135 FERC ¶ 61,245
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, John R. Norris,
and Cheryl A. LaFleur.

Moussa I. Kourouma d/b/a Quntum Energy LLC Docket No. IN11-2-000

ORDER ON SHOW CAUSE RESPONSE

(Issued June 16, 2011)

1. In this order, the Commission finds that Moussa I. Kourouma (the respondent) has violated section 35.41(b) of the Commission's regulations, which prohibits the submission of false or misleading information or the omission of material information in any communication with the Commission or a Commission-approved regional transmission organization.[1] In light of the seriousness of these violations and the lack of any effort by the respondent to remedy his violations, we find that a civil penalty, pursuant to section 316A of the Federal Power Act (FPA),[2] is appropriate.

I. Background

2. On January 7, 2011, the Commission's Office of Enforcement Staff (OE Staff) submitted to the Commission an Enforcement Staff Report and Recommendations (OE Staff Report) alleging that the respondent had violated section 35.41(b) of the Commission's regulations under the FPA[3] by omitting material information about his sole ownership of Quntum Energy LLC and submitting inaccurate information in an application to the Commission seeking market-based rate authority in Docket No. ER09-805-000. Specifically, the OE Staff Report alleged that Mr. Kourouma used his then one-year old daughter's name as well as the name and mailing address of an acquaintance in communications with the Commission and PJM Interconnection L.L.C. (PJM) in order to hide his participation in the formation and ownership of Quntum and its activities from his former employer, Energy Endeavors LP, in order to circumvent a non-compete clause. The OE Staff Report alleges that the respondent knew that neither his daughter nor his acquaintance had an active management and/or ownership role in Quntum and

[1] 18 C.F.R. § 35.41(b) (2011).

[2] 16 U.S.C. § 825o-1 (2006)

[3] 18 C.F.R. § 35.41(b).

that listing those individuals as Quntum's managers in communications to the Commission and PJM was false and misleading. Similarly, OE Staff found the respondent's failure to identify his direct ownership and management of Quntum was a knowing omission of a material fact in its application.[4]

3. On February 14, 2011, the Commission issued an order to show cause and notice of proposed penalty.[5] In the Show Cause Order, the Commission directed the respondent to file an answer within 30 days showing cause as to why he should not be found to have violated section 35.41(b) in connection with Quntum's application for market-based rate authority and Quntum's communications with PJM and why his alleged violation should not warrant the assessment of a civil penalty in the amount of $50,000. The Commission also stated that the respondent could elect an administrative hearing before an Administrative Law Judge (ALJ) at the Commission prior to the assessment of a penalty under section 31(d)(2) or, if the Commission finds a violation, an immediate penalty assessment by the Commission under section 31(d)(3)(A).[6]

4. The respondent filed his answer to the Show Cause Order on March 16, 2011 (Show Cause Answer). OE Staff submitted an answer to the respondent's answer on April 13, 2011 (OE Staff's Answer). On April 28, 2011, the respondent filed an answer to OE Staff's Answer (April 28 Answer). On May 11, 2011, OE Staff filed an answer to the respondent's April 28 Answer (May 11 Answer). On May 18, 2011, the respondent filed a motion to strike OE Staff's May 11 Answer or, in the alternative, answer to OE Staff's May 11 Answer (May 18 Answer).

II. Discussion

A. Procedural Matters

5. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the respondent's April 28 Answer, the respondent's May 18 Answer, or OE Staff's May 11 Answer and will, therefore, reject them.

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[4] *Moussa I. Kourouma d/b/a Quntum Energy LLC*, 134 FERC ¶ 61,105, at P 2 (2011) (Show Cause Order).

[5] *Id.*

[6] *Id.* P 3.

B. Substantive Matters

6. As discussed below, we find that the respondent violated section 35.41(b) of the Commission's regulations in the course of communications with the Commission and PJM. Further, we find that a civil penalty of $50,000 is appropriate given respondent's current financial situation. In order to alleviate financial hardship to the respondent, we will permit the respondent to pay the penalty in installments, as discussed below.

1. Summary Disposition

a. Show Cause Answer

7. In its answer, the respondent states that he does not dispute the material facts alleged and that, as a result, there is no basis to hold a hearing.[7] He argues that summary disposition is appropriate because the only remaining issues in the case are issues of law. He contends that his answer demonstrates that, based on the undisputed facts, he is entitled to summary disposition in his favor as a matter of law. He also asserts that even if the Commission does find that he violated section 35.41(b), the Commission should not levy the proposed penalty and should impose compliance measures instead.[8] He further states, however, that he elects to pursue an administrative hearing before an ALJ if the Commission should decide to continue the proceeding.[9]

b. OE Staff Answer

8. OE Staff agrees that summary disposition is appropriate in this case, as there are no genuine issues of fact in dispute. However, OE Staff argues that the Commission should grant summary disposition against the respondent, as the facts clearly demonstrate that the respondent knew that he was providing false and misleading information to both the Commission and PJM and that the respondent did nothing to prevent the Commission or PJM from being misled by his submissions.[10]

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[7] Specifically, the respondent states that he admits the facts as presented by OE Staff in section III.A of the OE Staff Report, subject to any defenses he may have to OE Staff's interpretation or conclusions drawn from those facts. He also states that he reserves the right to dispute new issues of material fact or conclusions raised or identified at trial, including issues relating to his state of mind or intent. Show Cause Answer at 3 n.3.

[8] *Id.* at 14.

[9] *Id.* at 1, 32.

[10] OE Staff Answer at 2-5.

c. Commission Determination

9. We will deny the respondent's motion for summary disposition. As further detailed below, while we agree with the respondent and OE Staff that there are no material facts in dispute, we find that these facts do not demonstrate that the respondent is entitled to summary disposition in his favor.

