deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on December 15, 2025.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 15, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–23176 Filed 12–17–25; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. Constellation Energy Corporation et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America et al.* v. *Constellation Energy Corporation et al.,* Civil Action No. 1:25–cv–04235–ABJ. On December 5, 2025, the United States filed a Complaint alleging that Constellation Energy Corporation's proposed acquisition of Calpine Corporation would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Constellation to divest the Calpine electric generating facilities listed below.

In the area operated by the Electric Reliability Council of Texas:

- Jack A. Fusco Energy Center, located southwest of the city of Houston, Texas; and
- Calpine's minority ownership interest in the Gregory Energy Center, located northeast of the city of Corpus Christi, Texas.

In the area operated by PJM Interconnection, LLC:

- Bethlehem Energy Center, located in Bethlehem, Pennsylvania;
- Edge Moor Energy Center, located in Wilmington, Delaware;
- Hay Road Energy Center, located in Wilmington, Delaware; and
- York Energy Center (York 1 and York 2), located southeast of the city of York, Pennsylvania.

A Competitive Impact Statement filed by the United States on December 12, 2025, describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Patricia Cororan, Acting Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8000, Washington, DC 20530 (email address: *ATR.Public-Comments-Tunney-Act-MB@usdoj.gov*).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8000, Washington, DC 20001, and STATE OF TEXAS, Office of the Texas Attorney General, Antitrust Division, P.O. Box 12548, Austin, TX 78711, Plaintiffs, v. *CONSTELLATION ENERGY CORPORATION, 1310 Point Street, Baltimore, MD 21231, CALPINE CORPORATION, 717 Texas Avenue, Suite 1000, Houston, TX 77001, and CPN CS HOLDCO CORP., 717 Texas Avenue, Suite 1000, Houston, TX 77001,* Defendants.

Case No.: 1:25–cv–04235–ABJ

COMPLAINT

Constellation Energy Corporation (''Constellation'') seeks to buy one of its largest rivals, Calpine Corporation (''Calpine''), in a proposed acquisition that would create the largest wholesale power generator in the United States with a formidable array of assets. The combination of those assets would risk affording Constellation the opportunity to profitably raise the price of electricity for millions of citizens and businesses in Texas and parts of the mid-Atlantic, likely resulting in increased energy costs of more than $100 million per year. The United States and the State of Texas bring this suit to preserve competition.

I. Introduction

1. Electricity is an essential resource to people and companies across the country.

Whether storing food in refrigerators, keeping the lights on in workplaces, watching a football game, or powering lifesaving support systems in hospitals, Americans depend on electricity for almost every facet of their daily lives. Demand for electricity is increasing rapidly, as the population grows and innovative technologies like cloud computing and artificial intelligence rely ever more on energy-intensive data centers. In Texas, the highest level of electricity consumption (so-called ''peak load'') handled by its largest electrical grid is expected to increase by 72% from 2024 to 2030. In the multistate power grid that includes the mid-Atlantic, summer peak load is expected to increase by 3.1% per year over the next decade. Despite this rapidly increasing demand, it is challenging to

add new reliable generation to the nation's power grids.

2. Consumers and businesses demand instantaneous access to electricity to avoid disruption to their lives and work. Demand for electricity changes depending on weather and patterns of social and business activity that vary with the time of day, day of week, and season of year. For example, peak demand may be reached during the hottest summer days or coldest winter nights, when air conditioning or electric heating are most needed. Lower demand may occur on some weekends or major holidays when many businesses are closed. Electricity must be produced and delivered in line with this fluctuating demand, and electrical grid operators call upon power generators like Constellation and Calpine to turn power generation plants on or shut them off to balance the supply of electricity with demand.

3. To determine which plants should be turned on or shut off, and how much electricity each plant should produce, the grid operator conducts daily and intra-day auctions. These electricity auctions set the prices paid to every generation unit. Constellation and Calpine compete against each other and against other generators in these auctions by submitting offers from each of their individual generation units to produce certain amounts of electricity at certain times and prices to meet demand. The offers of individual generation units are accepted from lowest to highest price until the total amount of electricity from the generation units combined satisfies the demand for a particular period. The price for the last unit's offer necessary to meet real-time demand, referred to as the market-clearing price, sets the price paid at that auction for every other individual unit that has received an accepted offer.

4. In other words, the price of electricity is set by the highest price offered by the individual power generating unit whose offer is accepted. All other generating units with lower offers that had offers accepted receive the same market-clearing price for the electricity they produce within a given period, despite having offered lower prices. Because the same price is paid by all wholesale electricity customers, even small price increases driven by one generator's offer strategy, executed during specific times throughout the year, can lead to market-wide price increases, adding tens or even hundreds of millions of dollars annually in increased electricity bills for consumers and businesses.

5. On January 10, 2025, Constellation announced plans to acquire Calpine for a net purchase price of $26.6 billion (the ''Acquisition''). If allowed to proceed, the Acquisition would create the largest wholesale electricity generating company in the United States.

6. Constellation and Calpine each sell wholesale electricity to two of the nation's major electricity grids, among others. The Electric Reliability Council of Texas (''ERCOT'') encompasses most of Texas, and PJM Interconnection LLC (''PJM'') includes all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

7. The Acquisition would eliminate substantial competition between Constellation and Calpine within both of these grids by increasing the opportunity for the combined firm to engage profitably in a strategy that withholds output from one of its plants, forcing the grid operator to call on a higher-cost plant to set the market price. Increasing the market-clearing price would benefit the combined firm's plants that have had offers accepted, as well as all other active plants in the market. The aggregation of Constellation and Calpine's portfolios of generation capacity within each of these two grids confers more opportunities for the combined firm to engage profitably in anticompetitive withholding that would raise wholesale electricity prices within those grids.

8. In short, the Acquisition would eliminate competition between Constellation and Calpine, thereby increasing Constellation's ability and incentive to anticompetitively withhold electricity to raise wholesale electricity prices beyond what either company could do today as independent competitors. A successful withholding strategy could result in increased retail electricity prices paid by tens of millions of residential, commercial, and industrial customers across Texas and the area that includes southeastern Pennsylvania, New Jersey, Delaware, and the eastern shores of Maryland and Virginia.

II. The Defendants

9. Constellation is a Pennsylvania corporation headquartered in Baltimore, Maryland. Constellation is one of the largest competitive electric generation companies in the nation, as measured by owned and contracted megawatts.

10. In ERCOT, Constellation owns or exercises control over two combined-cycle natural gas plants and one steam turbine plant. In addition, it has a 44% interest in the South Texas Project nuclear plant and two wind farms. Constellation's combination of nuclear, wind, and natural gas electricity power plants collectively have the capacity to generate approximately 5,000 megawatts (MW) of electricity in Texas. (For context, one megawatt serves between 800 to 1,000 homes.)

11. In PJM, Constellation owns or exercises control over 25 total plants and has a partial ownership interest in three. This includes combined-cycle natural gas plants, nuclear plants, coal plants, oil plants, and solar and wind renewals. These plants collectively provide more than 20,000 MW of electric capacity across PJM.

12. Calpine is a Delaware corporation headquartered in Houston, Texas. Calpine is the largest generator of electricity from natural gas and geothermal resources in the United States.

13. In ERCOT, Calpine owns or exercises control over 13 combined-cycle plants and one combustion turbine natural gas plant. In addition, Calpine is constructing another combustion turbine natural gas plant expected to come online in 2026 and holds a 28% interest in one additional operating combined-cycle natural gas plant. Calpine's power plants collectively have the capacity to generate approximately 9,000 MW of electricity, making it the third-largest electricity generation supplier in the state.

14. In PJM, Calpine owns or exercises control over 14 total plants, including natural gas plants, oil plants, and solar facilities. These plants collectively provide more than 5,000 MW of electric capacity.

15. CPN CS Holdco Corp. (''Holdco'') is a Delaware corporation headquartered in Houston, Texas and a direct wholly owned subsidiary of Calpine. Calpine created Holdco as a vehicle for its sale to Constellation.

III. How Electricity Is Generated and Sold

A. Wholesale Electricity

16. Electricity supplied to retail customers is produced at power plants. Wholesale electricity is electricity that is generated for ''sale for resale'' to utilities or retail electric providers that in turn resell it to end consumers, such as households and businesses. Power plants often contain several individual generating units that transform energy from fuel or a renewable resource into electricity. Important generating technologies in these units include steam turbines, combustion turbines,

and combined-cycle turbines powered by natural gas, oil, or coal, as well as nuclear reactors, wind turbines, and solar panels.

17. Generating units vary considerably in their operating costs, which are determined primarily by the cost of fuel and how efficiently that fuel can be converted into electricity.

- *Renewable* units, such as solar farms and wind turbines, have very low operating costs, but can operate only when the sun is shining or the wind is blowing.
- *Baseload* units, such as nuclear plants and some coal-fired steam turbine units, also have relatively low operating costs and provide consistent generation throughout the day and across each season of the year. Nuclear plants are designed to operate at full capacity unless they are offline for refueling outages. For many coal units, it is impractical to turn them on and off on a short-term basis because of long startup times and mechanical stress from cycling the units on and off.
- *Mid-merit* units, such as combined-cycle natural gas units and some coal steam turbines, can typically be turned on or have their output adjusted more quickly than baseload units.
- *Peaking* units, such as oil- and gas-fired combustion or gas-fired steam turbine units, tend to run only during periods of high (or ''peak'') electricity demand. They typically have the highest operating costs of any generation units but are also the easiest to turn on and shut off. This makes them critical for balancing supply and demand to keep the lights on without overloading the system.

