

142 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Deutsche Bank Energy Trading, LLC

Docket No. IN12-4-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 22, 2013)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and DB Energy Trading LLC (Deutsche Bank). The Commission determines this order is in the public interest because it provides fair and equitable resolution of the Order to Show Cause proceeding in this docket as well as Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012). This proceeding and Enforcement's investigation addressed Deutsche Bank's conduct in the markets of the California Independent System Operator Corporation (CAISO). The investigation examined possible violations of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2, and of the Commission's regulation prohibiting the submission of inaccurate information, 18 C.F.R. § 35.41(b).¹
2. Deutsche Bank neither admits nor denies the violations and agrees to pay a civil penalty of \$1,500,000; disgorge unjust profits of \$172,645, plus interest; and implement improved compliance training and procedures.

I. Background

3. As described in the Agreement, Deutsche Bank is an indirect, wholly-owned subsidiary of Deutsche Bank AG. Deutsche Bank has market-based rate authority.² For the period investigated, January 29, 2010 through March 24, 2010 (Referral Period), Deutsche Bank purchased and sold energy and Congestion Revenue Rights (CRRs) in the CAISO markets. Deutsche Bank conducted its trading in CRRs and Financial

¹ Enforcement staff also examined violations of similar provisions contained in then-applicable CAISO Tariff, CAISO Fourth Replacement Tariff, Conformed Fourth Replacement CAISO Tariff (Tariff), § 37.5.1 (accuracy) and § 37.7 (manipulation).

² *DB Energy Trading, LLC*, 109 FERC ¶ 61,125 (2004); *DB Energy Trading LLC*, Docket No. ER04-1222-001 (December 8, 2008) (delegated letter order).

Transmission Rights (FTRs) through its FTR desk. In the CAISO markets, the traders on that desk (CRR traders) focused exclusively on bidding on CRRs and had no responsibility for physical trading until they undertook the physical trades at issue in this matter.

4. Following a referral by the CAISO Department of Market Monitoring, Enforcement opened a non-public, preliminary investigation of Deutsche Bank to determine whether it violated the Commission's regulations and the CAISO Tariff.

5. Enforcement concluded that Deutsche Bank violated the Commission's Anti-Manipulation Rule, 18 CFR § 1c.2, by trading in one product, physical exports at Silver Peak, with the intent to benefit a second product, its CRR position at Silver Peak. Enforcement also concluded that Deutsche Bank's designation of its physical trades as Wheeling-Through transactions violated the accuracy requirements of Commission regulations, 18 CFR § 35.41(b).

6. Enforcement set forth its conclusions in a report to the Commission. Based on that report, on September 5, 2012, the Commission issued an Order to Show Cause and Notice of Proposed Penalty.³ On November 5, 2012, Deutsche Bank submitted an Answer to that order. On the day Enforcement staff's Reply to that Answer was due, January 11, 2013, the Commission issued a notice postponing the filing date of the Reply in light of the fact that Enforcement staff and Deutsche Bank had entered into settlement negotiations.

II. Stipulation and Consent Agreement

7. In those negotiations, Enforcement staff and Deutsche Bank resolved this matter by means of the attached Agreement.

8. Deutsche Bank stipulates to the facts recited in the Agreement.

9. Deutsche Bank entered the Referral Period holding a quarterly CRR position with a source internal to CAISO and a sink at the Silver Peak intertie between CAISO and the Sierra Pacific Power Company (SPPC) control area. This CRR position benefitted Deutsche Bank when export congestion occurred at Silver Peak and caused losses to Deutsche Bank when import congestion occurred at Silver Peak.

³ *Deutsche Bank Energy Trading, LLC*, 140 FERC ¶ 61,178 (2012).

10. On January 15, 2010, CAISO derated the Silver Peak intertie, allowing no net energy to flow in the import direction and limiting flows in the export direction. The derate did not prevent bidding and scheduling in both directions because exports could be offset by imports. Once the derate became effective on the trading day of January 19, 2010, import congestion at Silver Peak caused Deutsche Bank to lose money on its CRR position.

