SETTLEMENT AGREEMENT

The Energy Division of the California Public Utilities Commission ("CPUC" or "Commission") and Constellation NewEnergy, Inc. ("CNE") (individually "Party" and collectively "Settling Parties"), an Electric Service Provider registered with the CPUC, agree to settle all issues and liabilities associated with CNE's 2007 Year Ahead Local and System Resource Adequacy ("RA") ("Year Ahead Showing") and the January 2007 Month Ahead RA ("January Showing") compliance filings as described in this Settlement Agreement.

I. Joint Stipulation of Facts

The Parties stipulate to the following regarding CNE's Year Ahead Showing and January Showing for purposes of this Settlement Agreement:

1. CNE, as an Electricity Service Provider ("ESP"), is a Load Serving Entity ("LSE") subject to the RA Program pursuant to California Public Resources Code § 380, Commission Decisions D.05-10-042 (October, 2005) and D.06-06-064 (June, 2006), and the CAISO Tariff.

2. As an ESP with statewide operations, CNE was required to make its System and Local RA Showings covering the three IOU service territories and four Local RA areas (reflecting aggregation of six PG&E areas) on November 2, 2006.

3. In anticipation of the 2007 Year Ahead ("YA") Local and System RA Showings, CNE issued a Request for Offers ("RFO") on September 13 with responses due on September 27 for various RA products, including Local RA, consistent with CPUC requirements.

4. On October 13, 2006, with receipt of the Reliability Must-Run Allocation, CNE received all information needed to determine its total Local RA procurement obligations.

5. Pursuant to its RFO, CNE undertook multiple bilateral negotiations. On November 2, 2006, the counterparty for the PG&E Greater Bay Area ("GBA") Local RA requirement requested inclusion of a new contract provision that prevented CNE from executing the contract and including the 26 MWs of GBA Local procurement represented by the contract in the Compliance Filing, CNE-010-E.

6. On November 2, 2006, CNE filed its Compliance Filing CNE-010-E, showing a 26.55 MW shortfall for the GBA Local RA requirement. This shortfall was out of compliance

with the requirements for the GBA Local Area. CNE cured its GBA Local RA requirement shortfall in a filing made on November 30th, 2006.

7. CNE made its YA Local RA Compliance Filing on November 2, 2006, and included as "PG&E Other" Local RA capacity the "MidSun" resource through Occidental Power Services, Inc. ("Oxy"). While CNE listed a contract with the MidSun resource based on an email confirmation on November 2, 2006 from this counterparty stating that the parties would enter into a written contract, the parties had not fully executed a written contract at the time of the initial filing, and for this reason the filing was out of compliance in the "Other PG&E Local Area" as well as the GBA Local Area.

8. Negotiations with Oxy continued through November and broke off on November 29th without reaching a fully executed agreement.

9. The CNE-010-E Compliance Filing of November 2, 2006 included two declarations made under penalty of perjury: (1) supporting a request for confidentiality; and (2) the Declaration of Mona Tierney expressly addressing events that occurred on November 2, 2006 that resulted in the unexpected 26.55 MW procurement deficiency in the GBA Local Area.

10. CNE contacted CPUC Staff on November 3, 2006 concerning the status of its RA compliance. CNE noted to the CPUC Staff/ Energy Division that by Tuesday November 7th it would either procure the required capacity or submit a waiver request; CNE filed a waiver request on November 7th.

11. On November 10, 2006, the CAISO released a Market Notice showing that no backup procurement would be required.

12. CNE secured the required GBA RA-eligible resources and on November 30, 2006, CNE submitted CNE-010-E-B to satisfy the GBA RA requirement and again listed the MidSun facility as a RA Resource.

13. CNE secured RA-eligible resources from another supplier following written notification from the Energy Division on December 5, 2006 that the MidSun was not eligible to provide RA capacity and on December 11, 2006, CNE revised its 2007 YA and January 2007 MA RA Showings (CNE-010-E-C and CNE-011-E-A, respectively) reflecting the inclusion of 6.2 MWs from a "PG&E Other" Local RA eligible resource and requesting waiver of penalties.

14. On December 14, 2006, CNE met with the CPUC Staff/ Energy Division to discuss the waiver requests and Local RA events.

15. On February 28, 2007, Energy Division issued a letter denying the waiver request of CNE with respect to the GBA Local Area compliance issue.