18. Electricity generated at a plant is transported via an extensive set of interconnected high voltage lines and equipment, known as the transmission grid, to lower voltage distribution lines that relay electricity to homes and businesses. Transmission grid operators closely monitor the grid to prevent too little or too much electricity from flowing over the grid, either of which can risk widespread blackouts through damage to the lines, equipment, or generating units connected to the grid. To avoid damage and service interruptions, grid operators manage a grid to prevent additional electricity from flowing over a transmission line as that line approaches its operating limit (a ''transmission constraint'').

B. The Electric Reliability Council of Texas

19. ERCOT is an independent system operator that serves as the electricity grid and market operator for most of Texas. This means it manages the purchase of wholesale electricity from Constellation, Calpine, and their competitors, as well as the resale and transmission of that electricity to utilities and retail electric providers that directly serve end customers.

20. ERCOT is a membership-based nonprofit corporation subject to oversight by the Public Utility Commission of Texas. Its members include consumers, cooperatives, generators, power marketers, retail electricity providers, investor-owned electric utilities, transmission and distribution providers, and municipally owned electric utilities.

C. PJM Interconnection

21. PJM is a regional transmission organization that manages the wholesale electricity market and transmission grid that supplies electricity to all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

22. PJM is a private, nonprofit organization whose members include transmission line owners, generation owners, distribution companies, retail customers, and retail electricity suppliers.

23. PJM manages the largest transmission grid in the United States, which provides electricity to more than 67 million people. Each year, PJM is responsible for overseeing more than $25 billion in wholesale electricity sales.

D. ERCOT and PJM Use Auctions To Set the Price of Electricity

24. ERCOT and PJM each oversee two auctions to set the price of wholesale electricity and ensure there is enough supply to meet demand in their respective parts of the country. The first is a ''day-ahead'' auction that sets hourly prices for the next day, and the second is a ''real-time'' auction that sets prices for each five-minute interval throughout the operating day to reflect changing demand for electricity at specific times. In both auctions, competing generators, including Constellation and Calpine, submit offers for each of their generation units to sell electricity to electricity retailers at a specific price. These offers are the primary means by which electricity generators compete to supply electricity in ERCOT and PJM and drive the price consumers ultimately pay for it.

25. In the day-ahead auctions, each buyer typically submits a bid to ERCOT or PJM that identifies the amount of electricity that the buyer expects to need for each hour of the next day. ERCOT or PJM then adds up the bids to determine how much total electricity is expected to be demanded by buyers each hour. Each generator offering electricity in the day-ahead market (such as Constellation and Calpine) submits an offer to sell electricity to ERCOT or PJM that indicates, for each generating unit, the amount of electricity it is willing to sell the next day and the price at which it is willing to sell.

26. Subject to the physical limitations of their transmission grids, ERCOT and PJM seek to ''dispatch'' generating units, that is, to call on them to generate electricity in ''merit'' order, meaning from lowest offer price to highest. In the day-ahead auction, subject to expected transmission constraints, ERCOT and PJM take the least expensive offer first and then accept offers at progressively higher prices until the needs for each hour of the next day are covered. This minimizes the total cost of generating the electricity required for the next day. The clearing price for any given hour is determined by the generating unit with the highest offer price that is needed for that hour. All other sellers for that hour receive that identical price regardless of the individual unit's own offer price or costs. So, a generating unit that offers a lower price to ERCOT or PJM is paid the higher clearing price if electricity from additional, higher-priced generating units is needed to meet demand.

27. The real-time auctions reconcile the outcome of the day-ahead auctions with actual supply and demand. ERCOT and PJM follow the same auction mechanism as in the day-ahead auctions, by accepting sellers' offers in merit order, subject to the physical and/engineering limitations of the transmission grid, until there is enough electricity to meet actual demand. In the real-time auctions, however, ERCOT and PJM set prices for each five-minute interval of the day.

28. Transmission constraints sometimes affect PJM's merit order. When the lowest- cost generation cannot be dispatched because it would overload a transmission constraint, it is called ''congestion.'' To avoid congestion while still satisfying demand, PJM must call on higher-priced units that, given their location on the grid, do not overload transmission constraints. When this happens, prices are lower on one side of the constraint and higher on the other side. In other words, when the capacity of the transmission lines connecting two regions within PJM is reached so that electricity cannot flow from one region to another, the demand within each region has to be met by electricity that

is generated within that region. In these situations, competition and thus pricing can be different across the different regions within PJM.

IV. The Relevant Markets for Evaluating the Proposed Acquisition

A. Wholesale Electricity Is a Relevant Product Market

29. Wholesale electricity is a relevant product market for evaluating the potential competitive impact of the Acquisition. And each hourly increment in which wholesale electricity is sold in ERCOT's or PJM's ''day-ahead'' auction, as well as each five-minute increment in the ERCOT or PJM ''real-time'' auctions, constitutes a separate relevant product market. This is because electricity available in one time period is not a substitute for electricity available in another time period (notwithstanding the ability to use batteries to some extent to transfer electricity from one time period to another). While supply and demand for wholesale electricity can vary in different periods, both auctions share a common feature: in the event of a small but significant non-transitory increase in the price of wholesale electricity at relevant times, not enough purchasers are likely to switch away from wholesale electricity to make that increase unprofitable. Additionally, in the event of a small but significant non-transitory increase in the price of wholesale electricity within an hourly or five-minute interval, not enough purchasers would switch to consuming wholesale electricity in a different time period to make that price increase unprofitable. This means that each of these specific auction time intervals markets is a relevant product market and a ''line of commerce'' within the meaning of Section 7 of the Clayton Act.

30. While each of these specific time intervals is a relevant product market, they can be aggregated into a ''cluster market'' for analytical convenience for considering whether the Acquisition violates the antitrust laws. For example, all 24 hours in a single day in either PJM or ERCOT's ''day-ahead'' auction could be aggregated into one market, as could all five-minute intervals in a single hour in PJM or ERCOT's ''real-time'' auction. Separate cluster markets could also be created for periods of time that exhibit similar market contexts and competitive dynamics—for example, summer afternoons or winter nights.

B. ERCOT Is a Relevant Geographic Market

31. The region covered by ERCOT is a relevant geographic market for evaluating the potential competitive impact of Constellation's purchase of Calpine and a ''section of the country'' within the meaning of Section 7 of the Clayton Act. ERCOT serves more than 27 million Texans, who collectively account for about 90% of the state's electricity demand. In 2024, ERCOT was responsible for overseeing the sale of more than $14.4 billion in wholesale electricity.

32. In the event of a small but significant non-transitory increase in the price of wholesale electricity within ERCOT, not enough purchasers in the ERCOT region are likely to switch to purchasing from regions outside ERCOT to make that increase unprofitable. At its annual peak, electricity demand in ERCOT exceeds 85,000 MW. ERCOT's connections to Mexico's grid and to the Southwest Power Pool grid, which collectively can allow about 1,200 MW of electricity to flow into ERCOT, are insufficient to prevent generators from imposing a small but significant non-transitory price increase within ERCOT.

C. PJM Coastal Mid-Atlantic Is a Relevant Geographic Market

33. The PJM Coastal Mid-Atlantic geographic area is a relevant geographic market for evaluating the potential competitive impact of Constellation's purchase of Calpine and a ''section of the country'' within the meaning of Section 7 of the Clayton Act. The PJM Coastal Mid-Atlantic geographic area is a distinct area within the PJM region that includes southeastern Pennsylvania, New Jersey, Delaware, and the eastern shores of Maryland and Virginia. In 2024, approximately $4 billion of wholesale electricity was generated and supplied to more than 10 million people and businesses in PJM Coastal Mid-Atlantic.

34. PJM Coastal Mid-Atlantic is affected by a major transmission constraint located near the Maryland-Pennsylvania border, called Nottingham, that divides PJM Coastal Mid-Atlantic from the rest of the PJM region. Generators within PJM Coastal Mid-Atlantic frequently sell electricity into other areas to the west and south. But when transmission lines are constrained, the amount of electricity that generators within PJM Coastal Mid-Atlantic can sell outside of the area is limited. As a result, electricity prices in PJM Coastal Mid-Atlantic often differ from prices in other areas within the PJM region.

35. When Nottingham is constrained, purchasers of wholesale electricity for use in PJM Coastal Mid-Atlantic have limited ability to turn to generation originating outside of PJM Coastal Mid-Atlantic. During these times, the amount of electricity that purchasers could obtain from generators outside PJM Coastal Mid-Atlantic is insufficient to deter generators located in PJM Coastal Mid-Atlantic from imposing a small but significant non-transitory price increase.

V. The Acquisition Is Reasonably Likely To Raise Electricity Prices

36. The combination of Constellation and Calpine's electricity generating units serving ERCOT and PJM Coastal Mid-Atlantic would eliminate competition between them and enhance Constellation's post-Acquisition ability and incentive to withhold electricity to raise wholesale electricity price anticompetitively in those markets.

A. Constellation's Ability and Incentive To Raise Wholesale Electricity Price in ERCOT

37. The Acquisition would increase opportunities for Constellation to profitably engage in a withholding strategy that would increase wholesale electricity prices in Texas. The Acquisition would almost triple Constellation's generation capacity to nearly 14,000 MW in ERCOT and add to its Texas portfolio a fleet of gas plants that have relatively higher operating costs than Constellation's current fleet. Constellation has three gas plants—one steam turbine plant and two combined-cycle plants—that total approximately 3,500 MW. It also has a 44% share in a nuclear plant with a capacity of approximately 2,600 MW and owns two small wind generating assets that collectively have about 170 MW of capacity. Calpine owns or controls 13 combined-cycle gas plants in ERCOT and has a minority share in a fourteenth plant that together have 9,000 MW of capacity.

38. The Acquisition would make Constellation the second-largest electric generation company in Texas, controlling more than 12% of ERCOT's generating capacity and over 20% of the natural gas generation capacity in ERCOT that often sets the clearing price. This portfolio of gas generation plants represents the ''marginal fuel'': natural gas sets the price for all customers in ERCOT the majority of the time, and is particularly valuable in ERCOT, where the electricity grid relies on gas to complement and support its increasing use of intermittent renewable resources such as sun and wind to generate electricity.