11. In response, on January 26, 2010, during CAISO's auction for February CRRs, Deutsche Bank obtained CRRs that partially decreased its exposure to import congestion at Silver Peak.

12. To negate Deutsche Bank's remaining exposure, as of January 29, 2010, Deutsche Bank's CRR traders exported physical energy at the Silver Peak intertie in order to eliminate the import congestion that was causing losses to its CRR positions (the Export Strategy). As stipulated by Deutsche Bank, its "exports at Silver Peak raised prices at Silver Peak and caused its CRR position to gain value."

13. When Deutsche Bank exported at Silver Peak, no import congestion appeared at Silver Peak and Deutsche Bank's CRR position did not experience losses. For a small number of hours, Deutsche Bank contributed to export congestion that not only resulted in avoided losses but also increased the value of its CRR position. In both instances, the physical transactions were intended to, and did, benefit the CRR position.

14. Deutsche Bank implemented its Export Strategy by scheduling physical energy on transmission external to the CAISO system from Silver Peak to the Summit intertie and self-scheduling paired physical transactions consisting of exports (purchases) at Silver Peak and an equal amount of imports (sales) at Summit. Deutsche Bank falsely designated many of its physical transactions as Wheeling-Through transactions. Inside the CAISO, the Wheeling-Through designation led CAISO to conclude that Deutsche Bank was wheeling power from Summit to Silver Peak. Outside the CAISO, Deutsche Bank scheduled energy and transmission from the export point, Silver Peak, to the import point, Summit. The relevant CAISO Tariff required a Wheeling-Through transaction to have a resource outside of CAISO and a Load outside of CAISO.⁴ Deutsche Bank,

⁴ Tariff, § 30.5.4 (incorporating definition of Wheeling-Through); Tariff Appendix A, "Master Definitions Supplement" (defining Wheeling-Through); *see also* Tariff, § 1.2 ("Capitalized terms used in this CAISO Tariff shall have the meanings set forth in the Master Definitions Supplement.").

however, lacked a resource or a Load outside the CAISO for its designated Wheeling-Through transactions.

15. As noted above, the CRR traders focused exclusively on bidding on CRRs and, until they undertook the physical transactions at issue in this matter, had no responsibility for physical trading. They undertook the physical transactions in this matter to benefit the bank's CRR position. Deutsche Bank lost money on its physical transactions on every day it traded at Silver Peak during the Relevant Period. On each of these 44 days, SPPC's transmission charges and CAISO's export charges, which were publicly available on the internet, exceeded Deutsche Bank's revenue from the physical transactions. Further, Deutsche Bank's scheduling of physical exports at Silver Peak raised prices at Silver Peak.

16. Deutsche Bank stipulates that during CAISO's auction for March 2010 CRRs, it increased its CRR position at Silver Peak, increasing its exposure to losses from import congestion and gains from export congestion at Silver Peak.

17. Following calls from the CAISO Department of Market Monitoring expressing concerns regarding its trading at Silver Peak, Deutsche Bank stopped the Export Strategy as of trade date March 25, 2010. Enforcement determined that the Export Strategy increased the value of Deutsche Bank's Silver Peak CRRs by approximately \$172,645 during the Referral Period.⁵

18. Enforcement determined that, through the Export Strategy, Deutsche Bank engaged in cross-product manipulation, trading in one product (physical exports) with the intent to benefit a second product (the CRR position), and thereby violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2.⁶

⁵ This figure reflects further analysis since the issuance of the Order to Show Cause.

⁶ The Commission's Anti-Manipulation Rule prohibits any entity from: (1) using a fraudulent device, scheme or artifice, or making a material misrepresentation or a material omission as to which there is a duty to speak under a Commission-filed tariff, Commission order, rule or regulation, or engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity; (2) with the requisite scienter; (3) in connection with a transaction subject to the jurisdiction of the Commission.

