



NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

April 21, 2009

The Honorable Kimberly Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Re: *Constellation Energy Commodities Group, Inc.*, Docket No. RC08-7-000.  
Joint Settlement Agreement

Dear Ms. Bose:

Enclosed for filing is a settlement agreement between Constellation Energy Commodities Group ("Constellation") and the Texas Regional Entity ("Texas RE") that was approved by the North American Electric Reliability Corporation ("NERC") Board of Trustees on April 13, 2009 (the "Agreement"). Upon approval of the Federal Energy Regulatory Commission ("Commission"), the Agreement will fully resolve Constellation's July 11, 2008 appeal of the decision of NERC to register Constellation as a Generator Operator in the referenced docket (the "Appeal") and related matters arising between Constellation and Texas RE during the pendency of the Appeal.

As set forth in paragraph 49 of the Agreement, within 30 days after the Commission issues a final, nonappealable order approving the settlement agreement as submitted to it or as modified in a manner acceptable to the settling parties, Constellation will file a motion to withdraw the Appeal with prejudice.

Constellation, Texas RE and NERC respectfully request that the Commission expedite its action on this settlement so that the referenced matter can be finally resolved as soon as possible.

This filing includes the following attachments:

- Attachment 1: Settlement Agreement
- Attachment 2: Constellation's Mitigation Plan and Certificate of Completion (page 6 of Mitigation Plan)<sup>1</sup>
- Attachment 3: Texas RE Verification of Completion

All correspondence relating to this settlement agreement should be directed to:

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111 Market Place  
Baltimore, MD 21202  
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Texas Regional Entity  
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<sup>1</sup> As discussed in the transmittal letter to Attachment 2 and the body of the Settlement Agreement, Constellation submitted documentation of compliance with respect to the Reliability Standards at issue and, at the request of Texas RE, one mitigation plan with respect to four CIP-001 requirements. As noted in Attachment 3 and the Settlement Agreement, Texas RE ultimately found that mitigation was not required as Constellation had been fully compliant with the Reliability Standards at issue.



Respectfully submitted,

/s/ Rebecca J. Michael  
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North American Electric Reliability  
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david.cook@nerc.net

cc: Constellation Energy Commodities Group  
Texas Regional Entity  
Official Service List in RC08-7-000

Attachments

# **Attachment 1**

**SETTLEMENT AGREEMENT  
OF  
TEXAS REGIONAL ENTITY  
AND  
CONSTELLATION ENERGY COMMODITIES GROUP, INC. (NCR04043)**

**I. INTRODUCTION**

1. Texas Regional Entity ("Texas RE"), with its principal place of business located at 2700 Via Fortuna, Suite 225, Terrace II, Austin, Texas 78746, and Constellation Energy Commodities Group, Inc. ("Constellation"), with its principal place of business located at 111 Market Place, Baltimore, Maryland 21202, enter into this Settlement Agreement ("Agreement") to resolve all outstanding issues arising from Texas RE's determination and findings, pursuant to the North American Electric Reliability Corporation ("NERC") Rules of Procedure, of: (a) an alleged violation by Constellation of the process for submittal of requested data as contained in Appendix 4C, Section 3.0 – Compliance Monitoring and Enforcement Process ("CMEP"), of the NERC Rules of Procedure (the "Data Submittal Requirements"), and (b) alleged violations pursuant to certain Initial Notice of Alleged Violations sent by Texas RE to Constellation on February 18, 2008 and specifically referred to below.
2. Texas RE and Constellation shall collectively be referred to herein as "Settling Parties" and individually as "Settling Party."

**II. STIPULATION**

3. Facts stipulated herein are solely for the purpose of resolving matters between Texas RE and Constellation associated with the aforementioned alleged violation and do not constitute stipulations or admissions for any other purpose. Texas RE and Constellation hereby stipulate and agree to the following:

**A. Background**

4. Constellation entered into an agreement with Power Resources, Ltd. ("PRL") dated January 11, 2007, which governs PRL's sales and Constellation's purchases of electric generation capacity and electric energy, including all ancillary products and services, marketable in the market administered by the independent transmission system operator of the Electric Reliability Council of Texas ("ERCOT ISO") from PRL's gas-fired, combined cycle electrical generation facility located in Howard County, Texas (the "PRL Facility").
5. Based upon statements by Texas RE staff that Level 3 and 4 Qualified Scheduling Entities ("QSEs") (which included Constellation) should register with NERC as Generator Operators ("GOPs"), on February 28, 2007, Constellation filed a request that it be registered on the NERC Compliance Registry in the ERCOT region as a GOP and Purchasing Selling Entity. On April 10, 2007, NERC sent notice to Constellation that it was to be listed on the NERC Compliance Registry as the sole GOP for the PRL Facility. NERC formally registered Constellation as the GOP for the PRL Facility on June 28, 2007.
6. As a GOP, Constellation was required to abide by the mandatory requirements of the Reliability Standards proposed by NERC and approved by Federal Energy

Regulatory Commission ("FERC") that are applicable to a GOP ("GOP Requirements").