16. On March 19, 2007, the Energy Division orally informed CNE that the waiver request relating to the Oxy Contract would also be denied by the Energy Division.

17. CNE promptly raised these compliance issues to the attention of Energy Division, has been very cooperative and forthright with the Energy Division throughout their discussions, and has worked toward a timely and mutually agreeable resolution of the issues outlined above.

II. Parties' Positions

The Parties agree that Decisions D.05-10-042, D.06-06-064 and D.06-07-031 describe the waiver process and the delegation to the Energy Division for the review of compliance filings and initial review of requests for waiver. The Parties have different interpretations of the Commission's directives concerning the waiver process at this point in time, and recognize that additional work on waiver processes is an issue pending in the open resource adequacy docket. The following brief descriptions of each Party's position concerning the appropriateness of waivers in this instance are not definitive nor exhaustive and are made here to generally describe the potential dispute resolved by this Settlement.

A. Energy Division

Energy Division's ("ED") position is that the denial of CNE's two waiver requests were appropriate for the following reasons.

1. CNE Did Not Submit a Request for Waiver On Time.

Commission's D.06-06-064 stated that an LSE requesting a waiver must make such a request at the time it files its Local RAR compliance showing. The 2007 System RAR and Local RAR filings were due on November 2, 2006. CNE submitted its request for waiver in writing to ED on November 7, 2006, but the waiver only applied to the 26.55 MW shortfall. A supplemental Waiver Request to account for the Midsun transaction did not arrive until December 11, 2006, and ED's position is that it was therefore untimely.

Timely filing was important as ED needed to review and evaluate the 2007 System RAR and Local RAR filings so that it could identify any collective deficiencies in any Local Area. Notification to market participants of any additional LSE procurement to meet deficiencies was to be on November 8, 2006.

2. CNE has not demonstrated that it reasonably and in good faith solicited bids to fill its RAR capacity needs or demonstrated active pursuit of all commercially reasonable resources needed to meet its local procurement obligation.

Although CNE was in the process of executing a contract to fulfill its 2007 Local RAR, CNE had several months to fulfill its 2007 Local RAR before the November 2, 2006 deadline by either: (1) executing the existing transaction with commercially reasonable terms and conditions in an expeditious manner or (2) undertaking efforts to consider alternate transactions and executing an alternate transaction to satisfy its Local RAR before November 2, 2006. This pertains equally to either of the two transactions (CPN or Midsun) that caused the two deficiencies. ED believes that a good faith and reasonable effort under this situation required CNE to either complete the transaction by the deadline or undertake efforts to complete an alternate transaction.

3. The circumstances that left CNE with this deficiency were not caused by the exercise of market power.

Under D.06-06-064, the waiver process is a means to mitigate market power. This particular deficiency did not result from an exercise of market power, as there were other counterparties willing and able to provide capacity to CNE. CNE's failure to meet its Local RAR was not a result of market power but as a result of CNE's failure to conclude contract negotiations by November 2, 2006.

For the reasons above, ED's position is that CNE did not demonstrate that CNE reasonably and in good faith solicited bids for its RAR capacity needs nor did CNE demonstrate

that it pursued all commercially reasonable efforts to meet its Local RAR. CNE's Local RA deficiency was apparently caused by contracting difficulties, not by market power. CNE's negotiations with its counterparty were not concluded in a timely manner, and CNE did not demonstrate that it undertook efforts to consider and execute other offers to fulfill its procurement obligation by November 2, 2006. Therefore, ED's denial of the waiver was request was appropriate under the circumstances.

B. CNE

CNE's position is that the penalty and waiver process outlined in the Commission's decisions provides Energy Division with the discretion to review the totality of the associated circumstances and waive penalties for non-compliance where the LSE acted in good faith and with diligence, where the LSE was not able to comply due to circumstances outside its control, that compliance was not possible due to commercially impracticable contract terms, that there was no reliability risk at any time and that CNE promptly raised its compliance issues with relevant Staff. CNE's position, as described in the confidential affidavits accompanying the requests for waiver and as would be litigated if the waiver denials were appealed, has been that: (1) the Year Ahead Showing deficiency was due to a very last-minute contracting issue that sought to impose commercially impracticable terms that could not reasonably be expected to have been resolved prior to the submission date; (2) the January Showing issue was associated with the new Local RA program and a late discovery that the "MidSun" resource would not be eligible for the entire program year despite continued counterparty assurances otherwise; (3) system reliability was never at risk, CAISO did not need to exercise backstop procurement due to the short-term temporary shortfall, and CNE was diligent in is securing of required capacity before the RA program year began; (4) there was no direct or indirect harm to customers; and (5) a grace period should apply with respect to the waiver filing deadline to

accommodate instances where, as here, the LSE did not expect to seek a waiver prior to the filing date. CNE believes that Commission's RA policies support waiver of the penalties in light of the totality of the circumstances.

