

UNITED STATES OF AMERICA 118 FERC ¶61,025
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

In re NRG Energy, Inc.

Docket No. IN07-6-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 18, 2007)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and NRG Energy, Inc. (NRG). This order is in the public interest because it resolves violations of the ISO-NE tariff and the Commission's Market Behavior Rules with a settlement that provides for a \$500,000.00 civil penalty and requires NRG to follow a one year compliance plan to ensure that in the future it promptly and accurately reports to ISO-NE outages of units contracted to ensure system reliability.

2. The Agreement resolves all issues relating to a non-public, preliminary investigation pursuant to Part 1b of the Commission regulations, 18 C.F.R. Part 1b (2006). The investigation concerned alleged violations of the ISO-NE Market Rule 1 and the Commission's Market Behavior Rules 1 and 3.¹

¹ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, Order Amending Market-Based Rate Tariffs and Authorizations, 105 FERC ¶ 61,218 at P. 42 (Nov. 17, 2003) (Market Behavior Rules Order); *reh'g denied*, 107 FERC ¶ 61,175 (2004), *Cinergy Marketing & Trading, L.P. v. FERC*, appeal docketed, Nos. 04-1168 *et al.* (D.C. Circuit April 28, 2004). On February 16, 2006, the Commission codified Market Behavior Rules 1 and 3 at 18 C.F.R. § 35.37(a)-(b) (2006). *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, Docket No. RM06-13-000. However, Market Behavior Rules 1 and 3 adopted in 2003 were in effect during the period examined by Enforcement in this investigation and cover the activities in question.

3. NRG self-reported that on January 24 and 25, 2006, NRG personnel intentionally misrepresented the availability of a unit that is used to ensure system reliability. The misrepresentation was the result of a plant manager's sole decision and was not consistent with the practices or protocols of the company. The responsible plant manager and his subordinate were terminated by NRG.

4. The misrepresentation about the unit's availability violated sections III.B.3.2.3 (Misrepresentation Regarding Operating Conditions), III.B.3.2.4 (Misrepresentation of Resource Availability), and III.B.3.4.5 (Resource Information) of ISO-NE Market Rule 1. The misrepresentation also violated the Commission's Market Behavior Rule 1, which requires that a market participant operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable power market. Finally, the misrepresentation violated Market Behavior Rule 3, which requires, *inter alia*, that sellers provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission or Commission-approved market monitors.

5. During the course of the investigation, NRG provided exemplary cooperation with staff. NRG has improved communication protocols and has enhanced and formalized employee training to ensure future compliance with Commission rules.

6. The violations arose after August 8, 2005. As a result, the Commission may impose civil penalties against NRG in this matter pursuant to section 316A of the Federal Power Act, as amended by the Energy Policy Act of 2005.² In reviewing the Agreement, we considered the factors set forth in the Federal Power Act³ and our recent Policy Statement on Enforcement.⁴

7. Given the fact that NRG did not profit from the violations, that its violations did not harm customers and had no effect on the market, that it self-reported the violations, and provided exemplary cooperation in staff's investigation, we conclude that the penalty

² Section 1284(e) of the Energy Policy Act of 2005 amended section 316A(b) of the Federal Power Act (FPA), 16 U.S.C. § 825o-1(b), to grant the Commission authority to assess a civil penalty of not more than \$1,000,000 for each day that a violation of any provision of Part II of the FPA or any provision of any rule or order thereunder continues.

³ Section 316A(b) of the Federal Power Act, 16 U.S.C. § 825o-1(b).

⁴ 113 FERC ¶ 61,068 (2006).

specified in the Agreement provides a fair and equitable resolution of this matter and is in the public interest. We also conclude that the compliance program specified in the Agreement, under which NRG will provide certain outage-related information to the Commission for a period of one year, is in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

In re NRG Energy, Inc.

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Docket No. IN07-6-000

STIPULATION AND CONSENT AGREEMENT

The staff of the Office of Enforcement (“Enforcement”) of the Federal Energy Regulatory Commission (the “Commission”) and NRG Energy, Inc. (“NRG”) enter into this Stipulation and Consent Agreement (“Agreement”) to resolve all outstanding issues of fact and law arising from a non-public, preliminary investigation pursuant to Part 1b of the Commission regulations, 18 C.F.R. Part 1b (2006), into violations of the ISO-NE tariff and the Commission’s Market Behavior Rules 1 and 3,¹ resulting from NRG’s failure to report the unavailability from January 24-25, 2006, of Devon Unit 12. (the “January Incident”).