19. Enforcement determined that Deutsche Bank's physical trades were not consistent with the fundamentals underlying the market price of Silver Peak, e.g., supply and demand, but rather were undertaken with the intent to change the value of CRRs. Deutsche Bank thus injected false and deceptive information into the marketplace and affected the price at Silver Peak, which hindered the proper functioning of the physical market at Silver Peak as well as the CRR market. By hindering the proper functioning of the CRR and physical markets, Deutsche Bank's Export Strategy was a scheme that operated as a "fraud or deceit" under the Commission's Anti-Manipulation Rule

20. Enforcement concluded that Deutsche Bank's CRR traders acted with the requisite manipulative intent because, among other reasons, they engaged in the physical transactions with the intent to increase the value of Deutsche Bank's CRR position. Specifically, as stipulated by Deutsche Bank, the CRR traders sought for the exports at Silver Peak to change the price to benefit the bank's losing CRR position. Deutsche Bank's physical transactions were not profitable. Even if these physical transactions had been profitable, however, profitability is not determinative on the question of manipulation and does not inoculate trading from any potential manipulation claim (although profitability may be relevant in assessing the conduct). Rather, as we have recognized, the elements of manipulation are "determined by all the circumstances of a case."⁷ Here, based on all the facts and circumstances, Enforcement determined that Deutsche Bank's conduct constituted manipulation.

21. Enforcement also concluded that Deutsche Bank's false designation of its physical trading as Wheeling-Through transactions to facilitate the Export Strategy also operated as a "fraud or deceit," independently satisfying this element of the Commission's Anti-Manipulation Rule.

22. Here, both Deutsche Bank's physical energy and CRR transactions were jurisdictional transactions, which satisfies the jurisdictional element of the Anti-Manipulation Rule.

23. Enforcement determined that Deutsche Bank violated the Commission's accuracy requirement, 18 C.F.R. § 35.41(b), which requires it to "provide accurate and factual information and not submit false or misleading information ... in any communication

18 C.F.R. § 1c.2(a) (2012). Enforcement also determined that this conduct violated the similar provision of the CAISO Tariff, section 37.7.

⁷ *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats. & Regs. ¶ 31,202 at P 39, *order denying reh'g*, 114 FERC ¶ 61,300 (2006).

with ... independent system operators,” such as CAISO.⁸ Deutsche Bank violated these provisions by submitting false and fraudulent Wheeling-Through transactions to CAISO; these transactions did not meet the CAISO Tariff’s requirements for Wheeling-Through transactions because they did not have an external resource or load.

24. Deutsche Bank agrees to pay a civil penalty of \$1,500,000; disgorge unjust profits of \$172,645, plus interest; and implement improved compliance training and procedures.

III. Determination of the Appropriate Sanctions

25. In determining the appropriate remedy, Enforcement considered the factors described in section 316A(b) of the Federal Power Act and in the Revised Policy Statement on Penalty Guidelines.⁹ Enforcement concluded that: Deutsche Bank’s conduct undermined the proper functioning of the CAISO markets, that its conduct was committed with the knowledge of supervisory personnel, but that it and its employees cooperated in staff’s investigation. Enforcement concluded that Deutsche Bank did not have an effective compliance program. Despite the fact that the Deutsche Bank Compliance Handbook stated that “engaging in physical trading designed to benefit financial transactions” merited “heightened review” as potential manipulation, the trading personnel did not seek review of the Export Strategy.

26. The Commission concludes that the civil penalty, disgorgement of unjust profits, compliance training and procedures, and the compliance monitoring reports set forth in the Agreement are fair and equitable resolutions of the matters concerned and are in the public interest, as they reflect the nature and seriousness of Deutsche Bank’s conduct and recognize the company-specific considerations as stated above and in the attached Agreement.

27. The Commission directs CAISO to allocate the disgorged funds and interest for the benefit of the market participants harmed by Deutsche Bank’s conduct as determined by CAISO.

⁸ Enforcement also determined that this conduct violated the similar provision of the CAISO Tariff, section 37.5.

