156 FERC ¶ 61,223
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Maxim Power Corp., Maxim Power (USA), Inc., Maxim Power (USA) Holding Company Inc., Pawtucket Power Holding Company, LLC, and Pittsfield Generating Company, LP — Docket No. IN15-4-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued September 26, 2016)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Maxim Power Corp. (Maxim), Maxim Power (USA), Inc., Maxim Power (USA) Holding Company Inc., Pawtucket Power Holding Company, LLC, Pittsfield Generating Company, LP, (collectively, "Maxim Respondents"), This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2015), into whether the Maxim Respondents violated section 222 of the Federal Power Act (FPA) and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c and the Commission's rule concerning communications by entities with market-based rate authority.

2. The Maxim Respondents neither admit nor deny the alleged violations and agree that Maxim shall make a disgorgement payment of $4 million to ISO-New England and a civil penalty payment of $4 million to the United States Treasury.

I. Background and Investigation

3. Maxim is a Canadian firm based in Calgary, Alberta, which owns power plants in three countries, including the United States. One of Maxim's plants is a 181 megawatt (MW) unit in Pittsfield, Massachusetts that can burn either fuel oil or natural gas to generate electricity. The Pittsfield plant participates in ISO-New England.

4. To protect the reliability of the grid, ISO-New England frequently needs the Pittsfield plant to run to provide voltage support, even if its offer prices are above market prices ("Locational Marginal Prices," or "LMPs"). When this happens, ISO-New

England makes up the difference between the generator's offer price and the LMP through make-whole payments, called Net Commitment Period Compensation ("NCPC").

5. ISO-New England's Internal Market Monitor (IMM) submitted a referral to Enforcement in August 2013 concerning the Maxim Respondents' then-recent offers for the Pittsfield plant. Staff promptly opened a non-public investigation, which included obtaining documents and testimony from Maxim and information from ISO-New England.

II. <u>2010 Oil/Gas Conduct</u>.

6. On a number of days in July and August 2010, Maxim submitted offers for Pittsfield at fuel oil prices when it actually burned less expensive natural gas, and exchanged a number of communications with ISO-NE's Internal Market Monitor about its offers. Staff's investigation of this matter culminated in an Order to Show Cause proceeding, *see Maxim Power Corp*., 150 FERC ¶ 61,068 (2015), and ultimately in an Order Assessing Civil Penalties, *Maxim Power Corp*., 151 FERC ¶ 61,094 (2015). The Maxim Respondents did not pay the civil penalties, and the Commission therefore filed a lawsuit in 2015 in the United States District Court for the District of Massachusetts to enforce the Commission's Order. The attached Stipulation and Settlement Agreement resolves the lawsuit.

III. <u>2012-13 NCPC conduct</u>

7. Under the ISO-NE tariff, generators may submit three different prices in their offers to the ISO: (a) a one-time-per-dispatch "Startup" price, (b) a "No Load" price, which is a fixed dollar amount per hour, and (c) a variable "Energy" offer (*e.g.*, $45/MWH). Generators also need to specify the shortest period for which their unit may be dispatched, which is called the unit's "Minimum Run Time."

8. Generators needed by ISOs for reliability may enjoy market power. To ensure that energy prices are competitive, ISO-NE has, with the Commission's approval, adopted rules allowing make-whole payments to generators needed for reliability to be reduced, or "mitigated," in certain circumstances.

9. Under the ISO tariff as in force during 2012 and through the end of the conduct at issue here (in August 2013), whether an offer submitted by a generator needed for reliability was subject to mitigation depended on the unit's all-in offer price – the combination of Startup, No Load, and Energy charges – over the unit's Minimum Run Time. The rule limited the aggregate total of these charges to 110% of the unit's

reference costs across the unit's Minimum Run Time. This mitigation approach was proposed by ISO-NE,[1] and approved by the Commission,[2] in 2009.