39. The Acquisition would give Constellation a broader portfolio of assets that can be turned on and shut off more readily and quickly would enable it to more frequently and more

strategically withhold electricity at lower opportunity costs in order to enjoy increased market prices on the other generation units it continues to operate. By withholding a unit—or combination of units—from ERCOT's ''day-ahead'' or ''real-time'' auctions, Constellation could force ERCOT to accept an offer from a higher-priced unit. This would in turn raise the market-wide price to the benefit of Constellation's other units. The additional revenues received by Constellation's lower-cost generating unit(s) because of anticompetitively higher market-wide prices would frequently more than compensate for the lost profits from the generating unit(s) withheld. In other words, after the Acquisition, Constellation would be in a better position than either it or Calpine are today as independent competitors to profit from withholding output and raising the market-wide price to anticompetitive levels.

40. Because every other generation unit needed to meet demand in ERCOT would also receive the anticompetitively higher market-wide prices, the market-wide harm is much greater than simply Constellation's increased profits and the harm would be felt across the entire region. A small price increase that results in only millions in profit to Constellation could result in more than $100 million in harm to Texas consumers.

B. Constellation's Ability and Incentive To Raise Wholesale Electricity Price in PJM Coastal Mid-Atlantic

41. The Acquisition would enhance Constellation's ability to withhold output and raise the wholesale electricity price in PJM Coastal Mid-Atlantic by increasing its ownership of mid-merit and peaking units, which can be turned on or shut off more quickly than other types of generation assets. The Acquisition would enable Constellation to more frequently and more strategically withhold generation capacity at lower opportunity costs.

42. Constellation can withhold capacity in several ways, such as by submitting high offers in the PJM auctions for some of the capacity from its higher-cost units so that they are not called on to produce electricity. By withholding capacity from a unit—or combination of units—from PJM's ''day-ahead'' or ''real-time'' auction, Constellation could force PJM to accept an offer from a higher-priced unit in order to meet demand. This would raise the price in PJM Coastal Mid-Atlantic to the benefit of Constellation's other units supplying power to this area.

43. The additional revenues received by Constellation's lower-cost generation units, including its nuclear plants, because of anticompetitively higher prices in PJM Coastal Mid-Atlantic would more than compensate for the lost profits from the generating unit(s) withheld. In other words, after the Acquisition, Constellation would be in a better position than either it or Calpine is today as an independent competitor to profit from reducing output and raising the wholesale electricity price in PJM Coastal Mid-Atlantic.

44. Increasing Constellation's incentive and ability to profitably withhold capacity for PJM Coastal Mid-Atlantic increases the likelihood that Constellation will exercise market power after its acquisition of Calpine.

VI. Potential Entry Would Not Offset Anticompetitive Effects

45. Entry into wholesale electricity markets by building new generation capacity in either ERCOT or PJM Coastal Mid-Atlantic requires significant capital investment in generating equipment, infrastructure, and technology, and generally takes many years, considering the necessary environmental, safety, zoning, and regulatory approvals.

46. In both ERCOT and PJM Coastal Mid-Atlantic, recent supply chain dynamics and rising inflation have made it more difficult and expensive for companies to procure transformers and turbines to build gas-fired generation plants. Furthermore, the anticipated increase in electricity demand (*e.g.,* to power AI data centers as well as population growth and increased economic activity) has led to long queues for the delivery of new gas turbines, so that new entry is unlikely to be timely.

47. In PJM, interconnection queue wait times, or the duration from initial connection request to commercial operations, have increased substantially since the early 2000s. Building new high-voltage transmission that would relieve the constraints that limit the flow of electricity out of PJM Coastal Mid-Atlantic would also generally take many years, and require significant capital investment and multiple environmental, safety, zoning, and regulatory approvals.

48. Entry into wholesale electricity markets in ERCOT and PJM Coastal Mid-Atlantic would not be timely, likely, or sufficient in magnitude, character, or scope to defeat an anticompetitive price increase resulting from the Acquisition.

49. To the extent that there is new entry, including entry from renewable generation units, it will likely lag behind the substantial increases in demand projected in ERCOT and PJM Coastal Mid-Atlantic.

50. Defendants also cannot demonstrate verifiable, merger-specific efficiencies sufficient to offset the Acquisition's anticompetitive effects.

VII. Jurisdiction and Venue

51. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

52. The State of Texas brings this action under Section 16 of the Clayton Act, 15 U.S.C. 26, as *parens patriae* on behalf of and to protect its general economy and the health and welfare of its residents and to prevent and restrain the violation by Defendants of Section 7 of the Clayton Act, 15 U.S.C. 18.

53. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

54. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

VIII. Violation Alleged

55. The Acquisition, if it were consummated, likely would lessen competition substantially for wholesale electricity in ERCOT and PJM Coastal Mid-Atlantic, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

56. Unless restrained, the Acquisition likely would have the following anticompetitive effects, among others:

(a) Competition in wholesale electricity markets in ERCOT and PJM Coastal Mid-Atlantic would be substantially lessened;

(b) Constellation would wield increased market power in wholesale electricity markets in ERCOT and PJM Coastal Mid-Atlantic; and

(c) Prices for wholesale electricity in ERCOT and PJM Coastal Mid-Atlantic would increase.

IX. Request for Relief

57. Plaintiffs request that this Court:

(a) Adjudge Constellation's proposed acquisition of Calpine to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) Permanently enjoin and restrain Defendants from consummating the proposed acquisition of Calpine by

Constellation or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Calpine and Constellation;

(c) Award the Plaintiffs their costs for this action; and

(d) Award the Plaintiffs such other and further relief as the Court deems just and proper.

Dated: December 5, 2025.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

ABIGAIL A. SLATER
(D.C. Bar #90027189)
Assistant Attorney General

MARK H. HAMER
(D.C. Bar #1048333)
Deputy Assistant Attorney General

RYAN DANKS
Director of Civil Enforcement

GEORGE C. NIERLICH
(D.C. Bar #1004528)
Deputy Director of Civil Enforcement

PATRICIA C. CORCORAN
(D.C. Bar #461905)
Acting Chief, Transportation, Energy & Agriculture Section

KATHERINE CELESTE SPEEGLE
Assistant Chief, Transportation, Energy, & Agriculture Section

CATHERINE R. REILLY
(D.C. Bar #1002308)
Acting Assistant Chief, Transportation, Energy, & Agriculture Section

JOSEPH CHANDRA MAZUMDAR *
JOHN M. BRIGGS (D.C. Bar #90035937)
J. RICHARD DOIDGE
JEREMY EVANS (D.C. Bar #478097)
WILLIAM M. MARTIN
MICHAEL T. NASH
MICHELLE PARK (D.C. Bar #90005251)
KATHRYN TRINKA (D.C. Bar #90010251)
Trial Attorneys

HENRY C. SU (D.C. Bar #441271)
PAUL J. TORZILLI (D.C. Bar #986767)
Senior Litigation Counsel

United States Department of Justice
Antitrust Division
Transportation, Energy & Agriculture Section
450 Fifth Street NW, Suite 8000
Washington, DC 20530
Telephone: (202) 353–1560
Email: *chan.mazumdar@usdoj.gov*

* LEAD ATTORNEY TO BE NOTICED

FOR PLAINTIFF STATE OF TEXAS:

KEN PAXTON
Attorney General

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

AUSTIN KINGHORN
Deputy Attorney General for Civil Litigation

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711–2548
(512) 936–1162

THOMAS D. YORK
Chief, Antitrust Division

COLE PRITCHETT
Assistant Attorney General
Texas State Bar No. 24134376

KATHERINE DANNENMAIER
Assistant Attorney General
Texas State Bar No. 24125093

WILLIAM SHIEBER
Senior Staff Attorney
Texas State Bar No. 24012167

COUNSEL FOR THE STATE OF TEXAS

United States District Court for the District of Columbia

UNITED STATES OF AMERICA and STATE OF TEXAS, Plaintiffs, v. *CONSTELLATION ENERGY CORPORATION, CALPINE CORPORATION, and CPN CS HOLDCO CORP.,* Defendants.

Case No. 1:25–cv–04235–ABJ

Proposed Final Judgment

Whereas, Plaintiffs, United States of America and the State of Texas (''Texas''), filed their Complaint on December 5, 2025;

And whereas, Plaintiffs and Defendants, Constellation Energy Corporation, Calpine Corporation, and CPN CS Holdco Corp., have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

And whereas, Defendants agree to make certain divestitures to remedy the loss of competition alleged in the Complaint;

And whereas, Defendants represent that the divestitures and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

Now therefore, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities approved by the United States, in its sole discretion, to which Defendants divest any of the Divestiture Assets or with which Defendants, after approval by the United States in its sole discretion, have entered into definitive contracts to sell any of the Divestiture Assets. The word ''Acquirer'' in this Final Judgment may have both singular and plural meaning.

B. ''Calpine'' means Defendant Calpine Corporation, a Delaware corporation with its headquarters in Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Constellation'' means Defendant Constellation Energy Corporation, a Pennsylvania corporation with its headquarters in Baltimore, Maryland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''CPN'' means Defendant CPN CS Holdco Corp., a Delaware corporation headquartered in Houston, Texas and a direct, wholly-owned subsidiary of Calpine. Calpine created CPN as a vehicle for its sale to Constellation.

E. ''Divestiture Assets'' means the ERCOT Divestiture Assets and the PJM Divestiture Assets.

F. ''Divestiture Date'' means each date on which the ERCOT Divestiture Assets or the PJM Divestiture Assets are divested to an Acquirer or Acquirers under this Final Judgment. There may be different Divestiture Dates for each of the ERCOT Divestiture Assets and each of the PJM Divestiture Assets.