⁹ 16 U.S.C. § 825o-1(b); *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

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The Commission orders:

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

(B) This order terminates Docket No. IN12-4-000.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Deutsche Bank Energy Trading, LLC)

Docket No. IN12-4-000

STIPULATION AND CONSENT AGREEMENT

I. Introduction

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and DB Energy Trading LLC (Deutsche Bank) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012). The investigation examined Deutsche Bank's conduct in the markets of the California Independent System Operator Corporation (CAISO) related to the 17 MW Silver Peak intertie. Specifically, the investigation examined potential violations of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2; of the Commission's regulation prohibiting the submission of inaccurate information, 18 C.F.R. § 35.41(b); and of similar provisions of the CAISO tariff (Tariff) then in effect.¹

II. Stipulations

Enforcement and Deutsche Bank hereby stipulate and agree to the following facts:

2. Deutsche Bank has market-based rate authority. During the period here at issue, Deutsche Bank purchased and sold energy and Congestion Revenue Rights (CRRs) in the CAISO markets and purchased and sold both energy and financial transmission rights (FTRs) in other organized markets. In 2009 and 2010, Deutsche Bank was one of the largest participants in the CAISO CRR auction markets. Deutsche Bank's trading in CRRs and FTRs was undertaken by traders on its FTR desk (the CRR traders). In the CAISO markets, these traders focused exclusively on bidding on CRRs and, until they undertook the trades at issue in this investigation, had no responsibility for physical trading.

3. Enforcement opened the investigation of Deutsche Bank following a June 15, 2010 referral by the CAISO Department of Market Monitoring (DMM) related to Deutsche Bank's scheduling and trading practices in the CAISO markets for the period January 29, 2010 through March 24, 2010 (Referral Period) at the Silver Peak intertie.

¹ CAISO Fourth Replacement Tariff, Conformed Fourth Replacement CAISO Tariff (CAISO Tariff); *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,012 (2011). Capitalized terms herein have the meaning set forth in the CAISO Tariff.

4. Deutsche Bank had established a CRR position prior to the Referral Period. It entered the first quarter of 2010 holding a CRR position with an internal source and Silver Peak as a sink in the amount of 40.56 MW on-peak and 48.51 MW off-peak. Deutsche Bank added to this position in the monthly auction for January 2010 CRRs. As a result, Deutsche Bank had a net CRR position sinking at Silver Peak of 49.76 MW on-peak and 50.96 MW off-peak.

5. The capacity of the Silver Peak interties used in the CAISO-administered auction was 17 MW in both the import and export direction. CAISO is able to award CRRs that exceed the capacity in each direction when the net flow of all CRRs (including offsets via counter flow) awarded do not exceed the capacity of the line.

6. Both the on-peak and off-peak positions were “long;” they benefitted Deutsche Bank when export congestion occurred at Silver Peak and caused losses to Deutsche Bank when import congestion occurred at Silver Peak.

7. On January 15, 2010, CAISO derated the Silver Peak intertie. Instead of 17 MW in both directions, the derate allowed no net energy to flow in the import direction and limited the net flow to 13 MW in the export direction. The derate did not prevent bidding and scheduling in both directions because an export scheduled could be offset by imports.

8. Once the derate became effective on the trading day of January 19, 2010, Deutsche Bank began to lose money on its CRRs due to import congestion at Silver Peak.

9. On January 26, 2010, during CAISO’s auction for February 2010 CRRs, Deutsche Bank obtained CRRs that partially decreased its exposure to import congestion at Silver Peak. As a result of the auction, Deutsche Bank held a CRR position with Silver Peak as a sink in the amount of 31.44 MW on-peak and 39.14 MW off-peak. This position still left Deutsche Bank exposed to import congestion at Silver Peak.

10. Deutsche Bank’s CRR traders sought to offset Deutsche Bank’s remaining exposure by exporting physical energy at the Silver Peak intertie to eliminate the import congestion that was causing losses to its CRR positions. Given the derate of Silver Peak and Deutsche Bank’s long CRR position sinking at Silver Peak, Deutsche Bank’s scheduling of physical exports at Silver Peak raised prices at Silver Peak and caused its CRR position to gain value.