10. In its offers to ISO-NE for Pittsfield between July 2012 and mid-August 2013, when the mitigation rules adopted in 2009 were in effect, Maxim shifted dollars from the one-time Startup charge to the recurring Energy charge. Under this new offer strategy, Maxim's all-in price for Pittsfield's Minimum Run Time (usually four hours) remained the same as with its prior offers. But once that period was over, Maxim's energy offers were at a higher effective price, because the amounts previously built into the one-time Startup charge were now incorporated into the recurring Energy price.

11. In October 2012, Maxim reduced its Startup price to $0 and transferred all of the dollars formerly included in its one-time Startup price to its recurring Energy price. Maxim also submitted the shortest Minimum Run Time (four hours) permissible under the tariff. On an illustrative day, Maxim followed this strategy by reallocating its Startup price ($38,641) (a one-time charge) to the recurring per-MWh Energy charge, by spreading the $38,641 equally across the number of MWhs that the Pittsfield plant produced over four hours (154 MWs * 4 hours). Once Pittsfield's four-hour Minimum Run Time was satisfied, if ISO-NE continued to dispatch the plant for reliability, Maxim's energy offer was now at $149.50/MWh, as opposed to $76.30 under its prior offer method. ISO-NE's NCPC payments to Maxim at this higher energy price after the first four hours of a reliability dispatch were equivalent to Maxim receiving an additional Startup payment every four hours, even though the plant had actually started up only once.

12. In August 2013, the ISO-NE IMM contacted Maxim and asked it to stop employing this bidding strategy. Maxim immediately complied.

13. In September 2013, ISO-NE filed a request to amend its tariff with respect to NCPC payments to generators needed for reliability. The Commission approved that request in November 2013.[3]

14. Enforcement determined that Maxim's July 2012-August 2013 conduct violated the Commission's Anti-Manipulation Rule. The attached Stipulation and Settlement Agreement resolves this matter.

---

[1] ISO New England Inc. and New England Power Pool, Market Rule 1 Revisions Relating to the Mitigation of Supply Offers for Resources Committed to Satisfy Reliability Needs at 16, Docket No. ER09-1546-000 (Aug. 5, 2009)

[2] *ISO New England Inc. et al.*, 129 FERC ¶ 61,008 (2009).

[3] *ISO New England Inc. et al.*, 145 FERC ¶ 61,129 (2013).

IV. Stipulation and Consent Agreement

15. Enforcement and the Maxim Respondents resolved the matter discussed above by means of the attached Agreement.

16. The Maxim Respondents stipulate to the facts recited in the Agreement, but neither admit nor deny that they violated the Federal Power Act or Commission regulations.

17. The Maxim Respondents agree that Maxim shall make a disgorgement payment of $4 million to ISO-New England and a civil penalty payment of $4 million to the United States Treasury.

V. Determination of Appropriate Sanctions and Remedies

18. In determining the appropriate sanctions and remedy for the Maxim Respondents, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines.[4]

19. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

20. The Commission also concludes that the Maxim Respondents' civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.[5]

The Commission orders:

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

By the Commission. Chairman Bay is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

---

[4] *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

[5] *Id*.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Maxim Power Corp., Maxim Power (USA), Inc., Maxim Power (USA) Holding Company Inc., Pawtucket Power Holding Company, LLC, and Pittsfield Generating Company, LP	Docket No. IN15-4-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

Staff of the Office of Enforcement ("Enforcement") of the Federal Energy Regulatory Commission ("Commission"), on the one hand, and Maxim Power Corp. ("Maxim"), Maxim Power (USA), Inc., Maxim Power (USA) Holding Company Inc., Pawtucket Power Holding Company, LLC, Pittsfield Generating Company, LP, (collectively, "Maxim Respondents"), on the other hand, enter into this Stipulation and Consent Agreement ("Agreement") to resolve (i) a non-public investigation conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (the "Investigation"), (ii) all claims and allegations arising from the Investigation, including but not limited to the Maxim Respondents' alleged violations of section 222 of the Federal Power Act (FPA) and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c, and the Commission's rule concerning communications with (among others) Market Monitors for Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs), 18 C.F.R. § 35.41(b) (the "Alleged Violations"), and (iii) the Commission's lawsuit captioned *FERC v. Maxim Power Corporation et al.*, No. 3:15-cv-30113-MGM (D. Mass.) (the "Federal Court Lawsuit"). The Maxim Respondents neither admit nor deny the Alleged Violations. To resolve all disputes, claims and allegations underlying, arising from, and relating to the Investigation, the Alleged Violations, and the Federal Court Lawsuit, the Maxim Respondents agree that Maxim shall make a disgorgement payment of $4 million to ISO-New England and a civil penalty payment of $4 million to the United States Treasury.