III. Settlement Agreement

A. No Appeal of Waiver and Monetary Payment

In light of the facts stipulated to herein, CNE and Energy Division have agreed that it is in the mutual interests of both parties to resolve this matter through settlement without litigation, and that through such settlement CNE agrees not to appeal the denied requests for waiver of penalties and will pay $107,500 to the CPUC (for application to the General Fund) within 60 days of a final Commission decision approving this Settlement Agreement.

B. Resolution of Liabilities

The CPUC and Energy Division agree that this settlement resolves all potential liability associated with CNE's RA filings at the CPUC as addressed herein. The Settling Parties believe that this Settlement is in the public interest in that it resolves an outstanding compliance question expeditiously and that it saves limited Commission resources.

C. Reliance on Fully Executed Written Contracts Only

CNE has undertaken improvements to its internal RA procurement process to reduce the likelihood of potential future compliance issues. CNE also agrees that in all subsequent RA compliance filings, only those qualified resources with fully executed written contracts will be listed[1]. Resources secured pursuant to initial confirmation or agreements to contract that have not been finalized will not be relied upon.

[1] D.05-10-042, pp.27-28; D.06-07-031, p.33.

D. Other General Terms

1. Approvals.

After signing this Settlement Agreement, the Settling Parties shall actively support prompt approval of the Settlement Agreement, including any briefing, comments on the proposed decision, testimony if necessary, appearances, and other means as may be needed to obtain the necessary Commission approvals. The Settling Parties agree that if the Commission does not approve the agreement unconditionally and without modification, either Party may, in its sole discretion, elect to terminate the Settlement Agreement. If the Settlement Agreement is terminated, the Settling Parties shall request that the issues in this proceeding be heard and briefed at the earliest convenient time, unless a subsequent settlement is achieved.

2. Compromise.

The Settling Parties agree that this Settlement Agreement represents a compromise, not agreement or endorsement of disputed facts and law, and the Settlement Agreement does not constitute a precedent regarding any principle or issue now or for any future proceeding.

3. Intent of Settlement Agreement.

This Settlement Agreement embodies the entire understanding of the Settling Parties with respect to the matters described herein and supersedes any and all prior oral or written agreements, principles, negotiations, statements, or understandings among the Settling Parties. The Settlement Agreement may be amended only by a written agreement signed by both Settling Parties. The Settling Parties have bargained in good faith to achieve this Settlement Agreement. The Settling Parties intend the Settlement Agreement to be interpreted as a unified, interrelated agreement. Each of the Settling Parties has contributed to the preparation of this Settlement Agreement. Accordingly, the Settling Parties agree that no provision of the Settlement Agreement shall be construed against a Party because that Party or its counsel drafted the

provision. The section headings contained in this Settlement Agreement are solely for the purpose of reference, are not part of the agreement of the Settling Parties, and shall not in any way affect the meaning or interpretation of this Settlement Agreement.

4. Governing Law.

This Settlement Agreement shall be governed by the laws of the State of California.

5. Successors and Assigns.

The rights conferred and obligations imposed on a Party by this Settlement Agreement shall inure to the benefit of or be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a party hereto.

6. Counterparts.

This Settlement Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Settling Parties hereto have duly executed this Settlement Agreement.

Dated: July 3, 2007

Constellation NewEnergy, Inc.

By: _____
Clem Palevich, CEO

Dated: _____, 2007

Energy Division, California Public Utilities Commission

By: _____
Sean Gallagher, Director

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Dated: _____, 2007 Constellation NewEnergy, Inc.

By: _____
Clem Palevich, CEO

Dated: July 5, 2007 Energy Division, California Public Utilities Commission

By: _____
Sean Gallagher, Director