G. ''ERCOT'' means the Electric Reliability Council of Texas, Inc., 8000 Metropolis Drive, Building E, Suite 100, Austin, Texas 78744.

H. ''ERCOT Divestiture Assets'' means all of Defendants' rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the generation, dispatch, and offer of electricity from the ERCOT Divestiture Facilities, including:

1. the ERCOT Divestiture Facilities;

2. all other real property, including fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

3. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;

4. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;

5. all contracts, contractual rights, or other agreements, commitments, and understandings relating to employment of Relevant Personnel who elect employment with an Acquirer pursuant to Paragraph IV.J within 180 calendar days of the Divestiture Date;

6. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations, including those issued or granted by any governmental organization, and all pending applications or renewals;

7. all equipment associated with connecting to ERCOT (including automatic generation control equipment);

8. all remote start capability or equipment;

9. all other interests, assets, or improvements;

10. all records and data, including (a) customer lists, accounts, sales, and credit records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (d) records and research data relating to historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

11. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

12. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (*e.g.,* for the handling of materials and substances), quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet websites and internet domain names.

Provided, however, that the ERCOT Divestiture Assets do not include Excluded Assets.

I. The ''ERCOT Divestiture Facilities'' means:

1. Jack A. Fusco Energy Center, a natural gas combined cycle plant, located at 3440 Lockwood Rd, Richmond, TX 77469, and its contents; and

2. Calpine's interest in the Gregory Power Plant, a natural gas combined cycle plant, located at 4633A TX–361, Gregory, TX 78359.

J. ''Excluded Assets'' means master parts and services agreements, master consulting or professional services agreements, master subscription and software licenses and any other assets, rights, or properties of Defendants that Defendants use on a corporate-wide basis, ERCOT-wide basis, or PJM-wide basis. Any asset, right, or property necessary for the Acquirer to operate a Divestiture Asset that is transferable within the Defendants' control and not otherwise reasonably available to the Acquirer is not an Excluded Asset. The United States, in its sole discretion, after consultation with Texas, will resolve any disagreement relating to which assets, rights, or properties are Excluded Assets.

K. ''Good Utility Practice'' means any of the applicable practices, methods and acts (a) required by Federal Energy Regulatory Commission, North American Electric Reliability Council, Mid-Atlantic Area Council, PJM, ERCOT, or the successor of any of them, whether or not the party whose conduct is at issue is a member thereof, (b) required by applicable law or regulation, or (c) any of the practices, methods and acts which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practice, reliability, safety and expedition. ''Good Utility Practice'' is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.

L. ''Including'' means including, but not limited to.

M. ''Offer'' or ''Offers'' means either (1) an offer to sell energy submitted into the PJM Market pursuant to the version of PJM ''Amended and Restated Operating Agreement of PJM Interconnection, LLC,'' available at *www.pjm.com* in effect at the time the offer is made, or (2) an offer to sell energy submitted into the ERCOT Market pursuant to the Real-Time and Day-Ahead Market rules, as defined in the ERCOT Nodal Protocols, available at *https://www.ercot.com/mktrules/nprotocols/current,* in effect at the time the offer is made.

N. ''PJM'' means PJM Interconnection, LLC, 2750 Monroe Blvd., Audubon, Pennsylvania 19403.

O. ''PJM Divestiture Assets'' means all of Defendants' rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the generation, dispatch, and offer of electricity from the PJM Divestiture Facilities, including:

1. the PJM Divestiture Facilities;

2. all other real property, including fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

3. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;

4. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;

5. all contracts, contractual rights, or other agreements, commitments, and understandings relating to employment of Relevant Personnel who elect employment with an Acquirer pursuant to Paragraph IV.J within 180 calendar days of the Divestiture Date;

6. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations, including those issued or granted by any governmental organization, and all pending applications or renewals;

7. all equipment associated with connecting to PJM (including automatic generation control equipment);

8. all remote start capability or equipment;

9. all other interests, assets, or improvements;

10. all records and data, including (a) customer lists, accounts, sales, and credit records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (d) records and research

data relating to historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

11. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

12. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (*e.g.,* for the handling of materials and substances), quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet websites and internet domain names.

Provided, however, that the PJM Divestiture Assets do not include any Excluded Assets.

P. ''PJM Divestiture Facilities'' means the following facilities and their contents:

1. Bethlehem Energy Center, a natural gas combined cycle plant, located at 2254 Applebutter Road, Bethlehem, PA 18015;

2. York 1 Energy Center, a dual-fuel combined cycle natural gas plant, located at 1055 Pikes Peak Road, Delta, PA 17314;

3. York 2 Energy Center, a dual-fuel combined cycle natural gas plant, located at 1597 Atom Road, Delta, PA 17314;

4. Hay Road Energy Center, a dual-fuel combined cycle natural gas plant, located at 198 Hay Road, Wilmington, DE 19809; and

5. Edge Moor Energy Center, a simple cycle natural gas plant, located at 200 Hay Road, Wilmington, DE 19809.

Q. ''Regulatory Approvals'' means (1) any approvals or clearances from the Federal Energy Regulatory Commission or any local, state, or other federal regulatory body that are required for the Transaction to proceed; and (2) any approvals or clearances from the Federal Energy Regulatory Commission or any local, state, or other federal regulatory body that are required for an Acquirer's acquisition of any Divestiture Asset to proceed.

R. ''Relevant Personnel'' means all full-time, part-time, or contract employees of Defendants, wherever located, who as of the date of filing this document with the Court are or have been stationed at or assigned to a specific Divestiture Asset and are involved in the operation of a Divestiture Asset, for the period between the date of the filing of this document and the Divestiture Date. The United States, in its sole discretion, will resolve any disagreement relating to which employees are Relevant Personnel.

S. ''Transaction'' means Constellation's acquisition of Calpine that is the subject of the ''Agreement and Plan of Merger'' between Constellation and Calpine dated January 10, 2025.

III. Applicability

A. This Final Judgment applies to Constellation, Calpine, and CPN, as defined above, and all other persons in active concert or participation with any Defendant who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirers.

IV. Divestitures

A. Defendants are ordered and directed to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States, in its sole discretion, after consultation with Texas. Defendants must enter into a definitive contract or contracts for sale of the Divestiture Assets within 240 calendar days after consummation of the Transaction. The United States, in its sole discretion, may grant up to two thirty (30) day extensions of this time period, not to exceed sixty (60) calendar days in total, and will notify the Court in such circumstances. Defendants must seek Regulatory Approvals within five calendar days after the United States provides written notice pursuant to Paragraph VI.C. that it does not object to the proposed Acquirer or Acquirers. Defendants must divest the relevant Divestiture Assets no later than thirty (30) calendar days after receiving, for all of any Acquirer's Divestiture Assets, the last necessary Regulatory Approvals required for that Acquirer's Divestiture Assets. The United States, in its sole discretion, may grant up to one fifteen (15) day extension of this time period, and will notify the Court in such circumstances. For the avoidance of doubt, the deadlines set forth in this Paragraph apply independently to each set of Divestiture Assets (ERCOT Divestiture Assets and PJM Divestiture Assets), such that the timing of receipt of Regulatory Approvals required for divestiture of one set of Divestiture Assets does not provide a basis to delay the divestiture of the other set of Divestiture Assets. For the avoidance of doubt, the divestiture of assets to a particular Acquirer need only be completed once all relevant Regulatory Approvals have been received for all assets to be divested to that Acquirer.

B. For all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Divestiture Assets, Defendants must assign or otherwise transfer all contracts, agreements, and customer relationships to Acquirer or Acquirers within the deadlines for divestiture set forth in Paragraph IV.A; *provided, however,* that for any contract or agreement that requires the consent of another party to assign or otherwise transfer, Defendants must use best efforts to accomplish the assignment or transfer but it may not be a violation of this Final Judgment to fail to obtain the required consents. Defendants must not interfere with any negotiations between an Acquirer and a contracting party.

C. Defendants must use best efforts to divest the Divestiture Assets as expeditiously as possible. Defendants must take no action that would jeopardize the completion of the divestitures ordered by the Court, including any action to impede the permitting, operation, or divestiture of the Divestiture Assets.

D. Unless the United States otherwise consents in writing, the divestitures pursuant to this Final Judgment must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with Texas, that the Divestiture Assets can and will be used by Acquirer or Acquirers as part of a viable, ongoing business of electric generation services and that divestiture to Acquirer or Acquirers will remedy the competitive harm alleged in the Complaint.

E. The divestitures must be made to one or more Acquirers that, in the United States' sole judgment, after consultation with Texas, have the intent and capability, including the necessary managerial, operational, technical, and financial capability, to compete

effectively in the business of the provision of electric generation services.

F. The divestitures must be accomplished in a manner that satisfies the United States, in its sole discretion, after consultation with Texas, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise an Acquirer's costs, to lower an Acquirer's efficiency, or otherwise interfere in the ability of an Acquirer to compete effectively in the provision of electric generation services.

G. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that it is demonstrated to the sole satisfaction of the United States, after consultation with Texas, that the criteria required by Paragraphs IV.D., IV.E., and IV.F. will still be met.

H. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets, except that, for Calpine's interest in the Gregory Power Plant, such notice of availability will be subject to any third-party rights under the existing partnership agreements relating to the Gregory Power Plant. Defendants must inform any person making an inquiry relating to a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due diligence process; *provided, however,* that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make all information and documents available to Plaintiffs at the same time that the information and documents are made available to any other person.

I. Defendants must provide prospective Acquirers with (1) access to make inspections of the Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information relating to the Divestiture Assets; and (3) access to all financial, operational, or other documents and information relating to the Divestiture Assets that would customarily be provided as part of a due diligence process. Defendants also must disclose all encumbrances on any part of the Divestiture Assets, including on intangible property. *Provided, however,* that a prospective Acquirer interested in purchasing only one or some of the Divestiture Assets must be provided with (1)–(3) for only the relevant Divestiture Assets of interest.