II. STIPULATED FACTS

A. Relevant Entities

1. Maxim is a Canadian firm based in Calgary, Alberta. Maxim owns power plants in three countries, including the United States.

2. One of Maxim's power plants is a generator in Pittsfield, Massachusetts that is directly owned by Maxim's Pittsfield Generating Company, LP unit. The Pittsfield facility is a 181 megawatt (MW) dual-fuel unit that can burn either fuel oil or natural gas to generate electricity.

3. The Pittsfield plant participates in ISO-NE, a regional transmission organization with a footprint that includes Connecticut, Maine, Massachusetts, Rhode Island, New Hampshire, and Vermont.

B. ISO-NE Market Rules

4. ISO-NE schedules the majority of the electricity needed for the region, dispatching generation resources in part based on supply offers (including offers from generators) and demand bids (including bids from utilities that resell electricity to the public). The price for electricity at a particular pricing point in ISO-NE is called a "Locational Marginal Price," or LMP.

5. Normally, generators that submit supply offers that are above the cleared LMP are not dispatched. In some cases, however, ISO-NE may dispatch a particular generator to ensure that the electric grid operates reliably, even if the generator's supply offer is above the LMP. When ISO-NE dispatches a generator for reliability, it provides supplemental payments to the generator, in addition to payments at LMP. In ISO-NE, these payments are called Net Commitment Period Compensation ("NCPC").

6. The ISO-NE tariff includes provisions that potentially limit the amount of NCPC that ISO-NE will pay for any particular reliability dispatch. During the period relevant here, if a generator's supply offer exceeded 110% of ISO-NE's estimate of that generator's operating costs over the duration of its minimum run time, then ISO-NE's Internal Market Monitor ("IMM" or "Market Monitor") could, in certain circumstances, "mitigate" the amount of NCPC payments made to the generator so that the generator was compensated only for its operating costs. (Generators may also have been entitled to receive separate "capacity" payments for being available to provide energy.)

7. The IMM's estimate of a generator's operating costs, also known as its "reference level," includes estimates of the generator's fuel costs, its startup costs, its no-load costs, and its variable operation and maintenance costs. For facilities that can burn different fuels to produce electricity, different reference levels apply depending on the fuel used.

C. July-August 2010 Oil-Gas Conduct

8. Enforcement investigated Maxim's July-August 2010 participation in ISO-NE beginning in late 2013, and the Commission issued an Order to Show Cause on February 2, 2015. *Maxim Power Corp.*, 150 FERC ¶ 61,068 (2015). On March 4, 2015, the Maxim Respondents elected the federal district court option pursuant to FPA Section 31(d)(3), 16 U.S.C. § 823b(d)(3). Maxim also submitted an Answer on March 4, 2015, in which it denied any and all allegations against it. Enforcement filed a Reply on March 23, 2015. On April 6 and April 14, 2015, the Maxim Respondents filed responses to Enforcement's Reply, further denying all allegations. On May 1, 2015, by a vote of 3-1, the Commission issued an "Order Assessing Civil Penalties." *Maxim Power Corp.*, 151 FERC ¶ 61,094 (2015). Commissioner Clark issued a dissent.

9. On July 1, 2015, the Commission filed the Federal Court Lawsuit in the United States District Court for the District of Massachusetts to affirm the Commission's May 1, 2015 penalty assessment order. *FERC v. Maxim Power Corporation et al.*, No. 3:15-cv-30113-MGM (D. Mass.).