11. Deutsche Bank implemented its physical export strategy (Export Strategy) as of the January 29, 2010 trading day. Specifically, Deutsche Bank scheduled physical energy on transmission external to the CAISO system from Silver Peak to the Summit intertie and self-scheduled paired physical transactions consisting of exports (purchases) at Silver Peak and an equal amount of imports (sales) at Summit. When Deutsche Bank

executed the Silver Peak to Summit physical schedules, no import congestion appeared at Silver Peak and Deutsche Bank's CRR position did not experience losses.

12. The physical transactions were at first scheduled as independent export and import transactions, but as Deutsche Bank continued to engage in such transactions the majority of the schedules were designated as Wheeling-Through transactions. Pairing export and import schedules as Wheeling-Through transactions ensures that CAISO either will schedule both flows or neither side of the transaction will flow; it would not cut one leg alone. Although the applicable CAISO tariff defined Wheeling-Through transaction as having both an external resource and an external load, Deutsche Bank's physical transactions did not have either an external resource or an external load. Inside the CAISO, the Wheeling-Through designation led CAISO to conclude that Deutsche Bank was wheeling power from Summit to Silver Peak. Outside the CAISO, Deutsche Bank scheduled energy and transmission from the export point, Silver Peak, to the import point, Summit. When the transactions are taken together, there was no net outflow from or net inflow to CAISO.

13. Although for a handful of individual trading hours the physical transactions were profitable on a standalone basis, Deutsche Bank lost money on these physical transactions on every day it traded at Silver Peak. The transmission charges outside the CAISO and the CAISO's export charges exceeded Deutsche Bank's revenue from the physical transactions on each of these days.

14. For the period January 29 through February 20, 2010, Deutsche Bank scheduled 3 to 6 MW of exports at Silver Peak and imports at Summit. When the export transactions were executed, no import congestion occurred at Silver Peak and Deutsche Bank's CRR positions did not experience losses. During this period, Deutsche Bank designated export-import pairs as Wheeling-Through transactions approximately 47% of the time with the remaining transactions scheduled as individual imports and exports.

15. On February 21, 2010, Deutsche Bank began scheduling 10 to 13 MW of exports at Silver Peak and designated 100% of these pairs as Wheeling-Through transactions. The traders continued to observe that no import congestion occurred when Deutsche Bank engaged in the physical transactions and that, for a small number of hours, there was export congestion that not only resulted in avoided losses but also increased the value of the CRR position.

16. On February 23, 2010, during CAISO's auction for March 2010 CRRs, Deutsche Bank submitted bids to either increase or decrease the Silver Peak position depending on auction prices. The auction resulted in an increase in Deutsche Bank's CRR position for March to 45.25 MW on-peak and 50.16 MW off-peak. As a result of the increased CRR position Deutsche Bank increased its exposure to losses from import congestion and gains from export congestion at Silver Peak.

17. On March 18, 2010, a CAISO client representative informed Deutsche Bank that the DMM wanted to discuss Deutsche Bank's trading at Silver Peak. Conference calls were conducted on March 23 and March 26 during which the DMM raised concerns about Deutsche Bank's transactions at Silver Peak. Deutsche Bank reduced its exports at Silver Peak to 3 MWs as of trade date March 20, 2010 and stopped scheduling exports at Silver Peak as of trade date March 25, 2010.

18. Enforcement determined that Deutsche Bank's Export Strategy increased the value of its Silver Peak CRRs by approximately \$172,645 during the Referral Period.