J. Defendants must cooperate with and assist any Acquirer in identifying and, at the option of Acquirer, hiring all Relevant Personnel, including:

1. Within 10 business days following receipt of a request by an Acquirer or a Plaintiff, Defendants must identify all Relevant Personnel to the requesting Acquirer and the Plaintiffs, including by providing organization charts covering all Relevant Personnel.

2. Within 10 business days following receipt of a request by an Acquirer or a Plaintiff, Defendants must provide to the requesting Acquirer and Plaintiffs additional information relating to Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. Defendants must also provide to a requesting Acquirer and Plaintiffs information relating to current and accrued compensation and benefits of Relevant Personnel, including most recent bonuses paid, aggregate annual compensation, current target or guaranteed bonus, if any, any retention agreement or incentives, and any other payments due, compensation or benefits accrued, or promises made to the Relevant Personnel. If Defendants are barred by any applicable law from providing any of this information, Defendants must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of an Acquirer, Defendants must promptly make Relevant Personnel available for private interviews with the requesting Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by an Acquirer to employ any Relevant Personnel. Interference includes offering to increase the compensation or improve the benefits of Relevant Personnel at any time after the date of the filing of this document, unless (a) the offer is part of an annual compensation increase or improvement in benefits pursuant to the Defendants' compensation and benefit programs existing as of December 1, 2025, (b) the offer is part of a tenure-based, automatic increase in compensation or improvement in benefits, (c) the offer is otherwise required pursuant to the terms of collective bargaining agreements relating to the Divested Assets, (d) the offer is consistent with the terms of the Asset Preservation and Hold Separate Stipulation and Order, or (e) the offer is approved by the United States in its sole discretion. Defendants' obligations under this Paragraph IV.J.4. will expire 150 calendar days after the Divestiture Date for the relevant Divestiture Assets.

5. For Relevant Personnel who elect employment with an Acquirer within 150 calendar days of the Divestiture Date for the relevant Divestiture Assets, Defendants must waive all non-compete and non-disclosure agreements; vest and pay to the Relevant Personnel (or to Acquirer for payment to the employee) on a prorated basis any bonuses, incentives, other salary, benefits, or other compensation fully or partially accrued at the time of the transfer of the employee to Acquirer; vest any unvested pension and other equity rights; and provide all other benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with Defendants, including any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Relevant Personnel of Defendants' proprietary non-public information that is unrelated to the Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

K. Defendants must warrant to any Acquirer that (1) the Divestiture Assets to be divested to that Acquirer will be operational and without material defect on the date of their transfer to the Acquirer; (2) the Divestiture Assets to be divested to that Acquirer will be consistent with Good Utility Practice, subject to legal or regulatory restrictions on any of the Divestiture Assets in existence on the date of sale; (3) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Divestiture Assets to be divested to that Acquirer; and (4) Defendants have disclosed all material encumbrances on any part of the Divestiture Assets to be divested to that Acquirer, including on intangible property. Following the sale of any Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits relating to the operation of those Divestiture Assets.

L. Defendants must use best efforts to assist the Acquirer or Acquirers to obtain all necessary licenses,

registrations, and permits to operate the relevant Divestiture Assets. Until an Acquirer obtains the necessary licenses, registrations, and permits, Defendants must provide that Acquirer with the benefit of Defendants' licenses, registrations, and permits to the full extent permissible by law.

M. If any term of an agreement between Defendants and an Acquirer, including an agreement to effectuate any of the divestitures required by this Final Judgment, varies from a term of this Final Judgment, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested all of the Divestiture Assets within the period specified in Paragraph IV.A., Defendants must immediately notify Plaintiffs of that fact in writing. Upon application of the United States, which Defendants may not oppose, the Court will appoint a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of any of the Divestiture Assets that have not been sold during the time periods specified in Paragraph IV.A.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell those Divestiture Assets that the divestiture trustee has been appointed to sell. The divestiture trustee will have the power and authority to accomplish the divestitures to an Acquirer or Acquirers acceptable to the United States, in its sole discretion, after consultation with Texas, at a price and on terms obtainable through reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. Defendants may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by Defendants must be conveyed in writing to the United States and the divestiture trustee within 10 calendar days after the divestiture trustee has provided the notice of proposed divestiture required by Section VI.

D. The divestiture trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, approved by the United States in its sole discretion.

E. The divestiture trustee may hire at the cost and expense of Defendants any agents or consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished. If the divestiture trustee and Defendants are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the divestiture trustee by the Court, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the Divestiture Assets by the divestiture trustee and all costs and expenses incurred. Within 30 calendar days of the Divestiture Date, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to Defendants, and the trust will then be terminated.

H. Defendants must use best efforts to assist the divestiture trustee to accomplish the required divestitures, including best efforts to obtain all necessary Regulatory Approvals. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. Defendants also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. Defendants must not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestitures.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by providing monthly reports to the Plaintiffs setting forth the divestiture trustee's efforts to accomplish the divestitures ordered by this Final Judgment. The reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and must describe in detail each contact.

J. If the divestiture trustee has not accomplished the divestitures ordered by this Final Judgment within 180 calendar days of appointment, the divestiture trustee must promptly provide Plaintiffs with a report setting forth: (1) the divestiture trustee's efforts to accomplish the required divestitures; (2) the reasons, in the divestiture trustee's judgment, why the required divestitures have not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestitures. Following receipt of that report, the United States may make additional recommendations to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

VI. Notice of Proposed Divestiture

A. Within two business days following execution of a definitive agreement to divest the Divestiture Assets, Defendants or the divestiture trustee, whichever is then responsible for effecting the divestitures, must

notify Plaintiffs of the proposed divestiture. If the divestiture trustee is responsible for completing the divestiture, the divestiture trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. After receipt of the notice required by Paragraph VI.A., the United States, after consultation with Texas, may make one or more requests to Defendants or the divestiture trustee for additional information concerning the proposed divestiture, the proposed Acquirers, and other prospective Acquirers. Defendants and the divestiture trustee must furnish any additional information requested within 15 calendar days of the receipt of each request unless the United States provides written agreement to a different period.

C. Within 45 calendar days after receipt of the notice required by Paragraph VI.A or within 20 calendar days after the United States has been provided the additional information requested pursuant to Paragraph VI.B, whichever is later, the United States will provide written notice to Defendants and any divestiture trustee that states whether the United States, in its sole discretion, after consultation with Texas, objects to the proposed Acquirers or any other aspect of the proposed divestitures. Without written notice that the United States does not object, a divestiture may not be consummated. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V.C. of this Final Judgment. Upon objection by Defendants pursuant to Paragraph V.C., a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

VII. Financing

Defendants may not finance all or any part of any Acquirer's purchase of all or part of the Divestiture Assets.

VIII. Asset Preservation and Hold Separate Obligations

Defendants must take all steps necessary to comply with the Asset Preservation and Hold Separate Stipulation and Order entered by the Court.

IX. Affidavits

A. Within 20 calendar days of entry of the Hold Separate Stipulation and Order in this matter, and every 30 calendar days thereafter until all divestitures required by this Final Judgment have been completed, each Defendant must deliver to Plaintiffs an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel, describing in reasonable detail the fact and manner of that Defendant's compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. Each affidavit required by Paragraph IX.A. must include: (1) the name, address, and telephone number of each person who, during the preceding 30 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the Divestiture Assets and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants on information provided to prospective Acquirers. Objection by the United States to information provided by Defendants to prospective Acquirers must be made within 14 calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. Defendants must keep all records of any efforts made to divest the Divestiture Assets until one year after the Divestiture Date.

D. Within 20 calendar days of the filing of the Complaint in this matter, each Defendant must deliver to Plaintiffs an affidavit signed by each Defendant's Chief Financial Officer and General Counsel that describes in reasonable detail all actions that Defendant has taken and all steps that Defendant has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If a Defendant makes any changes to actions and steps described in affidavits provided pursuant to Paragraph IX.A, the Defendant must, within 15 calendar days after any change is implemented, deliver to Plaintiffs an affidavit describing those changes.

F. Defendants must keep all records of any efforts made to comply with Section IX until one year after the Divestiture Date.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation and Hold Separate Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents, wherever located, in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, wherever located, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

XI. No Reacquisition

Defendants may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment without prior written authorization of the United States.

XII. Public Disclosure

A. No information or documents obtained pursuant to any provision in this Final Judgment may be divulged by Plaintiffs to any person other than an authorized representative of the executive branch of the United States or an authorized representative of Texas, except in the course of legal proceedings

to which the United States or Texas are a party, including grand-jury proceedings, for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

B. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. 552, or similar state disclosure laws, for disclosure of information obtained pursuant to any provision of this Final Judgment, the United States will act in accordance with that statute and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information at 28 CFR 16.7, and Texas will act in accordance with its applicable disclosure laws. Defendants submitting information to the Antitrust Division or Texas should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7 or the relevant state statute. Designations of confidentiality under 28 CFR part 16 expire 10 years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

C. If at the time that Defendants furnish information or documents to the United States or Texas pursuant to any provision of this Final Judgment, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States and Texas must give Defendants 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XIII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Enforcement of Final Judgment

A. The United States and Texas retain and reserve all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. In a civil contempt action, a motion to show cause, or a similar action brought by the United States or Texas relating to an alleged violation of this Final Judgment, the United States or Texas may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the Plaintiffs allege was harmed by the challenged conduct. Defendants may be held in contempt of, and the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States or Texas to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, Defendant must reimburse the United States and Texas for the fees and expenses of their attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States, may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XIV.

