**Statement of Brenda Boultwood, Chief Risk Officer and Senior Vice President
Constellation Energy**

On behalf of the end-user coalition

**Before the Committee on Financial Services Subcommittee on Capital
Markets and Sponsored Enterprises**

United States House of Representatives

Friday, October 14, 2011

Good Morning, Chairman Garrett, Ranking Member Waters, Members of the Subcommittee, it is a pleasure to appear before you this morning. My name is Brenda Boultwood and I serve as Chief Risk Officer and Senior Vice President for Constellation Energy. I am here today in my capacity as an officer with Constellation; but, I am also here representing the broader end-user coalition, which is comprised of a variety of entities from agricultural interests, to manufacturers, car companies, airlines, and energy companies. While it may seem odd to have such a diverse and broad coalition coalescing around the same set of legislative proposals, I want to assure the Committee that we appreciate your hard work in helping to address some of the unintended consequences of the Dodd-Frank Act, as well as some of the broadly interpreted proposed rules that we believe go well beyond Congressional intent.

Let me be clear from the outset, our coalition is not opposed to greater transparency in these markets. In fact, we are highly supportive of greater transparency. But, transparency is achieved through reporting, not by classifying end-users as swap dealers. Simply put, end-users do not create systemic risk and none in our coalition were behind the collapse of the economy in 2008. Therefore, we are here today to offer our thoughts to several legislative proposals that we believe will help resolve those unintended consequences.

Before I begin my testimony on the proposed legislation, I would like to give a brief background about myself and about Constellation and how and why we use derivatives to help manage our customer's risk.

I have been involved in risk management practices in a variety of capacities – academia, commercial entities, financial institutions, and consulting - for more than twenty-five years. I serve on the Boards of the Committee of Chief Risk Officers (CCRO) and the Global Association of Risk Professionals (GARP), as well as serving as a member of the CFTC's Technology Advisory Committee. As you may recall, the CCRO began as a result of the accounting scandals from the early part of the last decade and is comprised of CRO's across the entire energy spectrum.

Constellation Energy is a Fortune 200 company located in Baltimore, MD, and is the largest competitive supplier of electricity in the country. We serve more than 30,000 megawatts of electricity daily and own approximately 12,000 megawatts of generation that comes from a diversified fleet across the U.S. To put that in perspective, our load obligation is approximately the same amount of power consumed by all of New England on a daily basis. We serve load to approximately 36,000 commercial and industrial customers in 36 states and we provide natural gas and energy products and services for homes and businesses across the country. Finally, the company delivers electricity and natural gas through the Baltimore Gas and Electric Company (BGE), our regulated utility in Central Maryland.

One of the reasons we have been so successful in growing our competitive supply business is due in large part to our ability to win load serving auctions by being the low cost provider. We are able to be the low cost provider due to a variety of risk management tools we employ to the benefit of our customers. We utilize exchange trading, clearinghouses and over-the-counter (OTC) derivatives to help manage these risks.

For example, electricity – it must be produced and consumed simultaneously; cannot be stored; and has some very volatile fuel exposure – coal, natural gas, and uranium. Furthermore, electricity gets delivered to thousands of points along the grid at a moment's notice. Physical energy markets are volatile and unpredictable, but hedging with derivatives allows Constellation to manage these risks and provide its thousands of customers with electricity and natural gas at a low fixed price.

Now, I would like to specifically address some of the proposed pieces of legislation that will help to resolve some of the unintended consequences that are emanating from the Commodity Futures Trading Commission's (CFTC) proposed rules.