10. On July 21, 2016 the District Court issued an order denying the Maxim Respondents' motion to dismiss the Federal Court Lawsuit and concluding that the case should be treated "as an ordinary civil action governed by the Federal Rules of Civil Procedure." *Maxim Power Corp., et al.*, 2016 WL 4126378 at *11 (D. Mass. July 21, 2016).

11. On September 2, 2016, the Maxim Respondents filed their Answer and Affirmative Defenses in the Federal Court Lawsuit.

D. 2012-2013 NCPC Offer Strategy

12. Under the ISO-NE tariff, generators can submit three different prices when they make offers to the ISO. First, generators may submit a one-time-per-dispatch "Startup" price for bringing their facility into full operation. Second, generators may submit a "No Load" price, which is a fixed dollar amount per hour. Finally, generators may submit a variable "Energy" offer, which is a dollar charge per megawatt-hour ("MWh"). Generators also must specify the shortest period for which their unit may be dispatched, which is called the unit's "Minimum Run Time."

13. During the time period relevant here, under the ISO-NE tariff, whether an offer submitted by a generator needed for reliability was subject to mitigation was evaluated based on the unit's all-in offer price—the combination of Startup, No Load, and Energy charges—over the unit's Minimum Run Time. The rule limited the aggregate total of these charges to 110% of the unit's reference costs across the Minimum Run Time.

14. In mid-2012, Maxim shifted dollars from the one-time Startup charge to the recurring Energy charge. Such a change was permitted by the ISO-NE tariff in effect at that time. Under this new offer strategy, Maxim's all-in price for Pittsfield's Minimum Run Time (usually four hours) remained the same as with its prior offers. For all hours of a dispatch longer than the Pittsfield facility's Minimum Run Time, however, Maxim's energy offers were at a higher effective price, because the amounts previously reflecting the one-time Startup charge were now incorporated into the recurring Energy price.

15. In October 2012, Maxim reduced its Startup price to $0 and transferred all of the dollars formerly included in its Startup price to its Energy price. Maxim also submitted the shortest Minimum Run Time (four hours) permissible under the tariff. On an illustrative day discussed in a Maxim presentation, the company employed this strategy by reallocating its Startup price ($38,641) (a one-time charge) to the recurring per-MWh Energy charge, by spreading the $38,641 equally across the number of MWhs that the Pittsfield plant produced over four hours (154 MWs * 4 hours). By doing so, after Pittsfield's four-hour Minimum Run Time was satisfied and if ISO-NE chose to continue dispatching the Pittsfield facility, Maxim's offer for energy would be $149.50/MWh, as opposed to $76.30 under its prior offer method. The additional payments that Maxim received through this strategy were mathematically equivalent to receiving an additional Startup payment every four hours after the Minimum Run Time ended.

16. During the period from July 2012 through mid-August 2013, Maxim collected more NCPC payments from ISO-NE than it would have received under its prior offer method. Maxim

promptly stopped structuring its offers this way after the ISO-NE Market Monitor asked it to do so in August 2013.

III. COMMISSION DETERMINATION OF VIOLATIONS CONCERNING 2010 OIL-GAS CONDUCT

17. In the May 30, 2015 penalty assessment order, published at 151 FERC ¶ 61,094, the Commission found that through their July-August 2010 oil offers, gas burns, and communications, the Maxim Respondents violated section 222 of the FPA and the agency's Anti-Manipulation Rule, 18 C.F.R. § 1c, and that Maxim violated 18 C.F.R. § 35.41(b).

IV. ENFORCEMENT DETERMINATION OF VIOLATIONS CONCERNING 2012-13 NCPC STRATEGY

18. Enforcement staff determined that Maxim violated 18 C.F.R. § 1c through its offers for Pittsfield between July 2012 and mid-August 2013, which were designed to frustrate and evade ISO-NE's mitigation rules and to enable Maxim to exploit market power to obtain inflated NCPC payments when the Pittsfield plant was dispatched for reliability. Enforcement separately determined that Maxim's offer strategy violated 18 C.F.R. § 1c because it interfered with a well-functioning market in ISO-NE that was designed to limit NCPC payments for reliability dispatches to 110% of a unit's reference levels.