XV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court, Defendants, and Texas that the divestitures have been completed and continuation of this Final Judgment is no longer necessary or in the public interest.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

_____

United States District Judge

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, and STATE OF TEXAS, Plaintiffs, v. *CONSTELLATION ENERGY CORPORATION, CALPINE CORPORATION, and CPN CS HOLDCO CORP.,* Defendants.

Case No. 1:25–cv–04235–ABJ

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On January 10, 2025, Constellation Energy Corporation (''Constellation'') announced its agreement to acquire Calpine Corporation (''Calpine'') for a net purchase price of $26.6 billion (the ''Acquisition''), a transaction that would create the largest wholesale electricity generating company in the United States. The United States and the State of Texas (collectively, the ''Plaintiffs''), filed a civil antitrust Complaint on December 5, 2025, seeking to enjoin the Acquisition.

The Complaint alleges that the likely effect of this Acquisition would be to substantially lessen competition for wholesale electricity in two relevant geographic markets in violation of

Section 7 of the Clayton Act, 15 U.S.C. 18. One market comprises the area operated by the Electric Reliability Council of Texas (''ERCOT''), an independent system operator that serves as the electricity grid and market operator for most of Texas. ERCOT's electricity is delivered to more than 27 million Texans, supplying approximately 90% of the state's electricity demand. In 2024, ERCOT oversaw the sale of more than $14.4 billion in wholesale electricity. The second market comprises the Coastal Mid-Atlantic area of the PJM Interconnection, LLC (''PJM''). PJM is a regional transmission organization that manages the largest electricity transmission grid in the United States. It serves all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia, supplying electricity to more than 67 million Americans. The PJM Coastal Mid-Atlantic geographic area is a distinct area within PJM that includes southeastern Pennsylvania, New Jersey, Delaware, and the eastern shores of Maryland and Virginia. In 2024, approximately $4 billion of wholesale electricity was generated and supplied to more than 10 million people and businesses in PJM's Coastal Mid-Atlantic area.

Concurrent with filing the Complaint, the United States filed a proposed Final Judgment [1] and an Asset Preservation and Hold Separate Stipulation and Order (''Stipulation and Order''),[2] which are designed to remedy the loss of competition alleged in the Complaint.

Under the proposed Final Judgment, which is explained more fully below, Constellation, Calpine, and CPN CS Holdco Corp. (collectively the ''Defendants'') are required to divest the Calpine electric generating facilities listed below.

In ERCOT:

- Jack A. Fusco Energy Center, located southwest of the city of Houston, Texas (''Jack A. Fusco''); and
- Calpine's minority ownership interest in the Gregory Energy Center, located northeast of the city of Corpus Christi, Texas (''Gregory'').

In PJM:

- Bethlehem Energy Center, located in Bethlehem, Pennsylvania (''Bethlehem'');
- Edge Moor Energy Center, located in Wilmington, Delaware (''Edge Moor'');
- Hay Road Energy Center, located in Wilmington, Delaware (''Hay Road''); and
- York Energy Center (York 1 and York 2), located southeast of the city of York, Pennsylvania (''York'').

The Stipulation and Order requires the Defendants to take certain steps to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the assets that must be divested pending entry of the proposed Final Judgment by this Court. Plant management and operations of the assets to be divested must be held entirely separate, distinct, and apart from Defendants' other operations.

For the four PJM electric generating facilities the Defendants must divest, the Stipulation and Order requires the Defendants to submit offers into the PJM day-ahead auction market, described in detail at Section II.B.2 below, at a price not greater than its costs. For each of these facilities, the Defendants must submit offers to this market at cost or lower, unless unable to do so due to an outage, as defined in the Stipulation and Order. In the event of an outage, the Defendants must submit offers for all output that is unaffected by the outage. Similarly, for Jack A. Fusco, the Defendants must submit offers into ERCOT's day-ahead auction, described in detail at Section II.B.2 below, at a price not greater than its costs in accordance with the physical characteristics of the applicable units unless unable to do so due to an outage or because ERCOT has issued an Advanced Action Notice or Weather Watch as specified in the Stipulation and Order. In the event of an outage, ERCOT Advanced Action Notice, or ERCOT Weather Watch, the Defendants must submit offers for all output that is unaffected by the outage, ERCOT Advanced Action Notice, or ERCOT Weather Watch. The Stipulation and Order prohibits the Defendants from participating in the formulation, determination, or direction of the strategy for Gregory's offers into the ERCOT auction markets.

The purpose of these terms in the Stipulation and Order is to ensure that competition is maintained during the pendency of the required divestiture of the six Calpine electric generating facilities listed above.

The Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violations

A. The Defendants and the Proposed Acquisition

Constellation is a publicly held Pennsylvania corporation headquartered in Baltimore, Maryland. The company is one of the largest competitive electric generation companies in the nation, as measured by owned and contracted megawatts, generating $23.6 billion in revenue in 2024. Constellation controls approximately 5,000 megawatts (MW) of electric generation capacity in ERCOT and over 20,000 MW in PJM. For context, one MW serves between 800 to 1,000 homes.

Calpine is a privately held Delaware corporation headquartered in Houston, Texas. Calpine is the largest generator of electricity from natural gas and geothermal resources in the United States. Calpine's power plants collectively have the capacity to generate approximately 9,000 MW of electricity in ERCOT, making it the third-largest electricity generation supplier in the state. In PJM, Calpine owns or exercises control over 14 total plants. These plants collectively provide more than 5,000 MW of capacity.

Defendant CPN CS Holdco Corp. (''Holdco'') is a Delaware corporation headquartered in Houston, Texas. It is a direct wholly owned subsidiary of Calpine that was created to serve as a vehicle for Calpine's sale to Constellation.

Pursuant to an Agreement and Plan of Merger dated January 10, 2025, Defendant Constellation proposes to acquire Defendant Calpine for a net purchase price of $26.6 billion.

B. The Acquisition's Competitive Effects

The Complaint alleges that the Acquisition would result in likely anticompetitive effects in the markets for wholesale electricity in ERCOT and PJM's Coastal Mid-Atlantic area.

1. Electricity Background

Generating companies such as Constellation and Calpine own power plants that produce electricity. Electric utilities and retail providers purchase that electricity from the generating companies and resell it to their end customers, such as households and businesses.

Power plants, which often contain several individual generating units, transform fuel or renewable resources

[1] Proposed Final Judgment, *United States et al.* v. *Constellation Energy Corporation, et al.,* No. 25–cv–4235, ECF 2–2 (D.D.C. Dec. 5, 2025).

[2] Asset Preservation And Hold Separate Stipulation And Order, *United States et al.* v. *Constellation Energy Corporation,* No. 25–cv–4235, ECF 2–1 (D.D.C. Dec. 5, 2025).

into electricity. Steam turbines, combustion turbines, and combined-cycle turbines powered by natural gas, oil, or coal, as well as nuclear reactors, wind turbines, and solar panels are important electric generating technologies.

The cost to operate generating units varies considerably, based primarily on the cost of fuel and the efficiency of converting that fuel into electricity:

- *Renewable* units, such as solar farms and wind turbines, have very low operating costs, but can operate only when the sun is shining or the wind is blowing.
- *Baseload* units, such as nuclear plants and some coal-fired steam turbine units, also have relatively low operating costs and provide consistent generation throughout the day and across each season of the year. Nuclear units are designed to operate at full capacity unless they are offline for refueling outages. For many coal units, it is impractical to turn them on and off on a short-term basis because of long startup times and mechanical stress from cycling the units on and off.
- *Mid-merit* units, including combined-cycle natural gas units and some coal steam turbines, can typically turn on or have their output adjusted more quickly than baseload units.
- *Peaking* units, such as oil- and gas-fired combustion or gas-fired steam turbine units, tend to run only during periods of high (or ''peak'') electricity demand. They typically have the highest operating costs of any generation units but are also the easiest to turn on and shut off. This makes them critical for balancing supply and demand to keep the lights on without overloading the system.

Electricity generated at a plant is transported via an extensive set of interconnected high voltage lines and equipment, known as the transmission grid, to lower voltage distribution lines that relay electricity to businesses and consumers in their homes. Operators, such as ERCOT and PJM, monitor the transmission grid closely to prevent too little or too much electricity from flowing over the grid, either of which can risk widespread blackouts through damage to the lines, equipment, or generating units connected to the grid. To avoid damage and service interruptions, grid operators manage the grid to prevent additional electricity from flowing over a transmission line as it approaches its operating limit (a ''transmission constraint'').

2. ERCOT and PJM Use Auctions to Set the Price of Electricity

ERCOT and PJM each oversees two auctions that set the wholesale electricity price in their respective areas. These auctions are the primary means by which electricity generators compete to supply electricity in ERCOT and PJM and drive the price consumers ultimately pay for it.

The first auction is called the ''day-ahead auction.'' Each generator offering electricity in the day-ahead market submits an individual offer for each of its participating generating units indicating the amount of electricity the unit is willing to sell each hour of the following day and the price at which it is willing to sell. Similarly, each buyer typically submits a bid identifying the amount of electricity that the buyer expects to need for each hour of the following day. ERCOT and PJM will take each of the bids and offers, add them up, and determine how much electricity will be demanded each hour.

ERCOT and PJM will then ''dispatch'' generating units to meet each hour's demand. Subject to the physical limitations of their transmission grids, ERCOT and PJM will call on individual units to operate in ''merit'' order, meaning that each will begin by accepting the least-expensive offer and thereafter, accept offers from units at progressively higher prices until the needs for each hour of the next day are met. The price offered by the last unit to be accepted to meet demand for an individual hour sets the clearing price for that hour. All other units whose offers also have been accepted for that individual hour receive the price of that highest cost unit, regardless of their individual offer price (or their units' costs). Thus, a generator may be paid a higher clearing price than its own offer price if electricity from additional, higher-priced generating units is needed to meet demand.