7. On May 4, 2007, Constellation filed an appeal with NERC challenging Texas RE's decision to register Constellation as a GOP for the PRL Facility ("NERC Appeal"). On October 22, 2007, NERC remanded the NERC Appeal, directing Texas RE to work with Constellation and PRL to resolve the issues presented by the NERC Appeal ("NERC Remand"). Despite negotiations, Constellation and PRL did not reach an agreement regarding registration for the PRL Facility at that time. NERC rejected Constellation's NERC Appeal on May 22, 2008. On July 11, 2008, Constellation filed an appeal with FERC ("FERC Appeal"). FERC remanded the FERC Appeal to NERC for further consideration and directed NERC to supplement the record in the proceeding with additional information. FERC also encouraged the parties to the proceeding to seek a voluntary resolution of the matter. The FERC Appeal remains pending.
8. On August 2, 2007, Texas RE provided notification to Constellation that it was required to certify compliance with actively monitored standards CIP-001-1, EOP-009-0, IRO-001-1, IRO-004-1, and TOP-003-0 for 2007 (the "Applicable Standards") by October 1, 2007 ("Self-Certification").
9. On August 31, 2007, Constellation responded to Texas RE's request, explaining that Constellation was not in a position to respond to the Self-Certification because Constellation neither owned nor operated any generator facilities in ERCOT.
10. On September 27, 2007, Constellation provided a Self-Certification to Texas RE that included a response of "n/a" (that is, not applicable) for the Applicable Standards. Constellation stated that it: (a) did not acknowledge that the Applicable Standards were applicable to Constellation, (b) had filed a formal challenge with NERC on May 4, 2007 disputing its registration as a GOP, and (c) had filed a similar formal challenge with Texas RE on June 14, 2007. Constellation further stated that pending a determination, Constellation would work with Texas RE in hopes of reaching an agreeable resolution.
11. On October 8, 2007, Texas RE notified Constellation that its Self-Certification, due October 1, 2007, was incomplete, and that Constellation should complete the form.
12. In October through December 2007, Texas RE, Constellation and PRL engaged in various conferences in attempt to resolve the various issues relating to the GOP for the PRL Facility as a result of the NERC Remand, including discussions between Constellation and Texas RE regarding Constellation's Self-Certification for 2007.
13. On December 21, 2007, Texas RE notified Constellation that: (a) its Self-Certification submittal of September 27, 2007 was not adequate, (b) pending a decision regarding registration as a GOP it was required to submit a completed Self-Certification form, and (c) a completed Self-Certification form was required by December 31, 2007.
14. On January 9, 2008, based upon Texas RE's request, NERC registered PRL as a GOP for the PRL Facility. Constellation remained registered as a GOP.
15. On January 18, 2008, pursuant to Step 3 of Attachment 1 to the CMEP ("Process for Non-Submittal of Requested Data"), Texas RE notified Constellation's Chief Executive Officer, informing him that the Constellation Self-Certification submittal

was inadequate, and that if a completed Self-Certification form was not received within 10 business days, a Reliability Standard violation may be applied at the Severe Compliance Severity Level.