Let me briefly offer my thoughts on H.R. 2779, also referred to as the Stivers-Fudge bill. Constellation Energy, like many other companies, uses a business model through which we limit the number of affiliates within our corporation that enters into derivatives transactions with external and other swap dealer counterparties. Rather than having each corporate subsidiary transact individually with external counterparties, a single or limited number of corporate entities face dealers and other counterparties in the market. This helps our company centralize risk taking, accountability and performance management. These entities then allocate transactions to those affiliates seeking to mitigate the underlying risk. This allocation is done by way of "inter-affiliate swaps" – or swaps between commonly controlled entities. This structure allows us to more effectively manage our corporate risk on an enterprise basis and to secure better pricing on our derivatives transactions. The transactions are largely "bookkeeping" in nature and do not create systemic risk. Using affiliates to transact has always been a healthy part of the way many companies internally centralize risk and manage overall performance. For example, small farmers and ranchers, utilities, and car manufacturers, to name a few, perform their hedging transactions in this way.

As we understand it, however, regulators are considering whether to subject inter-affiliate swaps to the same set of requirements that would apply to swaps with external dealer counterparties – possibly including margin, clearing, real-time reporting, and other requirements. In my mind, this would be a mistake, imposing substantial costs on the economy and on consumers. That is why we strongly support the Stivers-Fudge bill, which recognizes that inter-affiliate swaps do not create systemic risk and that consequently, as a category, inter-affiliate swaps should not be subject to regulation as if they were outward-facing. The Stivers-Fudge bill would exempt a <u>category</u> of swaps, not a <u>particular type</u> of entity from regulation. That is precisely what the Administration did in exempting foreign exchange swaps and forwards and it is the right approach here as well.

I would like to also speak briefly in support of H.R. 2586, the Swap Execution Facility Clarification Act. This measure provides clarity for existing voice-broker markets that can qualify as SEFs. Constellation utilizes several means of interstate commerce to execute trades including voice brokers, request for quote systems, auction systems, and other electronic means that are able to accommodate the characteristics of the swaps market. Preserving these markets is important to Constellation as these markets are often the primary means to facilitate transactions for many illiquid locations/contracts in energy that do not trade frequently enough to justify screen-based requirements. Limiting the means of interstate commerce market participants may utilize, may result in the unintended consequence of reducing liquidity, price discovery, and access to markets that are simply not developed enough to justify the costs of mandatory screen based trading. Furthermore it is not consistent with the actual language contained in Dodd-Frank, which sought to allow trading through *any* means of interstate commerce. The CFTC's proposed regulations concerning SEFs compromises efficiency and transparency.

Through Dodd-Frank, Congress intended for swap trading on SEFs to develop over time in a transparent way that maximizes competition through utilization of multiple modes of interstate commerce and consistent regulation. That is why we support the goals of H.R. 2586 which seek to address these issues and ensure that end-users will have a variety of options for hedging their risk.

Finally, I would like to address the not-yet-introduced legislative proposal that seeks to clarify the swap dealer definition—a fix of critical importance to many end-users. The definition of "swap dealer" is another crucial element to ensuring that burdensome requirements such as mandatory margin, capital and clearing are not improperly forced upon non-financial end-users. The Dodd-Frank Act regulates swap dealers and major swap participants differently than end-users, and appropriately so. But it is very important that the definition be tailored to capture persons that are actually in the business of providing dealer services to end-users, not the end-users themselves. Furthermore, to the extent end-users engage in only a small amount of customer-facing swap activity that is tied to their core non-financial businesses (e.g., manufacturing, processing, marketing), and whose dealing does not create systemic risk, then they should not be treated as swap dealers. To that end, the *de minimis* exception to the definition of "swap dealer" **must** be set in legislation at a reasonable level that protects end-users from being regulated the same as the largest swap dealers that are potentially systemically risky. In addition, a company should not be regulated as a swap dealer simply because it makes a market for its own affiliates. As I previously mentioned, inter-affiliate trades should not be subject to regulations designed for market-facing transactions, and should not be a factor for determining whether a company is a swap dealer.

In conclusion, I want to thank Chairman Garrett, Ranking Member Waters and Members of the Subcommittee for convening this hearing and affording me the opportunity to testify. Ensuring that Congressional intent is followed by the CFTC is critically important to the entire end-user community. I had hoped after passage of the Dodd-Frank Act that future legislation would not be required to deal with the concerns I have outlined here today. However, if legislation is not passed to clarify the statute's intent, end-users risk being captured as swap dealers and the end-user exemptions included in the bill would be null and void. It is important to remember that end-users rely on derivatives to reduce risk; bring certainty and stability to their businesses; and, ultimately to benefit their customers. We did not contribute to the financial crisis and we do not pose a threat to the financial system.