The second auction is a ''real-time'' auction that operates functionally in the same way. However, it clears the same day the electricity is required and reconciles the results of the day-ahead auctions with actual supply and demand. In the real-time auctions, ERCOT and PJM set prices for each five-minute interval of the day rather than each hour as in the day-ahead auction.

3. Wholesale Electricity Markets

As alleged in the complaint, wholesale electricity is a relevant product for evaluating the competitive impact of the Acquisition. Each hourly increment in which wholesale electricity is sold in ERCOT's or PJM's ''day-ahead'' auction and each five-minute increment in the ERCOT or PJM ''real-time'' auctions is a separate relevant product market. This is because electricity in one time period is not a substitute for electricity in another time period. While supply and demand for wholesale electricity varies in different periods, both auctions share a common feature: in the event of a small but significant non-transitory increase in the price of wholesale electricity at relevant times, not enough purchasers are likely to switch away from wholesale electricity to make that increase unprofitable. Additionally, in the event of a small but significant non-transitory increase in the price of wholesale electricity within an hourly or five-minute time period, not enough purchasers would switch to consuming wholesale electricity in a different time period to make that price increase unprofitable. This means that each of these specific auction time periods is a relevant product market and a ''line of commerce'' within the meaning of Section 7 of the Clayton Act.

Although each of these specific time periods is a relevant product market, they can be aggregated into a ''cluster market'' for analytical convenience for considering whether the Acquisition violates the antitrust laws. For example, all 24 hours in a single day in either PJM or ERCOT's ''day-ahead'' auction could be aggregated into one market, as could all five-minute intervals in a single hour in PJM or ERCOT's ''real-time'' auction.

4. Geographic Markets

At times, transmission constraints within power grids limit the free flow of electricity across a geographic region. Energy produced on one side of a constraint cannot easily flow to the other side of the constraint once the transfer limit has been reached. Transmission constraints can affect electricity flow within ERCOT and PJM to varying degrees with PJM, in particular, impacted. When constraints arise, PJM cannot dispatch generating units in merit order if doing so would overload a transmission constraint, a concept called ''congestion.'' To avoid congestion while still satisfying demand, PJM must call on higher-priced units that, given their grid location, do not overload the transmission constraint. When this happens, prices are lower on one side of the constraint and higher on the other side.

a. PJM's Coastal Mid-Atlantic Market

The Complaint alleges that the PJM Coastal Mid-Atlantic geographic area is a relevant geographic market for evaluating the potential competitive

impact of the Acquisition. PJM Coastal Mid-Atlantic is a distinct area within PJM that includes parts of southeastern Pennsylvania, New Jersey, Delaware, and the eastern shores of Maryland and Virginia.

PJM Coastal Mid-Atlantic is affected by Nottingham, a major transmission constraint located near the Maryland-Pennsylvania border that divides PJM Coastal Mid-Atlantic from the rest of the PJM region. Generators within PJM Coastal Mid-Atlantic frequently sell electricity into other areas to the west and south. However, when transmission lines are constrained, the amount of electricity that generators within PJM Coastal Mid-Atlantic can sell outside of the area is limited. As a result, electricity prices in PJM Coastal Mid-Atlantic often differ from other areas within the PJM region.

When Nottingham is constrained, purchasers of wholesale electricity for use in PJM Coastal Mid-Atlantic have limited capability to turn to generation outside of PJM Coastal Mid-Atlantic. At such times, the amount of electricity that purchasers could obtain from generators outside PJM Coastal Mid-Atlantic is insufficient to deter generators located in PJM Coastal Mid-Atlantic from imposing a small but significant non-transitory price increase. Thus, PJM Coastal Mid-Atlantic is a relevant geographic market and a ''section of the country'' within the meaning of Section 7 of the Clayton Act.

b. ERCOT Market

The Complaint also alleges that the entire ERCOT region is a relevant geographic market for evaluating the potential competitive impact of the Acquisition. The ERCOT grid experiences very little congestion. In the event of a small but significant non-transitory increase in the price of wholesale electricity within ERCOT, not enough purchasers in the ERCOT region are likely to switch to purchasing from regions outside ERCOT to make that increase unprofitable. At its annual peak, the electricity in demand in ERCOT exceeds 85,000 MW. ERCOT's connections to Mexico's grid and to the Southwest Power Pool grid, which collectively can for approximately 1,200 MW of electricity to flow into ERCOT. The volume of these power flows is insufficient to prevent generators from imposing a small but significant non-transitory price increase within ERCOT. Thus, the region covered by ERCOT is a relevant geographic market and a ''section of the country'' within the meaning of Section 7 of the Clayton Act.[3]

5. Anticompetitive Effects

As alleged in the Complaint, the Acquisition risks substantially lessening competition in the ERCOT and PJM Coastal Mid-Atlantic wholesale electricity markets. The combination of Constellation and Calpine's electricity generating units serving ERCOT and PJM Coastal Mid-Atlantic would eliminate competition between them and enhance Constellation's post-Acquisition ability and incentive to withhold electricity to raise wholesale electricity price anticompetitively in those markets.

Under certain circumstances, a wholesale electricity generator, such as Constellation or Calpine, may profitably withhold electricity, leading to increased wholesale electricity prices. An operator of a generating unit may withhold capacity in several ways, including by submitting high offers for some of its higher-cost units into the day-ahead or real-time auctions so that its units are not dispatched. If a unit is withheld from an auction, then a higher-priced unit may need to take the place of the withheld capacity because the units are dispatched in merit order, that is from the lowest-priced unit to the highest until demand matches supply. Thus, withholding a unit (or units) can lead to a higher market-clearing price because the withheld units force ERCOT or PJM to accept higher-priced offers from units that end up setting the market clearing price. All accepted units are paid the identical price regardless of the unit's offer price or its operating cost. Withholding can be profitable for generating companies that offer multiple units into an auction. For example, a generator might have four units accepted and a fifth higher-cost unit that, if accepted, would be one of the last units needed to meet demand and thus affect the market clearing price. If that fifth unit were withheld, then ERCOT or PJM would be required to accept an even higher-priced unit, thereby increasing the market-clearing price that would benefit the generator's four other units which had been accepted. In this example, withholding the fifth unit would be profitable for the generator if it increases the market-clearing price such that increased profits from the four dispatched units attributable to that price increase exceed the lost profits that would have been earned by the fifth unit if it were offered into the market at the lower market-clearing price. This type of electricity withholding is well established in a large body of theoretical and empirical literature in economics, public policy, and electricity markets analysis.

The risk that an electricity generator such as Constellation or Calpine may profitably withhold depends in part on the generator's asset mix. A profitable withholding strategy typically requires a combination of units that confer the ability to withhold and relatively low-cost units that provide an incentive to withhold. Units that provide an incentive to withhold typically are relatively low cost and operate consistently throughout the day and across all seasons of the year. As the Complaint describes, baseload units, such as nuclear plants and some coal-fired steam turbine units, are low cost and consistently operating. Because these types of units run frequently and at operating costs lower than the market-clearing price, they benefit from the higher prices and provide a significant incentive for their owner to withhold another, higher-cost generating asset.

These higher-cost units provide the ability to raise the market-clearing price. As the Complaint describes, peaking units, such as oil- and gas-fired combustion turbine or internal combustion units, are among the highest-cost electricity generators. Peaking units are also relatively easy to turn on and shut off and typically operate during high-demand periods, often setting the market-clearing price. Mid-merit units, including combined-cycle natural gas units and some coal steam turbines, often possess similar characteristics. As the Complaint describes, such units can typically be turned on and off or adjust their output more rapidly than baseload units. Although they are typically lower cost than peaking units, mid-merit units set the market-clearing price during periods of lower demand. This means that an owner of a peaking or mid-merit unit can raise the market-clearing price by withholding the unit. Withholding a unit is profitable to the extent that the company also owns enough low-cost units that confer incentive to at least recoup the profit foregone by withholding the unit that confers the withholding ability.

The Acquisition would likely enhance Constellation's ability and incentive to withhold electricity to raise prices in ERCOT and PJM Coastal Mid-Atlantic by giving Constellation a broader portfolio of units and a richer mix of assets. This combination of assets would enable Constellation to profitably

[3] Section 7 of the Clayton Act covers ERCOT, a geographic region located entirely within the state of Texas.

withhold one or more units in the ERCOT and PJM day-ahead and real-time auctions to a greater degree than either it or Calpine would have had individually, leading to higher market-clearing prices.

As the Complaint alleges, through the Acquisition, Constellation is increasing its share of mid-merit and peaking units serving PJM Coastal Mid-Atlantic. The acquisition of mid-merit and peaking units would give Constellation an enhanced ability to profitably withhold in that market. The additional revenues received by Constellation's lower-cost generation units, including its nuclear plants, because of anticompetitively higher prices in PJM Coastal Mid-Atlantic would more than compensate for the lost profits from the generating unit(s) withheld.

Similarly, in ERCOT, the Complaint alleges that after the Acquisition, Constellation would control more than 12% of ERCOT's generating capacity, and over 20% of the natural gas generation units in ERCOT that often set the clearing price. As the Complaint alleges, natural gas units set the market-clearing price in ERCOT the majority of the time, making them particularly valuable in Texas, where the electricity grid relies on gas to complement and support its increasing use of intermittent renewable resources such as sun and wind to generate electricity. Thus, the Acquisition would confer on Constellation an enhanced ability to profitably withhold. The additional revenues received by Constellation's lower-cost generating units because of anticompetitively higher market-wide prices would frequently more than compensate for the lost profits from the generating unit(s) withheld.