10. Nevertheless, while we will deny the respondent's motion for summary disposition in his favor, we find that summary disposition is appropriate here. The Commission has stated that summary disposition is proper under the following conditions: (1) the non-moving party must have been afforded a reasonable opportunity to present arguments and factual support and the evidence must be viewed in the light most favorable to the non-moving party; and (2) the Commission must find that a hearing is unnecessary and would not affect the ultimate disposition of an issue because there are no material facts in dispute or because the facts presented by the non-moving party have been accepted in reaching the decision.[11] Here the respondent acknowledges that there are no material facts in dispute and that a hearing is unnecessary. We agree. We find that the respondent has been afforded a reasonable opportunity to present arguments and factual support by submitting an answer to the Show Cause Order. We also find that the undisputed facts, even when viewed in the light most favorable to the respondent, demonstrate that he violated section 35.41(b) in his communications with the Commission and PJM and that the imposition of a civil penalty is warranted.

11. In addition, we find that a hearing before an ALJ is unnecessary under section 316A. Section 316A provides that a penalty shall be assessed by the Commission, after notice and opportunity for public hearing, in accordance with the process set forth in section 31(d) of the FPA,[12] as applicable. Section 31(d) gives a party charged with a violation the right to elect between two procedural paths. Under section 31(d)(2), the Commission shall "assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing . . . before an administrative law judge . . ."[13] In the alternative, under section 31(d)(3), a party may elect an immediate penalty assessment by the Commission.[14] In this case, the respondent has elected the procedures under section 31(d)(2).[15] In the *Statement of Administrative*

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[11] *See KGen Hinds, LLC*, 117 FERC ¶ 63,004, at P 44 (2006); *see also Coastal States Marketing, Inc.*, 25 FERC ¶ 61,164, at 61,452 (1983).

[12] 16 U.S.C. § 823b (2006).

[13] *Id.* § 823b(d)(2).

[14] *Id.* § 823b(d)(3).

[15] Show Cause Answer 1, 32.

Policy Regarding the Process for Assessing Civil Penalties, the Commission stated that in the usual case where a party elects the procedure under section 31(d)(2), the Commission will issue an order setting the matter for hearing before an ALJ.[16] The Commission further stated, however, that while it was outlining the basic procedures to be followed, the Commission retained the right to modify these procedures to fit the circumstances presented by specific cases.[17]

12. We find that a hearing before an ALJ is unnecessary under section 31(d)(2) and that the case is ripe for decision. As noted above, section 31(d)(2) requires that the Commission give the respondent an *opportunity* for an agency hearing before an ALJ before issuing an order assessing a penalty. Here, we have given the respondent an opportunity for a hearing, but the respondent has acknowledged that "there is no basis to hold a hearing" because "he does not dispute the facts."[18] We agree with the respondent that holding a trial-type hearing before an ALJ is unnecessary given that there are no material facts in dispute. The purpose of a trial-type hearing is to resolve disputed issues of material fact. As the Commission has previously stated, the Commission "need not conduct an evidentiary hearing when there are no disputed issues of material fact . . . ."[19] As fully discussed below, the undisputed facts demonstrate that the respondent violated section 35.41(b), even if these facts are viewed in the light most favorable to the respondent. In these circumstances, a hearing before an ALJ is not required and would be a waste of Commission resources.

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[16] *Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317, at P 5 (2006).

[17] *Id.* P 2.

[18] Show Cause Answer at 14.

[19] *Pioneer Transmission, LLC*, 130 FERC ¶ 61,044, at P 35 (2010); *See also Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,132, at 52 (2011) (an evidentiary hearing is appropriate when there is a dispute of material fact that cannot be resolved on the basis of the written record); *see also Pub. Serv. Co. of Indiana, Inc.*, 51 FERC ¶ 61,367, at 62,218-19, n.67, *order on reh'g*, 52 FERC ¶ 61,260, *clarified*, 53 FERC ¶ 61,131 (1990) ("Commission is required to reach decisions on the basis of an oral, trial-type evidentiary record only if the material facts in dispute cannot be resolved on the basis of the written record").

2. Section 35.41(b)

a. Intent

i. Show Cause Answer

13. The respondent argues that he did not violate section 35.41(b) of the Commission's regulations because he lacked the requisite intent. The respondent maintains that the history of section 35.41(b) demonstrates that intent is a necessary element of a violation. The respondent explains that section 35.41(b) was originally one of the Commission's "Market Behavior Rules," Market Behavior Rule 3, which were required to be included in sellers' market-based rate tariffs.[20] According to the respondent, when adopting Market Behavior Rule 3, the Commission stated that the rule prohibited the knowing submission of false or misleading data and pledged that the inadvertent submission of inaccurate or incomplete information would not be sanctioned.[21] In addition, the respondent points to a statement in a concurrence to the Market Behavior Rehearing Order indicating that intent is a necessary element of a violation of Market Behavior Rule 3.[22] The respondent acknowledges that the Commission subsequently rejected requests to include an express intent standard in the rule, but maintains that the Commission implemented the intent requirement by including a due diligence exception.[23] The respondent argues that while OE Staff points to a recent

[20] Show Cause Answer at 16-17 (citing *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) (Market Behavior Order), *order on reh'g*, 107 FERC ¶ 61,175 (2004) (Market Behavior Rehearing Order)). The Commission subsequently codified Market Behavior Rule 3 in Order No. 694 at section 35.37 of the Commission's regulations. *Conditions for Public Utility Market-Based Rate Authorization Holders*, 114 FERC ¶ 61,163 (2006). In Order No. 697, the Commission moved the market behavior rules codified at section 35.37 to section 35.41 unchanged. *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 1101, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

[21] Show Cause Answer at 17 (citing Market Behavior Order, 105 FERC ¶ 61,218 at P 110).

[22] *Id.* (citing Market Behavior Rehearing Order, 107 FERC ¶ 61,175 at 61,725-26 (Brownell, N. *concurring*)).

