes such transactions within four years of the effective date of the settlement, the Agreement requires the submission of a one-time compliance monitoring report covering the first 12 months of such activity.

### **Determination of the Appropriate Civil Penalty**

17. 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.<sup>5</sup> In approving the Agreement and the \$4 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.<sup>6</sup> 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 Enforcement's conclusions concerning NEMI's and Noble Gas' transactions. Although the flipping transactions occurred over a 28-month period and involved 33.35 Bcf of capacity, we note that the majority of flipping occurred with one counterparty and that the volumes associated with Noble Gas' shipper-must-have-title requirement violations were voluntarily reported after the commencement of the investigation. NEMI's buy/sell transactions were likewise voluntarily reported. In approving this settlement, we have considered all these factors and have also given NEI credit for its exemplary cooperation throughout the investigation.

18. We conclude that the civil penalty, disgorgement relief, and the conditional requirement that NEI provide a one-time monitoring report under the conditions 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 )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>5</sup> 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"*).

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

UNITED STATES OF AMERICA  
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Noble Gas Pipeline, Inc.	)	

STIPULATION AND CONSENT AGREEMENT

**I. INTRODUCTION**

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Noble Energy, Inc. (NEI), the parent company of Noble Energy Marketing, Inc. (NEMI) and Noble Gas Pipeline, Inc. (Noble Gas), 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 (2009), into whether NEMI and Noble Gas 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 (2009), the shipper-must-have-title requirement, and the Commission's prohibition of buy/sell transactions.

**II. STIPULATED FACTS**

Enforcement and NEI hereby stipulate and agree to the following:

1. At the relevant time, NEMI and Noble Gas were wholly-owned subsidiaries of NEI, an independent exploration and production company. NEI formed NEMI for the primary purpose of marketing NEI's gas production and, until a recent restructuring of NEI, that function served as NEMI's primary business purpose. Similarly, until the recent restructuring, Noble Gas was a wholly-owned subsidiary of NEMI and an asset holding company for gas gathering systems built to provide flow assurance and access to gas markets for equity gas owned by NEI. As described below, subsequent to the investigative period, NEI merged NEMI and Noble Gas into NEI.

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.<sup>1</sup> After receipt of notice of the investigation, NEI immediately conducted an internal examination of NEMI’s and Noble Gas’ natural gas transportation activities and subsequently voluntarily reported violations of the Commission’s shipper-must-have-title requirement and ban on buy/sell arrangements.

3. Between August 1, 2005 and October 31, 2007, NEMI and Noble Gas, as affiliated replacement shippers, released and/or acquired through flipping a total of 33.35 Bcf of transportation capacity on various pipelines and used this capacity to transport 20.79 Bcf on those pipelines. Approximately 95 percent of the capacity acquired by NEMI and Noble Gas was released pursuant to an asset management agreement with one customer of NEMI. This capacity was acquired during periods when the subject pipelines were not capacity constrained. The financial gain on those transactions was \$160,486.98.

4. The Commission’s regulations at 18 C.F.R. § 284.8(h)(1) (2009) 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.

5. Enforcement staff determined that the acquisitions of short-term, discounted rate capacity by NEMI and Noble Gas were flipping transactions that improperly avoided the requirement that discounted rate capacity be posted for competitive bidding prior to acquisition.

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<sup>1</sup> 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).



6. NEMI and Noble Gas, after their voluntary internal review of their capacity release transactions, also voluntarily reported certain other transactions in violation of the Commission's natural gas open access transportation requirements. NEMI and Noble Gas voluntarily reported that, between September 2005 and September 2007, Noble Gas shipped 9.5 Bcf of natural gas that was titled to NEMI on capacity held by Noble Gas.

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, NEMI and Noble Gas violated the Commission's shipper-must-have-title requirement, resulting in 9.5 Bcf of gas being transported in violation of such requirement.

9. NEMI also voluntarily reported that, in April 2006, it engaged in potential buy/sell transactions. NEMI identified a limited number of transactions that involved a single counterparty on one pipeline in which NEMI purchased gas at the pooling point from one counter-party and that same counter-party in turn purchased gas from NEMI at other delivery points within the same market area. The arrangement involved the transportation of 0.6 Bcf gas.

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 that require released capacity to be posted and bid on a nondiscriminatory basis.

11. Enforcement staff determined that, in April 2006, NEMI violated the Commission's prohibition on buy/sell transactions, resulting in 0.6 Bcf of gas being transported in violation of the buy/sell prohibition.