16. On January 29, 2008, Constellation resubmitted the Self-Certification under protest, stating "No", it did not comply with the Applicable Standards, but each response contained a statement by Constellation that Constellation was not able to comply because it did not own or control the PRL Facility and otherwise had no ability or authority to comply with the Applicable Standards or to compel performance by PRL.
17. On February 18, 2008, Texas RE issued an Initial Notice of Alleged Violation to Constellation, alleging that Constellation violated the Applicable Standards (the "INOV").
18. On March 11, 2008, four representatives from Constellation's management, compliance and legal team met with representatives of Texas RE compliance, enforcement and legal to discuss the means by which Constellation could address the compliance issues raised in the INOV given Constellation's position that it lacked ownership, authority and control over the PRL Facility and PRL.
19. Pursuant to the discussions on March 11, 2008, Constellation sent a letter, on March 14, 2008, to Texas RE requesting an extension of time to respond to the INOV, and expressing its intention to work with Texas RE to submit by April 18, 2008, a Self-Certification for 2007 that was acceptable to Texas RE.
20. On March 19, 2008, Texas RE responded with a letter granting to Constellation an extension to submit a corrected, appropriate and accurate Self-Certification for 2007, and a response to the INOV by April 18, 2008.
21. On April 18, 2008, Constellation again resubmitted a Self-Certification, which stated that Constellation was compliant with portions of requirements for the Applicable Standards.
22. In response to the April 18, 2008 submittal, on May 7, 2008, Texas RE requested a revised Self-Certification with clarification and a copy of Constellation's procedure that would show compliance with CIP-001-1.
23. Acting on guidance from Texas RE, on June 2, 2008, Constellation provided a revised Self-Certification, clarifying the issues raised by Texas RE on May 7, 2008.
24. On September 5, 2008, Texas RE sent notification to Constellation to provide, by September 12, 2008, either: (a) a proposed Mitigation Plan to correct the alleged violations, or (b) a description of how such alleged violations set forth in the INOV had been corrected by Constellation.
25. In response to, and in coordination with, Texas RE, on October 7, 2008, Constellation submitted the following:
  - a. a revised Self Certification for 2007, certifying compliance with all Applicable Standards from June 18, 2007 to December 31, 2007 (the "2007 GOP Self Certification");
  - b. a detailed compilation of evidence demonstrating compliance with the Applicable Standards; and

- c. a Joint Registration Organization Agreement between Constellation and PRL ("JRO"), delineating their respective responsibilities under the GOP Requirements as described in the detailed matrices attached to the JRO, for Texas RE's review and approval.
26. On December 10, 2008, Texas RE sent a letter to Constellation requesting additional documentation to confirm a statement in Constellation's October 7 submission regarding compliance with CIP-001-1 between June 18, 2007 and December 21, 2007. In addition, the letter notified Constellation that it was required to submit by December 19, 2008: (a) a proposed Mitigation Plan to correct the alleged violations, or (b) a description of how such alleged violations had been corrected by Constellation.
27. On December 19, 2008, in response to the December 10, 2008 request by Texas RE, Constellation (1) submitted to TRE additional documentation confirming the description of Constellation's October 7 submission regarding compliance with CIP-001-1 between June 18, 2007 and December 21, 2007; (2) documented the additional submission as well as its prior submittals to Texas RE set forth in Paragraph 25 on Texas RE Mitigation Plan forms, noting that the Mitigation Plans were completed as of October 7, 2008, and (3) submitted the Mitigation Plans to Texas RE. The Mitigation Plans identified the steps taken by Constellation to demonstrate that Constellation was in compliance with the Applicable Standards as of June 18, 2007.
28. In submitting 2007 GOP Self-Certification, the JRO Agreement, the evidence of compliance with the Applicable Standards, and the Mitigation Plans to Texas RE, Constellation expressly reserved and did not waive any rights, claims, or defenses arising in its pending FERC Appeal, and Constellation continued to dispute the existence of any violation or potential violation.
29. Texas RE found that Constellation's submittals on October 7, 2008 and December 19, 2008, as discussed in Paragraphs 25–27 (which included procedures, Black Start testing forms, test results, data submittals, and other relevant documents) demonstrated Constellation's compliance with Applicable Standards as of June 18, 2007. Texas RE verified the Mitigation Plans in January 2009 and confirmed this verification to Constellation on February 24, 2009. In its verification of the Mitigation Plans, Texas RE determined Constellation was in compliance with the Applicable Standards as of June 18, 2007.

### **III. PARTIES' SEPARATE REPRESENTATIONS**

#### **A. Statements of Texas RE and Summary of Findings**

30. Based on evidence ultimately provided by Constellation, Texas RE finds that during the period June 18, 2007 through December 31, 2007 ("Applicable Period"), Constellation was in fact compliant with the Applicable Standards.
31. Texas RE asserts that Constellation committed an alleged violation of the Data Submittal Requirements regarding the Self-Certification from October 1, 2007 through October 7, 2008.
32. Texas RE agrees that this Agreement is in the best interest of the Settling Parties and in the best interest of bulk power system reliability.