[23] *Id.* at 15-17, 19-20.

statement by the Commission that section 35.41(b) does not include a scienter requirement, the statement relied on is inconsistent with prior Commission explanations regarding the requirements of the section.[24]

14. The respondent maintains that while the Commission has not explicitly defined the standard for intent for section 35.41(b), the standards incorporated into the Commission's analogous anti-manipulation rule, which is based on Securities and Exchange Commission Rule 10b-5, are instructive. According to the respondent, in this context, intent has been described as "knowing or intentional misconduct . . . conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities."[25] The respondent states that the Commission has stated that recklessness satisfies the intent requirement of the anti-manipulation rules, which, according to the respondent, is consistent with the Supreme Court's recent statement that violation of section 10(b) "requires proof that 'a defendant made a material misstatement with an intent to deceive—not merely innocently or negligently.'"[26] The respondent further argues that although the Commission asserted that section 35.41(b) does not contain an intent requirement in the Revised Policy Statement on Penalty Guidelines, the Commission nonetheless agreed to modify those same guidelines as they related to instances of intentional or reckless misrepresentations and false statements to include an intent requirement.[27] The respondent asks that the Commission clarify that the standard for determining whether there is intent is recklessness, not merely negligence, if the Commission does not dismiss this enforcement action outright.[28]

15. The respondent argues that he lacked the requisite intent because his application was not intended to deceive the Commission or its jurisdictional entities. He notes that he is a non-native English speaker and that he was not represented by counsel at the time that he filed the application. The respondent claims that the failure to include certain information in an initial filing by a person not generally familiar with the Commission's filing requirements is not a knowing or intentional violation of the Commission's requirements and cannot be *per se* interpreted as an intention to deceive the Commission. Although the respondent acknowledges that making false statements to the Commission is inadvisable, he states that the statements at issue here were made to shield his involvement from his former employers, not to deceive the Commission. In addition, he

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[24] *Id.* at 16 (*Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216, at n.48 (2010) (Revised Policy Statement on Penalty Guidelines)).

[25] *Id.* at 17-18.

[26] *Id.* at 19 (citing *Merck & Co. v. Reynolds*, 130 S. Ct. 1784, 1796 (2010)).

[27] *Id.*

[28] *Id.* at 19-20.

states that these statements could have been corrected as part of the application process had Quntum not withdrawn its application for other reasons, including that he had been enjoined as part of a settlement of state court litigation from participating in electric markets and that such authorization in any event was not needed for virtual trading. The respondent states that the Commission has acknowledged that a false or misleading communication (or omission of relevant information) may be excusable in some circumstances, and that here the respondent's misunderstanding, lack of intent, and attempted due diligence justify such an excuse.[29]

ii. OE Staff Answer

16. OE Staff argues that: (1) while section 35.41(b) has a due diligence exception, it does not contain an intent requirement; (2) the respondent's reliance on the intent requirements of the anti-manipulation rules is misplaced; (3) the Commission explicitly rejected arguments to include an intent requirement when adopting Market Behavior Rule 3; and (4) the Commission most recently clarified in the Revised Policy Statement on Penalty Guidelines that the section does not include an intent requirement.[30] Thus, OE Staff argues that the respondent's assertion to the contrary amounts to a collateral attack on a Commission final rule and must be rejected.[31] In addition, OE Staff maintains that even if section 35.41(b) included an intent requirement, the respondent's intent is clearly demonstrated in this case, as he knowingly submitted false information.[32]

17. Although OE Staff acknowledges that section 35.41(b) includes a due diligence requirement, it maintains that the undisputed facts demonstrate that the respondent did not act with due diligence. OE Staff states that it has already addressed the merits of the respondent's characterization of his actions as a "technical violation" in the OE Staff Report and that it determined that the respondent's decision to list his wife's friend and his then one-year old daughter as managers and officers of Quntum in his application was a knowing use of inaccurate information and a direct attempt to cause the Commission and PJM to believe that these individuals had an active management and/or ownership role in Quntum when they did not. As far as the respondent's assertion that he is being treated differently than other market participants because he sought to withdraw his application, OE Staff states that the respondent did not attempt to withdraw the filing of

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[29] *Id.* at 20-21.

[30] OE Staff Answer at 5-7 (citing Market Behavior Rehearing Order, 107 FERC ¶ 61,175 at P 96; Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216, at P 176).

[31] *Id.* at 5-7.

[32] *Id.* at 7 n.21.

his own volition and that staff's investigation revealed that the respondent was given an opportunity to correct his application when the Commission issued a deficiency letter.[33]

18. OE Staff also contends that the respondent's defense that he should not be penalized for his failure to understand Commission rules because he was not represented by counsel when making his submission and he is not a sophisticated corporate entity must be rejected. OE Staff states that the respondent did not need counsel to avoid the basic and obvious deficiencies in his market-based rate application. OE Staff notes that the respondent himself claims that his false and misleading statements were easily corrected, while, at the same time, taking the position that the nuanced requirements of the application process were too difficult to understand. OE Staff points out that the Commission's website provides detailed information on how to apply for market-based rate authority and contact information for Commission staff to answer any technical or legal questions about the application process. OE Staff states that the respondent's decision not to avail himself of the Commission staff's expertise and assistance further evinces the lack of due diligence on his part. OE Staff also states that the respondent's assertion that he thought his filing comported with the Commission's regulations is directly contradicted by his admission that he intended to cloak his own involvement in Quntum.[34]

19. OE Staff states that sophistication is not required to understand that one should not represent to a federal agency that a one-year old is a managing member of an energy company. Moreover, OE Staff points out that the respondent has worked in the energy business for more than fifteen years and has a Master of Sciences degree in Technology Management from the University of Pennsylvania, and a Master of Sciences degree in Electrical Power Engineering from Drexel University. Furthermore, OE Staff points out that the respondent was so successful as an energy trader that in 2008 he earned bonuses amounting to $216,000 in addition to his $130,000 base pay. OE Staff states that since submitting the OE Staff Report to the Commission, it has discovered that the respondent has another energy company, Tibiri Energy Group LLC (Tibiri), which the respondent incorporated in July 2010, and that Tibiri's website claims a level of sophistication that directly contradicts his alleged lack of sophistication.[35] OE Staff notes that in December 2009, the respondent, as managing director of Tibiri, submitted a request to the Commission for Critical Energy Infrastructure Information, explaining that he needed one-line diagrams of all utility companies in the United States, and FERC Form 114 filings, among other things, for the purpose of trading energy in PJM, Midwest ISO, NYISO, NE-ISO, ERCOT, SPP, and FRCC. In addition, OE Staff states that although

[33] *Id.* at 7-9.

[34] *Id.* at 12.