6. Possible Entry and Expansion Unlikely To Offset Anticompetitive Effects

Entry of additional generation into either the PJM Coastal Mid-Atlantic market or ERCOT market is unlikely to be timely or sufficient in deterring or counteracting the competitive harm that may result from the Acquisition. Expansion by existing generators in those markets is similarly unlikely to occur in a sufficient and timely fashion to prevent such harm. Wholesale electricity markets feature high barriers to entry and expansion. Among those barriers, building new generation capacity in either the ERCOT and PJM Coastal Mid-Atlantic regions requires significant capital investment in generating equipment, infrastructure, and technology, and generally takes many years, considering the necessary environmental, safety, zoning, and regulatory approvals. Furthermore, the anticipated increase in electricity demand (*e.g.,* to power AI data centers) has led to long queues for the delivery of new gas turbines. There are additional barriers affecting the PJM Coastal Mid-Atlantic market. For example, building new high-voltage transmission lines that would relieve the constraints that limit the flow of electricity out of PJM Coastal Mid-Atlantic would also generally take many years, and require significant capital investment and multiple environmental, safety, zoning, and regulatory approvals.

III. Explanation of the Proposed Final Judgment

The relief required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing one or more independent and economically viable competitors in the ERCOT and PJM Coastal Mid-Atlantic wholesale electricity markets.

A. Divestitures

Paragraph IV.A of the proposed Final Judgment requires Defendants, within 240 calendar days after consummation of the Acquisition, to enter into a definitive contract or contracts to divest two sets of assets to an acquirer or acquirers acceptable to the United States. Allowing Defendants a 240-day period will help ensure that the transition of generation assets to an acquirer or acquirors will not occur during peak summer months.

Defendants must divest the ''ERCOT Divestiture Assets'' as that term is defined in Paragraph II.H of the proposed Final Judgment. The ERCOT Divestiture Assets include Calpine's Jack A. Fusco plant and Calpine's ownership interest in the Gregory plant, including all of Defendants' rights, titles, and interests in and to all property and assets, tangible and intangible, relating to or used in connection with the plants' generation, dispatch, and offer of electricity from these plants.

Defendants must also divest the ''PJM Divestiture Assets'' as that term is defined in Paragraph II.O of the proposed Final Judgment. The PJM Divestiture Assets include Calpine's Bethlehem, York, Hay Road, and Edge Moor plants, including all of Defendants' rights, titles, and interests in and to all property and assets, tangible and intangible, relating to or used in connection with the plants' generation, dispatch, and offer of electricity in PJM.

Defendants are responsible for divesting to an acquirer or acquirers acceptable to the United States in its sole discretion. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be operated by an acquirer or acquirers as a viable, ongoing business that can compete effectively in the ERCOT and PJM Coastal Mid-Atlantic markets. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and must cooperate with any acquirer.

1. Divestiture Assets

Calpine's two ERCOT plants to be divested as part of the ERCOT Divestiture Assets are Jack A. Fusco and Gregory. Jack A. Fusco is a 557 MW combined-cycle natural gas facility located in Richmond, Texas. Gregory is a 365 MW combined-cycle natural gas facility located in Gregory, Texas. Calpine owns approximately 28.5% of Gregory.

Calpine's four PJM Coastal Mid-Atlantic plants to be divested as part of the PJM Divestiture Assets are Bethlehem, York, Hay Road, and Edge Moor. Bethlehem is a 1,134 MW natural gas-fired combined cycle plant located in Bethlehem, Pennsylvania. It began commercial operations in 2003. York comprises two generating units, known as York 1 and York 2. York 1 is a 569 MW natural gas-fired combined-cycle unit. It began operations in 2011. York 2 is an 828 MW natural gas-fired combined-cycle unit. It is newer than York 1, having begun operations in 2019, eight years later. York 1 and 2 are in Peach Bottom Township, Pennsylvania. Hay Road is a 1,136 MW dual-fuel combined cycle plant. It began commercial operations in 1989. Edge Moor is a 707 MW simple cycle natural gas-fired plant that began commercial operations in 1965. Both Hay Road and Edge Moor are in Wilmington, Delaware.

For each plant, the Defendants must divest the entirety of their rights, titles, and interests in and to all property and assets, tangible and intangible, relating to or used in connection with the generation, dispatch, and offer of electricity. This includes all real property, tangible personal property, intangible property, and intellectual property relating to each plant. This also includes all customer contracts and relationships, as well as all supply agreements. The proposed Final Judgment defines the entirety of the assets that the Defendants must divest as the ''Divestiture Assets.''

The divestiture requirements of the proposed Final Judgment will maintain competition for wholesale electricity in the ERCOT and PJM Coastal Mid-

Atlantic markets by allowing one or more competitors independent of the Defendants to acquire the Divestiture Assets. The proposed Final Judgment seeks to preserve competition by depriving Constellation of assets that are key to making it profitable for Constellation to withhold electricity generation to raise the market-clearing price in ERCOT and PJM's day-ahead and real-time auctions. In ERCOT, Defendants must divest the Jack A. Fusco plant and Calpine's interest in the Gregory plant. These plants are natural-gas plants, a critical fuel type in ERCOT that, as the Complaint alleges, set the market-clearing price the majority of the time. Constellation's divestiture of these plants will keep it from gaining an enhanced ability to raise the market-clearing prices in the ERCOT auctions. In the PJM Coastal Mid-Atlantic market, Defendants must divest the Bethlehem, York, Hay Road, and Edge Moor plants. These are mid-merit and peaking units, which often set the market-clearing price in the PJM Coastal Mid-Atlantic market. Divestiture of these four plants ensures that the Acquisition does not confer on Constellation an enhanced ability to withhold electricity to raise the market-clearing price and the incentive to make withholding profitable. Accordingly, the proposed Final Judgment protects competition in these markets.

2. Relevant Personnel

The proposed Final Judgment contains provisions intended to facilitate an acquirer's efforts to hire certain employees. Specifically, Paragraph IV.J of the proposed Final Judgment requires Defendants to provide an acquirer, the United States, and the State of Texas with organization charts and information relating to these employees and to make them available for interviews. It also provides that Defendants must not interfere with any negotiations by an acquirer to hire these employees. In addition, for employees who elect employment with an acquirer, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro rata, provide all compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that the employees would generally be provided had those employees continued employment with Defendants, including but not limited to any retention bonuses or payments.

3. Divestiture Trustee

If Defendants do not accomplish the divestitures within the period prescribed in Paragraph IV.A of the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants must pay all costs and expenses of the trustee. The divestiture trustee's commission must be structured to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee must provide monthly reports to the United States and State of Texas setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within 180 calendar days of the divestiture trustee's appointment, the United States may make recommendations to the Court, which will enter such orders as appropriate, to carry out the purpose of the Final Judgment, including by extending the term of the divestiture trustee's appointment by a period requested by the United States.

B. Other Provisions To Ensure Compliance

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XIV.A provides that the United States and the State of Texas retain and reserve all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States or the State of Texas regarding an alleged violation of the Final Judgment, the United States or the State of Texas may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XIV.B provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to remedy the loss of competition the United States and the State of Texas allege would otherwise result from the Acquisition. Defendants agree that they will abide by the proposed Final Judgment and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIV.C provides that, if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIV.C provides that, in any successful effort by the United States or the State of Texas to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States and the State of Texas for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XIV.D states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court, Defendants and the State of Texas that the divestitures have been completed and continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Plaintiffs

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or within 60 days of the first date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Patricia C. Corcoran, Acting Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 450 Fifth St. NW, Suite 8000, Washington, DC 20530, *ATR.Public-Comments-Tunney-Act-MB@usdoj.gov*.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have pursued litigation and sought preliminary and permanent injunctions against the Acquisition. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition in the markets for wholesale electricity in ERCOT and PJM's Coastal Mid-Atlantic area. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

Under the Clayton Act and APPA, proposed Final Judgments, or ''consent decrees,'' in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one, as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should also bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (citation and internal quotation marks omitted) (emphases in original); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional

intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (quoting *W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 12, 2025

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

JOSEPH CHANDRA MAZUMDAR
JEREMY EVANS (D.C. Bar #478097)
KATHRYN TRINKA (D.C. Bar #90010251)
Trial Attorneys

PAUL J. TORZILLI (D.C. Bar #986767)
Senior Litigation Counsel

United States Department of Justice
Antitrust Division
450 Fifth Street, NW
Washington, DC 20530
Telephone: (202) 353–1560
Email: *chan.mazumdar@usdoj.gov*

[FR Doc. 2025–23298 Filed 12–17–25; 8:45 am]

BILLING CODE 4410–11–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, December 18, 2025.

PLACE: via ZOOM.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The General Counsel of the Corporation has certified that in her opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) permit closure of the following portion(s) of this meeting:

- Executive (Closed) Session

Agenda

I. Call to Order
II. Action Item: Temporary Delegation of Authority to the President & CEO
III. Action Item: Approval of Government in Sunshine Act Notice Waiver
IV. Discussion Item: FY25 External Audit With CliftonLarsonAllen
V. Sunshine Act Approval of Executive (Closed) Session
VI. Executive Session: FY25 External Audit With CliftonLarsonAllen
VII. Executive Session: CEO Report
VIII. Executive Session: CFO Report
IX. Executive Session: General Counsel Report
X. Executive Session: CIO Report
XI. Executive Session: Chief Audit Executive Report
XII. Action Item: Approval of Meeting Minutes for June 26 Annual Board Meeting and September 11 Regular Board Meeting
XIII. Action Item: Audit Committee Appointments
XIV. Action Item: Capital Corporations—Master Investment Agreement
XV. Action Item: Internal Audit Report Acceptance
  a. Active Directory Management
  b. Cyber Attack Incident Response II
  c. Network Affiliations
XVI. Discussion Item: Change to FY25/26 Internal Audit Plan
XVII. Discussion Item: Lapse in Funding Policy—OMB Requested Edit
XVIII. Discussion Item: Management Program Background and Updates
  a. 2026 Board Calendar
  b. 2026 Board Agenda Planner
  c. CFO Report
  i. Financials (Through 9/30/25)
  ii. Single Invoice Approvals $100K and Over