A. STIPULATION

Enforcement and NRG hereby stipulate and agree to the following:

Background:

1. NRG is a wholesale power generation company, primarily engaged in the ownership and operation of power generation facilities, the transacting in and trading of fuel and transportation services, and the marketing and trading of energy, capacity and

¹ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, Order Amending Market-Based Rate Tariffs and Authorizations*, 105 FERC ¶ 61,218 at P. 42 (Nov. 17, 2003) (Market Behavior Rules Order); reh’g denied, 107 FERC ¶ 61,175 (2004), *Cinergy Marketing & Trading, L.P. v. FERC*, appeal docketed, Nos. 04-1168 *et al.* (D.C. Circuit April 28, 2004). On February 16, 2006, the Commission codified Market Behavior Rules 1 and 3 at 18 C.F.R. § 35.37(a)-(b) (2006). *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, Docket No. RM06-13-000. However, Market Behavior Rules 1 and 3 adopted in 2003 were in effect during the period examined by Enforcement in this investigation and cover the activities in question.

related products in the United States. NRG owns or has partial ownership of approximately 40 power plants in the United States, mainly in the Northeast and Texas, with a total nominal summer capacity of approximately 23,000 MW.

2. In New England, NRG operates 23 active generation assets (approximately 2,000 MW). NRG sought and received reliability agreements (“RMR Agreements”) for the Devon Station, Montville Station, and Middletown Station, which comprise seventy percent of NRG’s New England generation, and are deemed necessary for system reliability (the “RMR Units”). Devon Unit 12 is part of the total resource at the Devon, Connecticut Station. Under the RMR Agreements, NRG receives an “Annual Fixed Revenue Requirement” payment specific to each asset, in addition to any variable operations and maintenance expenses incurred. In exchange, NRG offers each unit into the ISO-NE market at its short-run variable cost (*i.e.* the stipulated bid).

Origins and Nature of Investigation:

3. Following the failure of Devon Unit 12 to respond to dispatch instructions on January 25, 2006, NRG personnel began an informal inquiry into why the unit failed to respond, believing at the time the cause was equipment malfunction. On February 15, 2006, following that investigation, NRG orally self-reported the January Incident to Enforcement (then Office of Market Oversight and Investigations) and to ISO-NE. NRG provided a lengthy document setting out its findings concerning the January Incident on February 22, 2006, and supplemented that report on March 2, 2006 (collectively, the “Self-Report”). The Self-Report disclosed that the Devon Plant Manager chose not to notify ISO-NE prior to taking Devon Unit 12 out of service for maintenance on January 24-25, 2006 and that Devon Unit 12 was unable to respond to an ISO-NE dispatch instruction on January 25, 2006. Devon Unit 12 was not scheduled for dispatch because it bid into, but did not clear, the market. ISO-NE issued its dispatch instruction to test the capability of the unit. The Self-Report concluded that the Devon Plant Manager’s actions and communications surrounding the January 25, 2006, dispatch test were unacceptable in that he failed to apprise NRG Commercial Operations personnel that the unit was unavailable on January 24 and 25 and chose not to direct the unit’s return to service or claim a forced outage at the time.

4. On February 17, 2006, Enforcement opened a preliminary, non-public investigation into the reported violations. The period investigated by Enforcement was January 1, 2005 through March 31, 2006 (“Investigatory Period”).

5. On April 5, 2006, following receipt of the Self-Report, the ISO-NE Market Monitor (the “Market Monitor”) referred the January Incident to the Commission for investigation (the “Referral”). The Market Monitor also alleged (i) a second occasion upon which NRG personnel purposely did not relay the unavailable status of a unit; and (ii) that NRG personnel had inadequately addressed concerns raised by the Market

Monitor regarding switching the basis used for stipulated bidding (gas or oil). Staff broadened its existing investigation to encompass those allegations.

6. Between May 25, 2006 and September 1, 2006, NRG submitted audit reports prepared by an independent consulting firm, Gestalt, LLC, of outages for each of the RMR Units. Those audits supported the results of NRG's initial investigation, namely, that the January Incident was the only occasion during the Investigatory Period on which NRG had improperly misrepresented to ISO-NE information concerning its RMR Units.

Particulars of Violations:

7. On January 24 and 25, 2006, NRG's Commercial Operations employees offered the output from Devon Unit 12 into ISO-NE's day ahead market when the unit actually was inoperable. Commercial Operations personnel were unaware that Devon Unit 12 was unavailable at the time the offers were made because the Devon Plant Manager decided not to inform them that the unit had been taken offline to perform maintenance. On the second day on which Devon Unit 12 was offline, January 25, 2006, ISO-NE conducted an operational test of the plant, calling NRG Commercial Operations to ask the unit to come online within 30 minutes. When the Shift Supervisor received the call from Commercial Operations asking that the unit be brought online, the Shift Supervisor did not disclose that the unit had been taken offline. Rather, the Shift Supervisor misled NRG's Senior Trader, despite direct questions by the Senior Trader to the Shift Supervisor concerning the reason for the unit's unavailability. The Senior Trader conveyed the inaccurate information he received from the Shift Supervisor to ISO-NE, and, subsequently, to NRG's Regulatory, Operations, and Legal Departments.