[35] *Id.* at 13, Ex. G.

the respondent professes a lack of awareness or understanding of the Commission's rules and requirements, Tibiri's website highlights its ability to provide technical input to support the interconnection application and utility approval process and deliver recommendations on energy prices, terms, and conditions because of the company's intimate knowledge of market rules.[36]

iii. Commission Determination

20. We find that section 35.41(b) does not include an intent requirement. Section 35.41(b) provides as follows:

> A Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences.[37]

Section 35.41(b) prohibits the submission of "false or misleading information" or the omission of material information in any communication with the Commission and certain jurisdictional entities, and does not make reference to the seller's intent in doing so; instead, it grants an exception to sellers that have exercised due diligence to prevent the submission of such information.

21. In addition, we agree with OE Staff that the history of section 35.41(b) indicates that intent is not a necessary element of a violation of this section. As the respondent points out, the language of section 35.41(b) is taken directly from Market Behavior Rule 3. In adopting Market Behavior Rule 3, the Commission explained that the rule was not intended to penalize the inadvertent submission of inaccurate or incomplete information.[38] While the Commission acknowledged that Market Behavior Rule 3 was intended to penalize the "knowing" submission of false or misleading information, the Commission explained that it was including the due diligence exception to ensure that the inadvertent submission of information was not penalized. The Commission stated that

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[36] *Id.* at 13-14.

[37] 18 C.F.R. § 35.41(b). A "Seller" includes "any person that . . . seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates . . . ." 18 C.F.R. § 35.36(a)(1) (2011). Here, Quntum was a seller within the meaning of section 35.41(b) from March 13, 2009, the day that it submitted its application for market-based rate authority to the Commission until the Commission rejected its application on June 8, 2009.

[38] Market Behavior Order, 105 FERC ¶ 61,218 at P 110.

the due diligence exception applied to the seller, not the individual employee of the seller, submitting the data and that the Commission expected sellers to have in place processes that ensure the accuracy of submitted information. Although the respondent cites the Commission's reference to the "knowing" submission of false or misleading data as supporting his assertion that intent is a necessary element of section 35.41(b), the Commission clarified that it was not the intent of a seller but the actions taken by the seller to prevent the submission of inaccurate information that matters. Specifically, the Commission found that the submission of false or incomplete information "on behalf of a seller by an individual that did not personally know it to be false or incomplete in the absence of a process to insure data accuracy and sufficiency will not excuse the seller's conduct under the rule."[39]

22. In addition, on rehearing of the Market Behavior Order, the Commission further clarified that section 35.41(b) does not contain an intent requirement. On rehearing, several entities sought clarification that Market Behavior Rule 3 prohibited market participants from knowingly or intentionally submitting false and misleading information and urged the Commission to strengthen or *replace* the due diligence exception with an express intent requirement.[40] In denying these requests, the Commission stated that while it agreed that a false or misleading communication (or omission of relevant information) may be excusable based on the facts and circumstances presented, it did not believe that the due diligence standard would be inadequate for the purpose of considering such a defense.[41] The Commission further stated that, "to the contrary, we believe that a due diligence defense will give sellers sufficient latitude to bring all relevant facts on this issue before the Commission in advance of any action which may be taken against the seller."[42] The Commission's discussion in the Market Behavior Rehearing Order makes clear that intent is not a required element of a violation of section 35.41(b). More recently, in the Revised Policy Statement on Penalty Guidelines, the Commission explicitly noted that "section 35.41(b) does not contain a scienter requirement."[43]

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[39] *Id.*

[40] Market Behavior Rehearing Order, 107 FERC ¶ 61,175 at P 93, 96; *see* Merrill Lynch Capital Services Inc. and Morgan Stanley Capital Group Inc., Request for Rehearing, Docket No. EL01-118-003, at 18-19 (filed Dec. 17, 2003; *see also* Mirant Americas Energy Marketing, L.P. and Williams Power Company, Inc., Request for Rehearing, Docket No. EL01-118-003, at 14-19 (filed Dec. 17, 2003).

[41] Market Behavior Rehearing Order, 107 FERC ¶ 61,175 at P 96.

[42] *Id.*

[43] Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216 at P 176.

23. Having concluded that section 35.41(b) does not include an intent requirement, we turn now to the question of whether the respondent violated that section in his communications with the Commission and PJM staff.

24. We find that the undisputed facts demonstrate that the respondent violated section 35.41(b) in his communications with the Commission.[44] In this case, the respondent admits that on behalf of Quntum he submitted to the Commission an initial market-based rate application on March 13, 2009, an amended application for market-based rate authority on April 17, 2009, and a notice of cancellation on May 21, 2009. In these filings, the respondent stated that Imani Kalle and Deckonti Dennis occupied various management positions at Quntum, and listed Ms. Dennis's home address as the address for Quntum. These statements were clearly false, as Imani Kalle was the respondent's one-year old daughter and Deckonti Dennis was an acquaintance of the respondent's wife, was completely unfamiliar with Quntum's business, and only signed her name or Imani Kalle's name to documents as instructed by the respondent.[45] In addition, we find that these statements were clearly misleading because they incorrectly state that Ms. Kalle and Ms. Dennis were involved in the management of Quntum's affairs when it was the respondent who was solely responsible for all of Quntum's activities.[46] The respondent admits as much by acknowledging that he listed Ms. Kalle and Ms. Dennis in order to conceal his own involvement with Quntum.[47] In addition, failure of the respondent to identify himself as the owner of Quntum amounted to a material omission, as a seller seeking market-based rate authority must provide this fundamental information regarding its corporate structure or upstream ownership.[48]

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[44] 18 C.F.R. § 35.41(b).

[45] Kourouma Aff. ¶ 12; OE Staff Report, section III.A.

[46] Kourouma Aff. ¶ 14.

[47] *Id.* ¶¶ 10-12.

[48] Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at n.258. The identity of a seller's affiliates and its corporate structure or upstream ownership are of fundamental importance to the Commission's market-based rate analysis. The Commission must consider closely the extent to which an applicant and its affiliated entities control assets that give them the ability to exercise market power. *See* 18 C.F.R. § 35.37 (2011); *see also* Appendices A and B to Subpart H of Part 35 (2011). In addition, the Commission must determine whether its market-based rate affiliate restrictions are applicable to the applicant and, if so, whether the applicant and its affiliates are in compliance with these restrictions. *See* 18 C.F.R. § 35.39 (2011). It defies credulity for respondent to argue that he did not know that he had to identify the owner accurately, especially given the critical need for this information in order to process Quntum's application for market-based rate authority.