12. Enforcement staff concluded that flipping by NEMI and Noble Gas 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. Enforcement staff determined that NEMI and Noble Gas earned a total of \$160,486.98 in unjust profits as a result of the flipping and shipper-must-have-title violations that are the subject of this Agreement. There were no unjust profits as a result of the buy/sell transactions.

14. Prior to the Commission's Order in *BP Energy Company*,<sup>2</sup> NEMI did not have controls in place to identify and prevent the transactions at issue here. Subsequently, NEMI and Noble Gas took remedial measures to improve compliance with the Commission's open access transportation requirements. As part of these enhancements, employees at NEMI and Noble Gas were provided additional training on open access transportation compliance, including the prohibitions on buy/sell transactions, the shipper-must-have-title requirement, and flipping. Throughout the course of the investigation, the cooperation by NEI, NEMI, and Noble Gas was exemplary.

15. In 2009, NEI restructured its marketing business function to focus on sales of equity production, which involved terminating the separate corporate existence of both NEMI and Noble Gas by a merger/roll-up into NEI, thus significantly decreasing the marketing operations of NEI subject to Commission regulation. NEI terminated NEMI's marketing agreements with third parties and NEI focused on what its core capabilities and businesses are (*i.e.*, oil and gas production), not acquiring pipeline capacity for purchase and sales of third-party production. NEI now sells its equity gas production at the wellhead or upstream liquid trading points and only acquires interstate pipeline capacity where necessary to transport equity gas production (including related working interest owner

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<sup>2</sup> 121 FERC ¶ 61,088 (2007).

production) to a liquid trading point. NEI does not anticipate otherwise engaging in new downstream marketing or capacity transactions. The last package of released capacity NEMI purchased terminated in September 2009.

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

16. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, NEI admits entering into the flipping transactions and the shipper-must-have title and buy/sell transactions described herein, but neither admits nor denies Enforcement staff's conclusions that these transactions violated the Commission's rules, regulations, or policies. Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving the dispute between Enforcement and NEI without further proceedings, NEI agrees to undertake the obligations set forth in this Agreement.

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

17. NEI shall pay a civil penalty of \$4,000,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

#### **B. Disgorgement**

18. NEI shall disgorge \$160,486.98, plus interest, such amount representing unjust profits from capacity release violations by NEMI and Noble Gas, 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**

19. NEI represents that it has discontinued third party asset management activities and that it merged NEMI and Noble Gas into NEI in 2009 with the intent to limit NEI's interstate transportation activities to the sale of NEI's equity production. As a result, compliance monitoring is not warranted at this time. NEI agrees to inform Enforcement staff promptly if it or one of its subsidiaries or affiliates become involved in interstate gas transmission operations in the future as a shipper, other than those necessary to transport NEI's equity gas production and

the production of related working interest owners in its capacity as well operator. Additionally, if NEI or one of its subsidiaries or affiliates resumes such transactions within four years of the effective date of the settlement, they will be required to submit a one-time compliance monitoring report, consistent with the procedures set forth in *Constellation NewEnergy*, covering the first 12 months of such activity. The report, which will be required to be submitted one month after the end of the first 12 months of activity, shall: (i) advise staff whether additional violations by NEI or one of its subsidiaries or affiliates of open-access transportation requirements of have occurred; (ii) 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, (iii) include an affidavit executed by an officer of NEI that the compliance reports are true and accurate.

#### **IV. TERMS**

20. 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 NEI, NEMI and Noble Gas and any affiliated entity, their agents, officers, directors and employees, both past and present, and any successor in interest to NEMI and Noble Gas.

21. Commission approval of this Agreement in its entirety and without material modification shall release NEI and forever bar the Commission from holding NEI, its 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.

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

23. If NEI does not make the civil penalty payment above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 154.501(d) (2008) from the date that payment is due, in addition to the penalty specified above.

24. The Agreement binds NEI and its agents, successors, and assigns.

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

25. 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 NEI has been made to induce the signatories or any other party to enter into the Agreement.

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

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

28. 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.

29. The undersigned representative of NEI affirms that he or she has read the Agreement, that all of the matters set forth in the 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 those representations.

30. 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  
Norman C. Bay  
Director  
Office of Enforcement  
Federal Energy Regulatory Commission

3/2/10  
Date

David L. Stover  
David L. Stover  
Chief Operating Officer  
Noble Energy, Inc.

2/26/10  
Date