## B. Statements of Constellation

33. Constellation asserts it was compliant with all Applicable Standards since June 18, 2007.
34. Constellation confirms that the documents and procedures that Constellation submitted to Texas RE on October 7, 2008 and December 19, 2008, and that were produced by and in the control of Constellation, and not provided to Constellation by PRL, were true and correct copies that were in effect on the dates listed in such documents and procedures. As part of its submittals on October 7, 2008 and December 19, 2008, Constellation produced to Texas RE documents and procedures provided to Constellation by PRL.
35. Constellation asserts that there was confusion on its part arising from the communications with Texas RE described in Section II with regard to the manner in which Constellation was expected to meet its obligations during the initial certification process. Constellation asserts that this confusion was due to the fact that self-certification was a new regulatory requirement, the Applicable Standards required information from both PRL and Constellation to demonstrate compliance, only Constellation had been registered by Texas RE, and that Constellation had appealed Texas RE's GOP registration decision.
36. Notwithstanding the foregoing, in retrospect, Constellation acknowledges that it could have been more proactive in resolving the GOP self-certification issue to the satisfaction of Texas RE.
37. Constellation neither admits nor denies that the facts set forth herein constitute a violation of the Data Submittal Requirements from October 1, 2007 through October 7, 2008, or the violations set forth in the INOV.
38. Constellation enters into this Agreement with Texas RE to resolve the alleged violations set forth in Paragraph 1, and to avoid extended litigation and potential uncertainty regarding the matters described herein, and to effectuate a complete and final resolution of the issues set forth herein.

## IV. MITIGATING ACTIONS, REMEDIES, PAYMENT, AND OTHER AGREEMENTS

39. Constellation has reviewed all of its certifications of compliance with NERC or regional entity reliability standards since June 18, 2007 and confirmed that there are no other similar instances of confusion, ambiguity, or delays in submission.
40. Constellation is providing the following NERC compliance instruction to its employees involved in the NERC self-certification process:

*Certain NERC Rules of Procedure are applicable to Constellation's Registered Entities. NERC Rules of Procedure, Appendix 4C, Section 3.2, states that NERC or a regional compliance enforcement authority may require a Registered Entity to self-certify compliance with a particular Reliability Standard(s). Registered Entities must respond to such self-certification requests in accordance with NERC Rules of Procedure. The existence of ambiguities regarding a Registered Entity's registration status or related pending appeals or litigation does not relieve a Registered Entity of its responsibility to respond to a NERC or regional compliance enforcement authority's self-certification request in accordance with the NERC Rules of*

*Procedure. Ambiguity or confusion regarding a self-certification submittal may be resolved with NERC or the regional compliance authority through the submission and clarification process depicted in Figure 3.2.1 in Appendix 4C to the NERC Rules of Procedure. A Registered Entity that is unable to comply with a self-certification requirement found in the NERC Rules of Procedure, is required to notify and follow the directives of NERC as set forth in Section 100 of the NERC Rules of Procedure.*

While this procedure may change from time to time as Constellation reassesses its compliance procedures over time, Constellation anticipates that any future changes to this procedure will be consistent with the NERC Rules of Procedure. The Settling Parties agree that future changes to this procedure will not constitute non-compliance with, or otherwise a breach of this Agreement, provided, however, that such revised procedure makes clear the obligation of a Registered Entity to comply at all times with a NERC or Regional Entity self-certification requirement or request.

41. Based on the facts and circumstances described herein, Constellation agrees to make a payment of \$5,000 to Texas RE to settle and resolve all issues described above.
42. Constellation agrees to voluntarily withdraw with prejudice its appeal of Texas RE and NERC's decisions regarding Constellation registration as a GOP with respect to the PRL Facility filed with FERC on July 11, 2008.
43. As fully discussed in Paragraphs 25–29, Constellation submitted acceptable Mitigation Plans on December 19, 2008, and Constellation certified completion of the Mitigation Plans as of October 7, 2008. Texas RE verified completion of the Mitigation Plans in January 2009 and sent notice of the verification to Constellation on February 24, 2009. In its verification of the Mitigation Plans, Texas RE determined that Constellation was in compliance with the Applicable Standards as of June 18, 2007.
44. As a consequence of Texas RE's finding that Constellation was compliant with the Applicable Standards and in light of Constellation's desire to settle the matters contained herein, Texas RE hereby: (a) rescinds the INOV issued to Constellation on February 18, 2008; and (b) agrees that, in any future audit of Constellation as a GOP relative to the PRL Facility, Constellation will be responsible for producing all evidence for the June 18, 2007 to December 31, 2007 timeframe to demonstrate compliance with all Reliability Standards applicable to a GOP, except for evidence to demonstrate compliance with the Applicable Standards, provided that Constellation cross-references the submissions it has made to date as described in Paragraphs 25 to 28 in any such future audit.
45. Constellation entered into a JRO for the GOP function for the Facility with PRL on October 1, 2008, which Constellation and PRL have agreed has an effective date of January 8, 2008. Because the JRO is determined to be effective as of January 8, 2008, Texas RE will limit the scope of any future audit of Constellation as a GOP relative to the PRL Facility for the period of calendar year 2008 forward to only those obligations for which Constellation agreed to be responsible in the JRO and its appendices.
46. Texas RE agrees that the matters covered in this Agreement cannot be viewed as a factor to increase Violation Severity Levels in the future with respect to any