I would like to leave you with this final comment. As you probably know, the electricity industry is comprised of a number of types of entities, which include electric co-ops; investor owned utilities (IOUs), which could be vertically integrated or merchant generators; and, public power organizations. These groups represent every electric customer in the United States and rarely agree on any public policy. However, if these regulations are improperly implemented by the CFTC, then it could cause electricity prices to rise for every consumer in America. That is why when it comes to Title VII of the Dodd-Frank Act we are in 100% alignment that end-users must not be captured as swap dealers or forced to clear all of their transactions.

Thank you for your time and I look forward to your questions.

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Brenda Boultwood	Constellation Energy Group
3. Business Address and telephone number:	
[redacted]	
4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☑ No	☑ Yes ☐ No
6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.	
Please see the attached	
7. Signature: Brenda Boultwood	

Please attach a copy of this form to your written testimony.

PUBLIC SECTOR FEDERAL ACCOUNT LIST
(prepared October 11, 2011)

Mid-Atlantic Public Sector Customers

Defense Logistics Agency – Energy, contract SP0600-11-D-8000

DESC PJM Large 2010; January 2011 – January 2013

- Carlisle Barracks
- DDD New Cumberland
- Fort Detrick – Forest Glen
- Fort Dix
- Marine Barracks
- Tobyhanna Army Depot

Defense Logistics Agency - Energy

Current: PJM Small 2009; June 2009 – October 2012; contract SP0600-09-D-8017
Renewal: PJM Small 2011; October 2011 – June 2012; contract SP0600-11-D-8025

- Johns Hopkins University APL
- Maryland Procurement Office
- New Jersey IDA
- US National Arboretum
- National Institutes of Health (Department of Health and Human Services) – **NOT being served after Oct. 2011**

Department of State

FPI/UNICOR; December 2011 – December 2031; contract DJU4600004010
Contacts: Staci Card (FPI/UNICOR); scard@cental.unicor.gov
David Baker (Dept. of State); BakerDW@state.gov

General Services Administration

Current: Mid-Atlantic 2009; December 2009 – December 2011; contract – GS-00P-09-BSC-0641
Renewal: Mid-Atlantic 2011; December 2011 – December 2014; contract GS-00P-11-BSD-0822

- American Red Cross
- Architect of Capitol
  - Capitol Police Headquarters
  - Capitol Power Plant
  - Library of Congress
    - The Johns Adams Building
    - The Thomas Jefferson Building
    - The James Madison Memorial Building
  - Robert A. Taft Memorial
  - Supreme Court
  - Thurgood Marshall Federal Judiciary Building
  - US Botanic Garden
  - US House of Representatives
    - Cannon House Office Building
    - Ford House Office Building
    - Longworth House Office Building
    - Rayburn House Office Building
  - US Senate
    - Russell Senate Office Building
    - Dirksen Senate Office Building

Hart Senate Office Building
Bureau of Public Debt (part of Office of Thrift Supervision)
Corcoran Gallery of Art & Design
Department of Agriculture
Department of Commerce
Department of Energy
Department of Health and Human Services
National Institutes of Health
Department of Homeland Security
US Coast Guard
Department of Housing and Urban Development
Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
Department of State - **NOT being served under this renewal contract**
Department of Transportation
Department of Treasury
Financial Management Service
Bureau of Engraving and Printing
Federal Bureau of Investigation
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
Federal Reserve System
Federal Trade Commission
General Services Administration (GSA)
Government Printing Office
Inter-American Development Bank
Internal Revenue Service
International Monetary Fund
Kennedy Center
National Archives
National Gallery of Art
National Park Service
Office of Personnel Management
Organization of American States
Pan American Health
Smithsonian Institution
The World Bank Group
International Finance Corporation
US Department of Labor
U.S. Dept of Interior
U.S. Government Accountability Office
United States Holocaust Memorial Museum
US Soldiers' Home
Veterans Administration
Washington Aqueduct