III. Violations

A. DBET Engaged in Market Manipulation

19. Based upon its investigation, Enforcement determined that, during the Referral Period, Deutsche Bank violated the Commission's Anti-Manipulation Rule by engaging in transactions in one product, energy exports (physical purchases) at Silver Peak, with the intent to benefit a second product, its CRR position at Silver Peak. The Commission's Anti-Manipulation Rule prohibits any entity from: (1) using a fraudulent device, scheme or artifice, or making a material misrepresentation or a material omission as to which there is a duty to speak under a Commission-filed tariff, Commission order, rule or regulation, or engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity; (2) with the requisite *scienter*; (3) in connection with a transaction subject to the jurisdiction of the Commission.²

20. Enforcement determined Deutsche Bank's Export Strategy violated the Commission's Anti-Manipulation Rule.³ In a CRR market, the holder of a CRR is subject to various risks, including the risk that a derate will affect the value of the CRR. Through its Export Strategy, Deutsche Bank sought to negate the adverse impact the derate at Silver Peak had on the value of its CRR position. Deutsche Bank lost money consistently on its physical transactions. Its physical trades were not consistent with the fundamentals underlying the market price of Silver Peak, e.g., supply and demand, but rather were undertaken with the intent to change the value of CRRs. Deutsche Bank thus injected false and deceptive information into the marketplace and affected the price at Silver Peak, which hindered the proper functioning of the physical market at Silver Peak

² The Energy Policy Act of 2005 (EPA 2005) added an anti-manipulation provision to the Federal Power Act, 16 U.S.C. § 824v, which the Commission codified in Order No. 670. *See Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats. & Regs. ¶ 31,202, *reh'g denied*, 114 FERC ¶ 61,300 (2006) (Order No. 670).

³ Enforcement staff also determined that the conduct violated the similar section of then applicable CAISO Tariff, § 37.7 (2010).

as well as the CRR market. Enforcement determined that by hindering the proper functioning of the CRR and physical markets, which are both jurisdictional markets, Deutsche Bank's Export Strategy was a scheme that operated as a "fraud or deceit" under the Commission's Anti-Manipulation Rule.⁴

21. Enforcement also concluded that Deutsche Bank's designation of its physical trading as Wheeling-Through transactions to facilitate the Export Strategy also operated as a "fraud or deceit"⁵ because the designation was not accurate, as discussed below in section III.B.

B. DBET Violated Accuracy Provisions

22. Further, Enforcement determined that Deutsche Bank violated the accuracy requirements of Commission regulations, 18 CFR § 35.41(b).⁶ Section 35.41(b) of the Commission's regulations applies to Deutsche Bank, as a market-based rate seller. This section requires Deutsche Bank to "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with... Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences." In its Export Strategy, Deutsche Bank scheduled its exports at Silver Peak with imports of equal amount at the Summit intertie, designating the majority of the paired bids as Wheeling-Through transactions. Appendix A of the CAISO Tariff defines a "Wheeling-Through Transaction" as "the use of the CAISO Controlled Grid for the transmission of Energy from a resource located outside the CAISO Controlled Grid to serve a Load located outside the transmission and Distribution System of a Participating [Transmission Operator]."

23. Enforcement determined that Deutsche Bank did not meet the tariff's requirements for Wheeling-Through transactions because its transactions lacked both an external resource and an external Load served, violating the Commission's regulation requiring the submission of accurate schedules, 18 CFR § 35.41(b), and the identical provision of the CAISO Tariff.

IV. Remedies and Sanctions

24. For purposes of settling any and all civil and administrative disputes arising out of, related to, or connected with Enforcement's investigation, Deutsche Bank agrees with

⁴ 18 C.F.R. § 1c.2(a)(3) (2012).

⁵ *Id.*

⁶ Enforcement staff also determined that the conduct violated the similar section of then applicable CAISO Tariff, § 37.5.1 (2010).

the facts as stipulated in Section II of this Agreement but neither admits nor denies the violations described in Section III of this Agreement. Deutsche Bank agrees to take the following actions.

A. Civil Penalty

25. Deutsche Bank shall pay a civil penalty of \$1,500,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

B. Disgorgement

26. Deutsche Bank shall disgorge unjust profits of \$172,645 resulting from its Export Strategy, plus interest, to CAISO within ten days after the Effective Date of this Agreement as defined below, for distribution to market participants affected by Deutsche Bank's actions.