future potential, alleged or confirmed violations of Constellation, or to otherwise aggravate future penalties, except where Constellation, solely with respect to its obligations under the JRO and the appendices to the JRO, does not respond to a self-certification request or resolve ambiguities or other issues related thereto in accordance with the NERC Rules of Procedures.

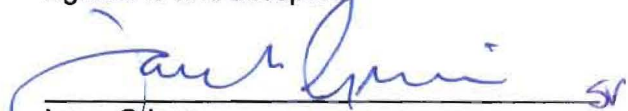
## V. ADDITIONAL TERMS

47. 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 Texas RE or Constellation has been made to induce the signatories or any other party to enter into the Agreement.
48. Texas RE shall report the terms of all compliance settlements matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar alleged violations or under other, similar circumstances. Based on this review, NERC will either approve the settlement or reject the settlement and notify Texas RE and Constellation of changes to the settlement that would result in approval. If NERC rejects the settlement, NERC will provide specific written reasons for such rejection and the Texas RE will attempt to negotiate a revised settlement agreement with Constellation including any changes to the settlement specified by NERC. If a settlement cannot be reached, the enforcement process shall continue to conclusion. If NERC approves the settlement, the Settling Parties will file this Agreement in FERC Docket No. RC08-7-000 (the FERC Appeal docket) for approval by FERC. The Settling Parties believe it is appropriate to file this settlement in the FERC Appeal docket because it settles the FERC Appeal and other matters at issue during the pendency of the FERC Appeal.
49. This Agreement shall become effective upon the Commission's approval of the Agreement by final, non-appealable order as submitted to it or as modified in a manner acceptable to the Settling Parties ("Final Order"). Constellation shall undertake its obligations set forth in Paragraphs 40, 41 and 42 within 30 days after a Final Order.
50. Constellation agrees that this Agreement, when approved by NERC and the Commission, shall represent a final settlement of all matters set forth herein and Constellation waives its right to further hearings and appeal, unless and only to the extent that a Settling Party contends that any NERC or Commission action on the Agreement contains one or more material modifications to the Agreement. Texas RE reserves all rights to initiate enforcement, penalty or sanction actions against Constellation in accordance with the NERC Rules of Procedure for any matters not covered in this Agreement. Constellation shall retain all rights to defend against such enforcement actions, also according to the NERC Rules of Procedure.
51. Except as set forth herein, nothing in the Agreement can be construed as Constellation waiving any claim or defense.
52. 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.
53. The undersigned representative of each Settling Party 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 such Settling Party in express reliance on those representations, provided, however, that such affirmation by each Settling Party's representative shall not apply to the other Settling Party's statements of position set forth in Section III of this Agreement.

- 54. The Article and Section headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained nor govern the rights and liabilities of the Settling Parties hereto.
- 55. The Agreement may be signed in counterparts.
- 56. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

  
\_\_\_\_\_  
Larry Grimm  
CEO and Chief Compliance Officer  
Texas Regional Entity, a division of  
Electric Reliability Council of Texas, Inc.

4/20/09  
Date

*FDA*  
  
\_\_\_\_\_  
Stuart Rubenstein  
Chief Operating Officer  
Constellation Energy Commodities Group, Inc.