25. In addition, the facts demonstrate that he made nearly identical representations in his communications with PJM and PJM staff. For instance, on May 17, 2009, the respondent submitted an application for membership to PJM on behalf of Quntum, which listed Deckonti N. Dennis as the manager of Quntum and listed Ms. Dennis's home address as the address of Quntum.[49] In addition, the evidence indicates that the respondent submitted a notice of withdrawal to PJM on May 27, 2009, which listed Deckonti Dennis as manager, included Ms. Dennis's home address, and included the email address dennis@quntumenergy.com.[50] In addition, the respondent admits that he repeatedly represented himself as "Dennis" or "Mr. Deckonti Dennis" in emails and on phone calls with PJM employees.[51] We find that these statements, like the representations he made to the Commission, were false and misleading.

26. We also find that the facts demonstrate that the respondent failed to exercise due diligence to prevent the submission of these statements to the Commission and PJM. There is no evidence that suggests that the respondent inadvertently submitted inaccurate or incomplete information or made any efforts to ensure that accurate information was submitted to the Commission and PJM. On the contrary, the respondent acknowledges that his application to the Commission for market-based rate authority contained false statements concerning Ms. Kalle's and Ms. Dennis's involvement in Quntum's affairs and were designed to conceal his involvement with the company.[52]

27. While the respondent claims that it was his lack of sophistication with the Commission's requirements and regulations that led him to submit this data,[53] the evidence indicates that he deliberately submitted this information to the Commission and PJM in order to hide his involvement with Quntum from his former employers. The fact that the respondent's ultimate goal was to mislead another market participant as opposed to the Commission or PJM is of no significance. The issue here is whether the respondent exercised due diligence in order to prevent the submission of inaccurate information to the Commission and PJM. Based on the undisputed evidence in the record, we find that he did not.

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[49] Show Cause Answer at 8; Kourouma Aff. ¶ 12; OE Staff Answer, Ex. A.

[50] Show Cause Answer at 9; Kourouma Aff. ¶16; OE Staff Answer, Ex. B.

[51] OE Staff Report, section III.A

[52] Kourouma Aff. ¶¶ 9-12; OE Staff Report, section III.A.

[53] Moreover, even assuming that the respondent was not familiar with the Commission's requirements, lack of sophistication is not an excuse. The respondent, "like all entities appearing before the Commission, is held responsible for being familiar with the agency's regulations." *See, e.g.*, *San Diego Gas & Elec. Co.*, 112 FERC ¶ 61,330, at P 8 (2005).

b. Vagueness

i. Show Cause Answer

28. The respondent contends that section 35.41(b) can be viewed as unconstitutionally vague, overbroad or discriminatory.[54] He states that while the Commission has previously rejected arguments that the Market Behavior Rules were unconstitutionally vague on their face, he is challenging the application of the rule based on the specific circumstances here; in other words, in the circumstances of this case, the respondent would not have known that a failure to identify his involvement in Quntum would lead to an investigation for allegedly misleading the Commission. Additionally, he states that section 35.41(b) is vague and overbroad as applied to the extent that it can be invoked for any violation of the Commission's rules. The respondent states that it is unsurprising that a new entrant acting *pro se*, even with reasonable diligence, would not have realized the necessity for including upstream ownership information, as this requirement is from a single footnote in Order No. 697-A. The respondent states that one must not only comply with the language of section 35.41(b) but one must also comply with all the regulatory text and associated orders.[55]

29. Moreover, the respondent claims that the rules did not give him fair warning that his decision to withdraw the application instead of correcting it would lead to a violation that would not have existed otherwise. The respondent states that Commission staff regularly provides the applicants the opportunity to correct filings where the staff has found the application incomplete or inaccurate.[56] In this regard, the respondent maintains that he is being treated differently than other market participants simply because he sought to withdraw his application. He points out that while the Commission found that the Market Behavior Rules did not violate the filed rate doctrine because they were voluntarily incorporated into the seller's tariff as a condition relating to its market-based rate authority, in this case there never was a filed rate in effect. He states that even assuming the rules are applicable, pursuing action against the respondent when the Commission has never previously taken action for a failure to make such a correction is unduly discriminatory and, therefore, violates section 206(a) of the FPA.[57]

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[54] Show Cause Answer at 22 (citing *Grayned v. City of Rockford*, 408 U.S. 104 (1972) (*Grayned*)).

[55] *Id.* at 21-24.

[56] *Id.* at 24 (citing *Elec. Plant Board of the City of Paducah, Kentucky*, 122 FERC ¶ 61,149, at P 9 (2008); *Va. Elec. & Power Co.*, 80 FERC ¶ 61,275, at 61,997 (1997)).

[57] *Id.* at 24-25 (citing 16 U.S.C. § 824e(a) (2006)).

30. Similarly, he argues that the decision to withdraw rather than to perfect the application should not provide the basis for an enforcement action. He states that he could have perfected Quntum's application if there had not been other reasons leading him to withdraw it. He states that the fact that Quntum's amended application for market-based rate authority did not identify his involvement with Quntum does not evince an intent to deceive but merely shows that he did not understand that it was necessary to identify himself as the actual owner of Quntum. He further states that although the OE Staff Report indicates that withdrawal of the respondent's application would not resolve the issues presented by the statements made in his application, the Commission has previously treated the filing of *pro forma* tariff records, withdrawals, and filings rejected as patently deficient as substantive nullities.[58]

ii. OE Staff Answer

31. OE Staff maintains that the respondent's void-for-vagueness defense fails as a matter of law. OE Staff argues that an analysis of the case cited by the respondent, *Grayned*, demonstrates that the respondent's contention is without merit.[59] OE Staff explains that *Grayned* addressed whether an anti-noise ordinance was unconstitutionally vague and overbroad in restricting First Amendment rights. OE Staff states that while the court in *Grayned* found that a clear and precise enactment may nevertheless be overbroad if it reaches constitutionally protected conduct, providing false and misleading information to a government agency is not constitutionally protected.[60] Moreover, while *Grayned* discussed the concern that government may misuse its discretion to apply a law in an arbitrary and capricious way, OE Staff points out that the Supreme Court sustained the anti-noise ordinance at issue in that case, despite the fact that it left some discretion to police.[61] OE Staff explains that, unlike the ordinance in *Grayned*, section 35.41(b) required no subjective or discretionary judgments in this case, as the information provided to the Commission and PJM was clearly false.