C. Compliance

27. To the extent not already implemented since the Referral Period, Deutsche Bank shall adopt compliance measures and procedures related to its trading of jurisdictional products, including CRRs and other FTRs, to the extent that it continues to trade in jurisdictional products. These measures shall include improved training for its traders, supervisors, and managers regarding the Commission's regulations governing energy trading, including the adherence to the tariffs in the organized markets in which Deutsche Bank participates. Deutsche Bank shall make an initial compliance monitoring report and thereafter shall make semi-annual compliance monitoring reports to Enforcement for one year following the Effective Date of this Agreement. The initial compliance monitoring report shall be submitted no later than 60 days after the Effective Date of this Agreement. The period covered by the initial compliance monitoring report shall be March 26, 2010, through the Effective Date of this Agreement. The first semi-annual compliance monitoring report shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The period covered by the report shall consist of the six months ending one calendar month prior to the date of such report. The second semi-annual compliance monitoring report shall be submitted six months thereafter for the six month period succeeding the prior reporting period. Provided, however, that the foregoing compliance measures and procedures shall not be required to address specific products or markets if, as certified in its compliance monitoring reports, Deutsche Bank no longer transacts in those products or markets and does not resume transacting in those products or markets within one year after the Effective Date of this Agreement.

28. Each compliance monitoring report shall: (1) advise Enforcement of any violations of Commission regulations or the CAISO tariff requirements that have occurred during the applicable period and are known to Deutsche Bank either as a result of its monitoring and testing programs or otherwise; (2) provide a detailed update of all compliance measures and procedures instituted, and compliance training administered, by Deutsche Bank in the applicable period, including a description of the compliance measures and procedures instituted, the compliance training provided to all relevant personnel concerning the CAISO Tariff, and a statement of the personnel or other evidence demonstrating that the personnel have received such training and when the training took place; and (3) include an affidavit executed by an officer of Deutsche Bank that the compliance monitoring reports are true and accurate to the best of his or her knowledge. Upon request by Enforcement, Deutsche Bank shall provide to Enforcement documentation to support its reports. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require Deutsche Bank to submit semi-annual reports for one additional year.

V. Terms

29. 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 Deutsche Bank and any affiliated entity, and their agents, officers, directors and employees, both past and present, and any successor in interest to Deutsche Bank.

30. Commission approval of this Agreement in its entirety and without material modification shall release Deutsche Bank and forever bar the Commission from holding Deutsche Bank, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the investigation addressed in this Agreement.

31. Deutsche Bank's failure to: (a) make a timely civil penalty payment; (b) make a timely disgorgement payment to CAISO; (c) comply with the compliance monitoring requirement specified herein; or (d) comply with 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 Deutsche Bank to additional action under the enforcement and penalty provisions of the Federal Power Act.

32. If Deutsche Bank fails to make the civil penalty and disgorgement payments described above at the times 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. § 35.19a(a)(2)(iii)(A) (2012) from the date the payments are due, in addition to any other enforcement action and penalty that the Commission may take or impose.

33. This Agreement binds Deutsche Bank and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on Deutsche Bank, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

34. The signatories to this 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 Deutsche Bank has been made to induce the signatories or any other party to enter into the Agreement.

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

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

37. 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 this Agreement on the entity's behalf.

38. The undersigned representative of Deutsche Bank affirms that he or she has read this Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information, and belief that he or she understands that this Agreement is entered into by Enforcement in express reliance on those representations, and that he or she has had the opportunity to consult with counsel.

39. This Agreement may be signed in counterparts.

Agreed to and Accepted:



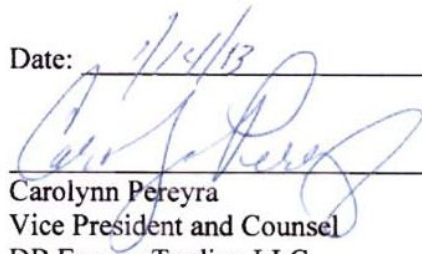
Norman Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: Jan. 14, 2013



Hank Jones
Managing Director
DB Energy Trading LLC

Date: 1/14/13



Carolynn Pereyra
Vice President and Counsel
DB Energy Trading LLC

Date: 1/14/2013

Document Content(s)

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