April 17 2009  
Date

## **Attachment 2**



December 19, 2008

TO: Mr. Jeffrey Whitmer  
Manager, Compliance Enforcement  
Texas Regional Entity  
7620 Metro Center Drive  
Austin, Texas 78744

RE: Constellation Energy Commodities Group, Inc. Mitigation Plan Submittals for Initial Notice of Alleged Violations as relates to the Texas Regional Entity 2007 GOP Self Certification

Mr. Whitmer:

Constellation Energy Commodities Group, Inc. ("Constellation" or "CCG") hereby provides its response to the Texas Regional Entity ("TRE") letter dated December 10, 2008. In that letter, the TRE requested CCG to provide a description of how all such Alleged Violations have been corrected by CCG, CCG hereby provides the following.

On October 7, 2008, CCG provided to TRE, a comprehensive submission of information as related to Notification Numbers TRE200800032, TRE200800033, TRE200800034, TRE200800035, TRE200800036, TRE200800037, TRE200800038, TRE200800039, TRE200800040, TRE200800041, and TRE200800042. On December 16, 2008, CCG provided to TRE, upon TRE's request, additional supporting documentation demonstrating CCG's compliance to CIP-001-1 R1, R2, R3, and R4. Pursuant to this letter, CCG is submitting to TRE, CCG's Mitigation Plan Submittal Forms for the aforementioned Alleged Violations. As with CCG's previous submissions in this matter, by submitting the enclosed mitigation plans, CCG is not making any admission to liability or against its self inherent with respect to matters related to the pending appeals before TRE, NERC and FERC, (Docket Number RC908-7-000).

Mr. Jeffrey Whitmer  
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Constellation appreciates the Texas Regional Entity's support in allowing CCG to provide this written response to the February 18, 2008, Initial Notice of Alleged Violations. CCG understands that their submission of these mitigation plans resolves and closes the February 18, 2008, Initial Notice of Alleged Violations. CCG looks forward to working with the Texas Regional Entity to ensure safe and reliable system operation.

Thank You



Stephen C. Knapp  
Director, Operations

Cc: Stuart Rubenstein  
Steven M. Wofford  
Paul D. Ackerman, Esq.  
Donald W. Schopp

## Mitigation Plan Submittal Form

Date this Mitigation Plan is being submitted: Thursday, December 18, 2008

If this Mitigation Plan has already been completed:

- Check this box  and
- Provide the Date of Completion of the Mitigation Plan: October 7, 2008

### **Section A: Compliance Notices**

- Section 6.2 of the CMEP<sup>1</sup> sets forth the information that must be included in a Mitigation Plan. The Mitigation Plan must include:
  - (1) The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
  - (2) The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
  - (3) The cause of the Alleged or Confirmed Violation(s).
  - (4) The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
  - (5) The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed violation(s).
  - (6) The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
  - (7) A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
  - (8) Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
  - (9) Any other information deemed necessary or appropriate.
  - (10) The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self-Certification or Self Reporting submittals.
- This submittal form may be used to provide a required Mitigation Plan for review and approval by Texas Regional Entity (Texas RE) and NERC.

<sup>1</sup> "Uniform Compliance Monitoring and Enforcement Program of the North American Electric Reliability Corporation;" a copy of the current version approved by the Federal Energy Regulatory Commission is posted on NERC's website.



- The Mitigation Plan shall be submitted to the Texas RE and NERC as confidential information in accordance with Section 1500 of the NERC Rules of Procedure.
- This Mitigation Plan form may be used to address one or more related violations of one Reliability Standard. A separate mitigation plan is required to address violations with respect to each additional Reliability Standard, as applicable.
- If the Mitigation Plan is approved by Texas RE and NERC, a copy of this Mitigation Plan will be provided to the Federal Energy Regulatory Commission in accordance with applicable Commission rules, regulations and orders.
- Texas RE or NERC may reject Mitigation Plans that they determine to be incomplete or inadequate.
- Remedial action directives also may be issued as necessary to ensure reliability of the bulk power system.

**Section B: Registered Entity Information**

**B.1 Identify your organization:**

Company Name: Constellation Energy Commodities Group, Inc.  
Company Address: 100 Constellation Way, Suite 500C, Baltimore, Maryland 21202  
NERC Compliance Registry ID: NCR04043

**B.2 Identify the individual in your organization who will serve as the Contact to Texas RE regarding this Mitigation Plan. This person shall be technically knowledgeable regarding this Mitigation Plan and authorized to respond to Texas RE regarding this Mitigation Plan.**

Name: Stephen C. Knapp  
Title: Director, Operations  
Email: [steve.knapp@constellation.com](mailto:steve.knapp@constellation.com)  
Phone: 410-470-3374 (Office) / 443-286-6785 (Cell Phone)