United States Postal Service
July 2010 – August 2012
Contact: Deborah Wilcox-Loos; deborah.wilcox-loos@usps.gov

New England Public Sector Customers

Defense Logistics Agency – Energy, contract #SP0600-08-D-8029
DESC New England; December 2009 – January 2012
US Coast Guard - Nantucket
US Army – Barnes
US Army – Natick

Defense Energy Support Center, contract # NE00304164733963943 (Demand Response)
June 1, 2010 – May 31, 2013
Cape Cod Air Force Station – contact: Steve Mellin; Stephen.mellin@capecod.af.mil

United States Postal Service, contracts1AUTIL-05-B-3005 and 3006
Current: December 2009 – December 2011
Renewal: December 2011 – December 2012
Contact: Deborah Wilcox-Loos; deborah.wilcox-loos@usps.gov

MetroNorth Public Sector Customers

Defence Logistics Agency - Energy
Defense Energy Support Center 0411
New York 2010; December 2010 – December 2012
Dept of Homeland Security, Border Patrol, contacts: various

Contract SP0600-09-D-8030
New York 2009; December 2009 – December 2011
Fort Drum, contact: Jean Hughes; jean.m.hughes@us.army.mil
Department of Energy – West Valley, contact: William Sullivan; William.sullivan@wves.org
Department of Labor, contact: Rick Brazelton; brazelton.rick@dol.gov

Federal Reserve Bank of New York, contract #1-417126864
March 2010 – March 2012
Contact: Thomas Reilly; Thomas.reilly@ny.frb.org

US General Services Administration, contract #GS 00P-10-BSD-0718
New York 2009; May 2010 – May 2012
US Veterans Administration

United States Postal Service, contract 1AUTIL-05-B-3004
June 2011 - May 2013
Contact: Deborah Wilcox-Loos; deborah.wilcox-loos@usps.gov

Texas Public Sector Customers

Defense Logistics Agency - Energy
DES C – Texas 2010; January 2011 – January 2013:
AF Space Command
Bryan Mound
Customs and Border Protection
Dyess Air Force Base
JRB Navy Reserves
MCRC Galveston

NAS Corpus Christi
NAS Kingsville
NASA JSC
Navy Reserves

Great Lakes Public Sector Customers

General Services Administration
Illinois-Ohio 2010
December 2010 – December 2011

United States Postal Service
July 2010 – August 2012
Contact: Deborah Wilcox-Loos; deborah.wilcox-loos@usps.gov

California Public Sector Customers

General Services Administration, contract GS-09P-KSC-0009
GSA – various buildings throughout the State of California
current contract ends May 2011
Contact: Mark Levi; mark.levi@gsa.gov

Energy Efficiency Team Federal Contracts:

Contract name	Description
Dept of Energy SUPER ESPC (Contract #DEAM3602NT41458)	$5 billion IDIQ, requires competition - Used for construction of projects, allows financing for 25-years
US Army Corp. of Engineers ESPC (Contract #W912DY09D0013)	$80 million IDIQ, requires competition - Used for construction of projects, allows financing for 25-years
Stand alone ESPC (at NCI Frederick)	DSM project specific, no recurrence
GSA Schedule 03 FAC (Contract #GS21F0139V)	Contract for Special Item Numbers (Studies, PM, construction) - no financing, requires congressional appropriations
GSA Schedule BPA (Contract #GS-23F-PE003)	Contract that allows all Special Item Numbers consolidated - no financing, requires congressional appropriations
DOJ/BOP/FPI/ UNICOR IDIQ (Pending)	$70 million IDIQ, requires competition
DOJ/BOP/FPI/ UNICOR Teaming Agreement	Submission of Business Initiative allows project to be sole sourced - (Variance of an unsolicited proposal), ESA/PPA use, 25-year authority