32. OE Staff also states that the respondent's argument that section 35.41(b) is vague to the extent that it can be invoked for any violation that could be corrected during the application process suggests that any seller can submit false and misleading information to the Commission but can avoid enforcement of a civil penalty by simply correcting the information. According to OE Staff, this construction of section 35.41(b) cannot be sustained. OE Staff notes that in this case the respondent submitted information that he

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[58] *Id.* at 25-27 (citing 18 C.F.R. § 154.5 (2011); *K N Interstate Gas Transmission Co.*, 76 FERC ¶ 61,134, at 61,728 (1996)).

[59] OE Staff Answer at 9-10.

[60] *Id.* at 9 (citing *Grayned*, 408 U.S. at 114).

[61] *Id.* 9-10 (citing *Grayned*, 408 U.S. at 306).

knew to be false and he admitted he purposely chose not to disclose his ownership of Quntum in order to conceal his involvement from another market participant. OE Staff further notes that the respondent did not attempt to correct his submissions.[62]

33. Similarly, OE Staff asserts that there is no support for the contention that section 35.41(b) is vague because it is unclear that correcting an application negates a violation while seeking to withdraw an application does not. OE Staff states that the issue of correcting an application versus withdrawing an application does not alter the fact that misrepresentations were made in violation of section 35.41(b). OE Staff also states that the respondent did not correct his misrepresentations and disclose his involvement with Quntum to PJM after the commencement of OE Staff's investigation into his conduct. While the respondent claims that he sent a notice of membership withdrawal to PJM on May 27, 2009, OE Staff notes that in the withdrawal request the respondent continued to communicate with PJM under the false pretense that he was Deckonti Dennis.[63] Additionally, OE Staff notes that when corresponding with PJM to receive a refund of his membership collateral balance, he continued to use the email address "ddennis@quntumenergy.com" with a signature line of Dennis, even though he knew this to be false and misleading.[64]

iii. Commission Determination

34. We disagree with the respondent's argument that section 35.41(b) is unconstitutionally vague as applied to the facts of this case. A law is unconstitutionally vague if the law fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so devoid of standards that it authorizes or encourages discriminatory enforcement.[65] With respect to the issue of notice, courts have stated that regulations will be found to satisfy due process so long as they are "sufficiently specific that a reasonably prudent person, familiar with the conditions that the regulations are meant to address and the objectives the regulations are meant to achieve, would have fair warning of what the regulations require."[66]

35. We find that section 35.41(b) provides adequate notice of what is prohibited because a reasonably prudent person would understand that the respondent's conduct was

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[62] *Id.* at 10-11.

[63] *Id.* at 11, Attachments B and C.

[64] *Id.* at 11, Attachment D.

[65] *See U.S. v. Williams*, 553 U.S. 285, 304 (2008) (*Williams*); *see also Grayned*, 408 U.S. at 108-109.

[66] *Freeman United Coal Mining Co. v. Federal Mine Safety and Health Review Comm'n*, 108 F.3d 358, 362 (1997).

prohibited by the section. A reasonably prudent person would know that the omission of ownership information may constitute a "material omission" for the purpose of section 35.41(b) because a reasonably prudent person seeking market-based rate authority would consult relevant Commission orders, including Order No. 697 and its progeny. Moreover, a reasonably prudent person would understand that a seller's ownership structure is a critical component of a market-based rate application, as the Commission must ensure that the seller and its affiliates do not possess market power and must determine if the Commission's market-based rate affiliate restrictions are applicable to the seller and, if so, whether the seller is in compliance with these restrictions.[67]

36. A reasonably prudent person would also know that submitting an application to the Commission or PJM representing that certain individuals hold management roles with a company when those individuals do not have any role in the company constitutes a "false or misleading" communication. Indeed, the respondent himself admits that his statements were meant to conceal his involvement with Quntum (i.e., were misleading).

37. The respondent appears to be arguing that he is being treated differently than other market participants. We agree with OE Staff that the issue of correcting an application versus withdrawing an application does not alter the fact that misrepresentations were deliberately made in violation of section 35.41(b) and that merely correcting Quntum's application would not resolve the issues presented here. In addition, the cases that the respondent points to in support of the fact that the Commission has provided applicants the opportunity to correct filings in the past are not analogous to the case here, as none of the cases cited by the respondent involved the submission of false and misleading statements to the Commission.[68]

38. Moreover, as far as the omission of ownership information from Quntum's application is concerned, the respondent overlooks the fact that Commission staff gave the applicant an opportunity to correct his filing by issuing a deficiency letter, which clearly directed the respondent to "identify all owners of Quntum."[69] The respondent decided not to avail himself of this opportunity and instead decided to file a notice of cancellation, which identified Deckonti Dennis as the vice president of Quntum. Nevertheless, it is not the respondent's decision to withdraw his application that forms the basis of the action here; on the contrary, it is the respondent's decision to continue

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[67] Despite the respondent's contention that section 35.41(b) is vague because he could not have known that he was required to include ownership information, the respondent, "like all entities appearing before the Commission, is held responsible for being familiar with the agency's regulations." *See* case cited *supra* note 53.

[68] *See Va. Elec. & Power Co.*, 80 FERC ¶ 61,275.

[69] *Quntum Energy LLC*, Docket No. ER09-805-000, at 1-2 (Apr. 22, 2009).

misrepresenting himself and the organizational structure of Quntum to both the Commission and PJM.