8. The Devon Plant Manager and Shift Supervisor failed to declare a maintenance outage for Devon Unit 12 prior to taking it out of service and intentionally misrepresented that the unit was available when, in fact, it was unavailable. These actions violated sections III.B.3.2.3 (Misrepresentation Regarding Operating Conditions), III.B.3.2.4 (Misrepresentation of Resource Availability), and III.B.3.4.5 (Resource Information) of ISO-NE Market Rule 1. As a result, these actions also violated the Commission's Market Behavior Rule 1, which requires that a market participant operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable power market. In addition, the failure to notify ISO-NE of the outage and the intentional misrepresentation to the ISO-NE concerning the nature of the outage, constituted a violation of Market Behavior Rule 3, which requires, *inter alia*, that sellers provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission or Commission-approved market monitors.

9. The January Incident occurred after August 8, 2005, the effective date of the Commission's expanded civil penalty authority under the Energy Policy Act of 2005, which has been codified in Section 316A(b) of the Federal Power Act ("FPA").

10. Staff's investigation revealed that from January 2005 through March 31, 2006, NRG improperly failed to report a unit's unavailability on only one occasion, the January Incident. NRG provided adequate exculpatory evidence concerning the other allegations contained in the Referral and staff found no other violations.

11. NRG did not profit from the January Incident because upon learning of the unit's unavailability, ISO-NE did not pay NRG the approximately \$18,000 per day in fixed costs NRG otherwise would have collected had the unit been available. ISO-NE also assessed NRG approximately \$54,000 in nonperformance penalties for failing to respond to its dispatch instruction. Moreover, the unavailability of the unit did not harm customers and had no quantifiable effect on the market.

Corporate Course of Conduct:

12. Upon recognizing that the reports from plant personnel raised questions regarding the accuracy of the reporting of the availability of the unit, NRG moved quickly to investigate further, take corrective action, and put new controls in place to ensure that unit availability is properly reported. NRG proactively undertook an internal investigation and hired independent consultants to conduct audits of the conduct at issue. Then, at staff's request, NRG expanded the scope of its audits and provided the results of those audits to staff. During the course of the investigation, NRG fully cooperated with staff, promptly responded to data requests, and provided expeditious and complete answers to all questions.

13. NRG states that it is committed to following the Commission's rules and regulations as well as the rules of the markets in which it participates. The company has informed the Commission that it has improved communication protocols and has enhanced and formalized employee training.

B. REMEDIES AND SANCTIONS

For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation into the matters reported by NRG in its Self-Report, Enforcement and NRG agree that on and after the effective date of this Agreement, NRG shall take the following actions:

1. NRG shall pay a civil penalty of \$500,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined in paragraph C.1 below and shall submit proof of payment to the Commission within five

days thereafter. The entire civil penalty shall not be passed through, directly or indirectly, to any present or future customers or ratepayers through cost of service rates.

2. NRG shall make semi-annual filings with Enforcement for a period of one year, the first filing to be submitted no later than August 31, 2007, and the second filing to be submitted no later than February 28, 2008. The filings shall include the results of an audit of all outages taken by NRG for all such units then remaining under RMR agreements for the six month period ending June 30, 2007, and December 31, 2007, respectively, and shall be similar to the Gestalt, LLC audit results NRG provided Enforcement for its investigation. Upon request by staff, NRG shall provide to staff all backup documentation to support those results.

C. TERMS

1. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to NRG and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to NRG (hereinafter collectively, NRG).

2. The Agreement involves matters subject to the Commission's exclusive jurisdiction under Section 316A(b) of the FPA and is a settlement of claims investigated by the Commission under its plenary authority over rates for wholesale electricity sales in interstate commerce. Commission approval of this Agreement without material modification shall release NRG and forever bar the Commission from bringing against NRG any and all administrative or civil claims arising out of, related to, or connected with the violations addressed in this Agreement.

3. Failure to make a timely civil penalty payment or to comply with the compliance program agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act, 16 U.S.C. § 792 *et seq.*, and may subject NRG to additional action under the enforcement and penalty provisions of the FPA.

4. If NRG does not make the civil penalty payment above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

5. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or NRG has been made to induce the signatories or any other party to enter

into the Agreement.

6. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor NRG shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and NRG.

7. Except as provided in Paragraph C6 above, the Agreement binds NRG and its agents, successors and assigns.

8. In connection with the payment of the civil penalty provided for herein, NRG agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended. NRG waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.


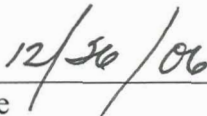
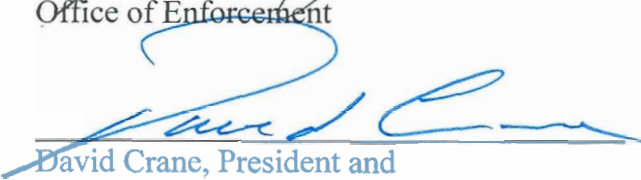

9. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

10. The undersigned representative of NRG affirms that he has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

11. The Agreement may be signed in counterparts.

12. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

 _____ Susan J. Court, Director Office of Enforcement	 _____ Date
 _____ David Crane, President and Chief Executive Officer NRG Energy, Inc.	 _____ Date