**Section C: Identity of Reliability Standard Violations Associated with this Mitigation Plan**

This Mitigation Plan is associated with the following violation(s) of the reliability standard listed below:

- C.1 Standard: The alleged violation that associated with this mitigation plan is CIP-001-1.**

C.2 Requirement(s) violated and violation dates:

The alleged violation that associated with this mitigation plan involves the following CIP-001-1 requirements:

NERC Violation ID # [if known]	Texas RE Violation ID # [if known ]	Requirement Violated (e.g. R3.2)	Violation Date <sup>(*)</sup>
N/A	200800032	R1	02/15/08
N/A	200800033	R2	02/15/08
N/A	200800034	R3	02/15/08
N/A	200800035	R4	02/15/08

(\*) Note: The Violation Date shall be: (i) the violation occurred; (ii) the date that the violation was self-reported; or (iii) the date that the violation has been deemed to have occurred on by Texas RE. Questions regarding the date to use should be directed to the Texas RE.

C.3 Identify the cause of the violation(s) identified above:

See Constellation Energy Commodities Group Letter dated October 7, 2008 enclosing comprehensive submittal of information related to the alleged violation ("CCG Submission").

C.4 Provide any relevant additional information regarding the violations associated with this Mitigation Plan:

The following documents are incorporated by reference into this mitigation plan: (1) CCG Submission; (2) CCG and Power Resources, Ltd. ("PRL") application for Joint Registration Organization and attachments ("JRO Application") submitted electronically to TRE on October 1, 2008; and (3) the enclosed documentation responding to TRE's December 10, 2007 request for supplemental information: (a) CPS Communication Plan and Threat Advisory System, dated March 2003 ("Communications Plan"); and (b) North American Electric Reliability Council, (a/k/a North American Reliability Corporation), Electricity Sector Critical Infrastructure Protection Communications, dated December 30, 2004 ("NERC CIP Communication"), (collectively "Supplemental Information").

With respect to the Supplemental Information, the CPS Communications Plan describes Constellation's procedures implemented after the 9/11 terrorist attacks which informed and instructed CCGs' 24 hour desk personnel (who perform ERCOT QSE functions) and Constellation's Security Operations Center ("SOC") personnel through the entire 2007 calendar year. In the event of any emergency event, including terrorism or sabotage, under this procedure CCG employees are instructed to contact

the SOC. During the period including all of calendar year 2007, SOC personnel were in turn guided by the NERC CIP Communication, which includes notification to the FBI of such events as detailed in the CCG Comprehensive Submission.

**Section D: Details of Proposed Mitigation Plan**

**Mitigation Plan Contents**

- D.1 Identify and describe the action plan, including specific tasks and actions that your organization is proposing to undertake, or which it undertook if this Mitigation Plan has been completed, to correct the violations identified above in Part C.2 of this form:

The specific tasks and actions taken to resolve the alleged violation are detailed in the CCG Comprehensive Submittal and JRO Application. Additionally, CCG and PRL are operating pursuant to delineation of compliance responsibilities set forth in the JRO Application while final approval of the JRO by TRE and NERC is pending so as to ensure on-going compliance with applicable reliability standards.

**Check this box  and proceed to Section E of this form if this Mitigation Plan, as set forth in Part D.1, has already been completed; otherwise respond to Part D.2, D.3 and, optionally, Part D.4, below.**

**Mitigation Plan Timeline and Milestones**

- D.2 Provide the timetable for completion of the Mitigation Plan, including the completion date by which the Mitigation Plan will be fully implemented and the violations associated with this Mitigation Plan are corrected:
- D.3 Enter Milestone Activities, with completion dates, that your organization is proposing for this Mitigation Plan:

Milestone Activity	Proposed Completion Date* (shall not be more than 3 months apart)

(\*) Note: Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.