3. Civil Penalty Determination

a. Show Cause Answer

39. The respondent maintains that that imposing the proposed penalty of $50,000 would be inconsistent with the Commission's goal in imposing civil penalties, i.e., achieving compliance.[70] The respondent states that the likelihood that such conduct will recur is quite remote given that Quntum has been dissolved and the respondent has suffered severe financial and professional harm. The respondent further states that if the Commission would like to use this case as a means for establishing legal precedent, it can establish such precedent through findings in an order dismissing this case or, as it has done in a previous case, on settlement.[71] Moreover, the respondent argues that, even if a violation is found, the Commission has previously declined to impose a penalty on an entity where the gravity of the conduct at issue has been relatively minor and has resulted in little or no potential or actual harm.

40. The respondent asserts that while OE Staff claims that his actions resulted in harm to the regulatory process, the promotion of honesty does not require the imposition of "draconian" civil penalties against an uninformed individual for a technical violation of a communication requirement of which the individual had no notice and in response to which he was allowed no opportunity to cure. The respondent states that the Commission should exercise its discretion to fashion a remedy, such as compliance measures, that more appropriately respond to the nature and scope of the conduct at issue here as well as the fact that he lacks the ability to pay the proposed penalty.[72]

b. OE Staff Answer

41. OE Staff argues that the respondent's violations warrant assessment of the proposed civil penalty. OE Staff states that, given the number of communications in which the respondent submitted information that he knew to be false and misleading and the more than six months he pretended to be Deckonti Dennis in communications with PJM, a civil penalty of $50,000 is reasonable. OE Staff states that it took into account the

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[70] Show Cause Answer at 27 (citing *Compliance with Statutes, Regulations, and Orders*, 125 FERC ¶ 61,058, at P 1 (2008); Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216 at P 112).

[71] *Id.* at 27-28 (citing *Amaranth Advisors, L.L.C.*, 128 FERC ¶ 61,154, at P 2 (2009)).

[72] *Id.* at 28-31.

respondent's financial situation before recommending a penalty of $50,000. OE Staff rejects the notion that the respondent was a "minor scale" energy trader and argues that even a "minor" market participant can harm the public. OE Staff states that permitting the respondent to pay the proposed penalty in installments, as the Commission has done in other cases, will address any concerns about the respondent's financial situation. OE Staff states that, to the extent the Commission determines an installment plan to be appropriate, it recommends that the respondent be required to pay $5,000 within 90 days and installments of not less than $9,000 per year thereafter.[73]

c. Commission Determination

42. Section 316A of the FPA grants the Commission authority to assess civil penalties against any person who violates Part II of the FPA or any rule or order thereunder.[74] Under section 316A, the Commission may impose civil penalties of up to $1 million per day, per violation.[75] In determining the amount of a proposed penalty, the Commission is required to take into consideration "the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner."[76] The Commission has identified five factors that the Commission may consider in determining the amount of any civil penalty: (1) seriousness of the offense, (2) commitment to compliance, (3) self-reporting, (4) cooperation, and (5) reliance on staff guidance.[77]

i. Seriousness of the Violation

43. The Revised Enforcement Policy Statement identifies a number of issues to be considered when analyzing the seriousness of violations of the FPA. We discuss these factors below to the extent that they are relevant here. Consideration of these factors establishes that the respondent's violations were serious and warrant a penalty.

44. *Harm Caused by the Violations*. We agree with OE Staff that the respondent's conduct harmed the integrity of the regulatory process as well as undermined the

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[73] OE Staff Answer at 14-16

[74] 16 U.S.C. § 825o-1.

[75] *Id.*

[76] *Id.*

[77] *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156, at P 54-71 (2008) (Revised Policy Statement on Enforcement). We note that the Commission has recently issued a Revised Policy Statement on Penalty Guidelines; however, this policy statement is not applicable here since it does not apply to natural persons, or where the parties have engaged in settlement discussions. Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216 at n.2, § 1A1.1.

transparency of the PJM market. When adopting Market Behavior Rule 3, the Commission explained that the rule was intended to emphasize the need for market-based rate sellers to act "honestly and in good faith" when interacting with the Commission and entities tasked with the administration of wholesale markets, and that the integrity of the processes established by the Commission for open competitive markets relies on the openness and honesty of market participant communications.[78] We disagree with the respondent's characterization of his actions as "technical violations" and as being limited in scope. By misrepresenting himself and the organization of Quntum, the respondent hampered the Commission's ability to properly evaluate Quntum's application for market-based rates and discharge its statutory obligation to ensure that rates are just and reasonable. Likewise, we believe that the respondent's conduct undermined the transparency of the market, another factor that the Commission will consider when assessing the seriousness of conduct.[79]

45. *Manipulation, Deceit, Fraud, and Recklessness or Indifference to Results of Actions*. The respondent's conduct, by his own admission, was designed to deceive his former employer.[80] Further, the evidence indicates that the respondent was indifferent as to whether his actions to conceal his involvement with Quntum misled the Commission or PJM.

46. *Willful Action or in Concert with Others*. There is no evidence to suggest that the respondent inadvertently provided false or misleading information to the Commission. On the contrary, he did so knowingly and deliberately.

47. *Isolated Instance or Recurring Problem, Systematic and Persistent Wrongdoing, and Duration.* The record shows that respondent provided false and misleading information in three filings and to PJM staff in at least two communications. There is also evidence suggesting that he misrepresented himself in emails and phone calls with Commission staff. This conduct occurred over several months. Thus, the evidence indicates that the respondent persistently and systematically provided false and misleading information to conceal his ownership and management of Quntum.[81]

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[78] Market Behavior Order, 105 FERC ¶ 61,218 at P 107.

[79] Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 at P 56.

[80] Kourouma Aff. ¶¶ 10-12.

[81] While OE Staff points to litigation concerning the respondent and the Internal Revenue Service, we place no weight on that here. As the Commission stated in the Revised Policy Statement on Enforcement, we are concerned with the Commission's governing statutes, regulations, and orders. Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 at n.56.

48. *How Did the Wrongdoing Come to Light*. The respondent's wrongdoing came to the attention of the Commission after his former employer protested Quntum's market-based rate application alleging that Quntum had submitted false information to the Commission and PJM.

ii. Mitigating Factors

49. *Commitment to Compliance and Actions Taken to Correct*. The Commission has stated that it will take into account the nature and extent of an entity's internal compliance measures in existence at the time of the violation as well as the actions taken by an entity to correct the activity that produced the violation.[82] The Commission has stated that the presence of a *robust* compliance program is a mitigating factor that may result in a reduced penalty.[83] While the respondent states that he prepared Quntum's application based on the forms and instructions contained on the Commission's website, the record demonstrates that the respondent did not make any efforts to ensure the accuracy of information. Instead, he deliberately provided false and misleading information. Accordingly, we find that no credit is warranted.