[Note: Provide your response here; additional detailed information may be provided as an attachment as necessary]

**Additional Relevant Information (Optional)**

- D.4 If you have any relevant additional information that you wish to include regarding the mitigation plan, milestones, milestones dates and completion date proposed above you may include it here:

[Provide your response here; additional detailed information may be provided as an attachment as necessary]

**Section E: Interim and Future Reliability Risk**

**Check this box  and proceed and respond to Part E.2 and E.3, below, if this Mitigation Plan, as set forth in Part D.1, has already been completed.**

**Abatement of Interim BPS Reliability Risk**

- E.1 While your organization is implementing the Mitigation Plan proposed in Part D of this form, the reliability of the Bulk Power System may remain at higher risk or be otherwise negatively impacted until the plan is successfully completed. To the extent they are, or may be, known or anticipated: (i) identify any such risks or impacts; and (ii) discuss any actions that your organization is planning to take or is proposing as part of the Mitigation Plan to mitigate any increased risk to the reliability of the bulk power system while the Mitigation Plan is being implemented:

Not Applicable

**Prevention of Future BPS Reliability Risk**

- E.2 Describe how successful completion of the Mitigation Plan as laid out in Part D of this form will prevent or minimize the probability that your organization incurs further violations of the same or similar reliability standards requirements in the future:

CCG has entered into a JRO with PRL in which the delegation for specific responsibility, as applicable to the NERC GOP reliability standards, has been delineated between the two entities, ensuring no gap to system reliability.

- E.3 Your organization may be taking or planning other action, beyond that listed in the Mitigation Plan, as proposed in Part D.1, to prevent or minimize the probability of incurring further violations of the same or similar standards requirements listed in Part C.2, or of other reliability standards. If so, identify and describe any such action, including milestones and completion dates:

CCG is not taking additional action at this time.

**Section F: Authorization**

An authorized individual must sign and date this Mitigation Plan Submittal Form. By doing so, this individual, on behalf of your organization:

- a) Submits the Mitigation Plan, as laid out in Section D of this form, Texas RE for acceptance by Texas RE and approval by NERC, and
- b) If applicable, certifies that the Mitigation Plan, as laid out in Section D of this form, was completed (i) as laid out in Section D of this form and (ii) on or before the date provided as the 'Date of Completion of the Mitigation Plan' on this form, and
- c) Acknowledges:
  1. I am Chief Operating Officer of Constellation Energy Commodities Group, Inc.
  2. I am qualified to sign this Mitigation Plan on behalf of Constellation Energy Commodities Group, Inc.
  3. I have read and understand Constellation Energy Commodities Group, Inc.'s obligations to comply with Mitigation Plan requirements and ERO remedial action directives as well as ERO documents, including, but not limited to, the NERC Rules of Procedure, including Appendix 4(C) (Compliance Monitoring and Enforcement Program of the North American Electric Reliability Corporation" (NERC CMEP)).
  4. I have read and am familiar with the contents of the foregoing Mitigation Plan.
  5. Constellation Energy Commodities Group, Inc. agrees to be bound by, and comply with, the Mitigation Plan, including the timetable completion date, as approved by Texas RE and approved by NERC.

**Authorized Individual Signature**

  
(Electronic signatures are acceptable; see CMEP)

Name (Print): Stuart Rubenstein  
Title: Chief Operating Officer  
Date: December 18, 2008



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**Section G: Comments and Additional Information**

You may use this area to provide comments or any additional relevant information not previously addressed in this form.

Submit completed and signed forms to [mitigation@texasre.org](mailto:mitigation@texasre.org)

Please direct any questions regarding completion of this form to:

Texas Regional Entity  
Rashida Williams  
512-225-7056  
[rashida.williams@texasre.org](mailto:rashida.williams@texasre.org)

## **Attachment 3**

February 24, 2009

Re: Texas Regional Entity (Texas RE) Mitigation Plan Verification of Completion

Registered Entity: Constellation Energy Commodities Group, Inc.  
Violation Number(s): TRE200800032, TRE200800033, TRE200800034, TRE2008000325,  
TRE200800036, TRE200800037, TRE200800038, TRE200800039, TRE200800040,  
TRE200800041, TRE200800042

Texas RE reviewed evidence of completion and compliance provided by Constellation Energy Commodities Group for mitigation plans addressing the above violations.

Texas RE's review of the procedures and records provided by Constellation Energy Commodities Group, shows that Constellation Energy Commodities Group's procedures were written and implemented before the mitigation plan completion date.

The evidence submitted did meet the requirements of NERC Reliability Standards CIP-001,R1, R2,R3,R4; EOP-009,R1,R2; IRO-001,R18; IRO-004,R4 and TOP-003 R1, R2, R3 in accordance with the mitigation plan date.

Respectfully submitted,

Jeff Whitmer  
Manager, Compliance Enforcement  
Texas Regional Entity  
(512) 225-7030  
Email: [Jeff.Whitmer@TexasRE.org](mailto:Jeff.Whitmer@TexasRE.org)