50. *Cooperation.* In the Revised Policy Statement on Enforcement, the Commission stated that it expects cooperation of all entities and that it would only give credit for "exemplary cooperation."[84] Among the factors that the Commission stated that it would consider in determining whether there has been exemplary cooperation are whether the entity facilitated Commission access to employees with knowledge and information bearing on the issue and whether the entity identified culpable employees and assisted the Commission in understanding their conduct.[85] Both the respondent and OE Staff state that the respondent was cooperative during OE Staff's investigation. We find that his actions to cooperate with OE Staff's investigation warrant credit and consideration.

51. *Self-Reporting*. Self-reporting of violations is an important consideration because companies are in the best position to detect and correct such violations.[86] In the Revised Policy Statement on Enforcement, the Commission acknowledged that it would award penalty credit for parties that promptly self-report violations.[87] The respondent did not

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[82] *Id.* P 57.

[83] *Id.*

[84] *Id.* P 65.

[85] *Id.* P 66.

[86] *Brian Hunter*, 135 FERC ¶ 61,054, at P 147 (2011).

[87] Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 at P 62.

report the violations. This factor, therefore, cannot serve to mitigate the respondent's violations.

52. *Reliance on Staff Guidance*. While the respondent indicates that he relied on forms and instructions found on the Commission's website in preparing his market-based rate application, we find that credit is not warranted here. In the Revised Policy Statement on Enforcement, the Commission stated that "the application and degree of credit for reliance on staff guidance will be based on a case-by-case analysis, and will vary according to the nature and extent of the guidance and other surrounding circumstances."[88] In this case, the respondent's actions go beyond a mere error in the application process; he affirmatively and repeatedly misrepresented himself and Quntum in communications with the Commission and PJM.

iii. Appropriate Penalty

53. Based on the foregoing factors and the entire record in the proceeding, the Commission believes that there is a need to deter the conduct at issue and that a civil penalty of $50,000 is fair and reasonable under the circumstances.

54. We disagree with the respondent's assertion that assessment of a civil penalty is inconsistent with the Commission's goal in imposing civil penalties. As we have previously noted, our primary goal in assessing civil penalties is to promote compliance with the law.[89] Here, the respondent argues that a civil penalty is unnecessary to promote compliance because the unique circumstances giving rise to the alleged violation no longer exist and that, given the harm that the respondent suffered to his professional standing and his bleak career prospects in this industry, the likelihood that such conduct would recur is very remote.[90] Yet, it appears that the respondent has started another energy company, Tibiri, and that he has requested information from the Commission for the specific purpose of trading power in various markets throughout the United States.[91] We believe that the imposition of a civil penalty will encourage the respondent to comply with the Commission's rules and regulations as well as to deal honestly with the Commission, jurisdictional entities, and other market participants in his role with Tibiri and any other ventures that the respondent may pursue. In addition, the imposition of the proposed penalty here will encourage other entities to cautiously avoid the submission of

[88] *Id.* P 71.

[89] *Order Revising Market-Based Rate Tariffs*, 114 FERC ¶ 61,165, at P 33 (2006); *also see* Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216, at P 112.

[90] Show Cause Answer at 27-28.

[91] OE Staff Answer at 13-14.

false or misleading information to the Commission in the future, whether resulting from negligence or otherwise.

55. We note that in coming to our conclusion that $50,000 is a fair and reasonable penalty we have taken into account the respondent's cooperation with OE Staff and his current financial situation. As noted above, under section 316A of the FPA, the Commission may impose civil penalties of up to $1 million per day, *per violation* for any violation of Part II of the FPA. The respondent submitted filings to the Commission containing false and misleading information and material omissions on March 13, 2009, April 17, 2009, and May 21, 2009. Each of these submissions represents a separate violation of section 35.41(b). In addition, the respondent submitted false and misleading information to PJM on March 17, 2009 and May 27, 2009. Again, each of these submissions represents a separate violation. In light of the number of violations and the seriousness of the respondent's conduct, we believe that $50,000 represents a fair and reasonable amount given respondent's current financial situation.

56. While the respondent argues that the Commission should impose compliance measures instead of a civil penalty, we disagree. As the Commission has previously noted, the purpose of compliance plans is generally to monitor relevant activity by the company for a suitable period of time, to ensure that steps are taken within the company to improve compliance practices and thereby prevent reoccurrence of the violations.[92] It is unclear how the imposition of compliance measures would deter the respondent from providing false and misleading information to the Commission in the future. In this case, the respondent repeatedly submitted false and misleading information to the Commission and PJM—not because there were insufficient safeguards in place to ensure that complete and accurate information was submitted—but because the respondent actively sought to cloak his involvement in Quntum's affairs. In these circumstances, we believe that the imposition of a civil penalty is more likely to impact the respondent's behavior, as well as the behavior of other market participants,[93] than compliance measures would.

57. As far as the respondent's financial situation is concerned, we agree with OE Staff that a payment plan can alleviate this concern. Therefore, we will direct the respondent to pay $5,000 within 90 days of the issuance of this order and to pay $9,000 one year after the issuance of this order and each year thereafter. In the event that the respondent would prefer to pay the entire penalty in one lump sum within 90 days, the respondent may do so.

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[92] Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 at P 44.

[93] *Brian Hunter*, 135 FERC ¶ 61,054 at P 148.

The Commission orders:

(A) The respondent's motion for summary disposition is hereby denied.

(B) The Commission hereby directs the respondent to pay to the United States Treasury by a wire transfer a sum of $50,000 in civil penalties. The respondent must pay $5,000 within 90 days of the issuance of this order. The respondent must then pay $9,000 one year after the issuance of this order and then $9,000 each year thereafter until the respondent's total payments equal $50,000. In the event that the respondent elects to pay the entire penalty in one lump sum within 90 days, the respondent may do so.

By the Commission. Commissioner Moeller is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

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