V. REMEDIES AND SANCTIONS

19. For purposes of this Agreement, the Maxim Respondents stipulate to the facts set forth in Section II of this Agreement, but neither admit nor deny the allegations set forth in Sections III and IV of this Agreement.

20. For purposes of settling any and all disputes, allegations, and claims within the jurisdiction of the Commission underlying, arising from, or relating to the Investigation, the Alleged Violations, and the Federal Court Lawsuit, the Maxim Respondents agree that Maxim shall make a disgorgement payment of $4 million to ISO-NE and a civil penalty payment of $4 million to the United States Treasury. These payments shall be made in three equal installments, the first such installment within ten business days of the Effective Date of the Agreement and the subsequent installments on each of the next two anniversaries of the Effective Date of the Agreement. Maxim shall direct all of its payments to ISO-NE for disgorgement until it has paid the full disgorgement amount; that is, the first payment shall be made entirely to ISO-NE, the second payment shall be split between ISO-NE and the U.S. Treasury, and the third payment shall be made entirely to the U.S. Treasury. When making the payments, Maxim shall provide Enforcement with written confirmation that it has done so.

21. Within three business days of receiving confirmation of the first payment from Maxim, the Commission shall file a Notice of Dismissal With Prejudice of the Federal Court Lawsuit. The Commission and the Maxim Respondents agree to bear their own costs and fees from the case.

22. The Commission shall direct ISO-NE to promptly allocate the Maxim Respondents' disgorgement payments for the benefit of current ISO-NE ratepayers through an internal accounting procedure.

23. Enforcement agrees to permanently close, without further action, any and all remaining investigations of the Maxim Respondents (and their respective current and former officers, directors, employees, agents or assigns) concerning conduct up to the date this Agreement is signed by both Enforcement and the Maxim Respondents, including, but not limited to investigations into: (i) the oil-gas conduct during July-August 2010; (ii) the July 2012-August 2013 NCPC offer conduct; and (iii) the 2010-13 capacity test conduct discussed in the Notice of Alleged Violations issued on November 3, 2014 (collectively, the "Closed Matters"). (Enforcement advised the Maxim Respondents in February 2016 that it had closed its investigation of the 2010-13 capacity test conduct.)

VI. TERMS

24. The "Effective Date" of the Agreement shall be the date on which the Commission issues an order approving the Agreement without material modification. When effective, the Agreement shall resolve all disputes, allegations, and claims underlying, arising from, or relating to the Investigation, the Alleged Violations, the Federal Court Lawsuit and the Closed Matters (collectively, the "Released Matters").

25. Commission approval of the Agreement without material modification shall release the Maxim Respondents and their respective current and former officers, directors, employees, agents or assigns, and forever bar the Commission from holding the Maxim Respondents and their respective current and former officers, directors, employees, agents or assigns, any affiliated entity to the Maxim Respondents, and any successor in interest to the Maxim Respondents, liable for any and all disputes, allegations, or claims underlying, arising from, or relating to the Released Matters.

26. Failure to make timely payment or comply with any other provision of the Agreement shall be deemed a violation of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. §792, et seq., and may subject the Maxim Respondents to additional action under the enforcement provisions of the FPA.

27. If Maxim fails to make any portion of the payment described above by the date agreed by the parties, interest payable to ISO-NE and to the United States Treasury shall begin to accrue at the rates specified at 18 C.F.R. § 35.19(a) (2) (iii) from the date that payment is due.

28. The Agreement binds the Maxim Respondents and their agents, successors, and assignees. The Agreement does not create any additional or independent obligations on the Maxim Respondents, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in the Agreement.

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

30. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and Enforcement and the Maxim Respondents shall not be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and the Maxim Respondents.

31. The Maxim Respondents agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order under the Federal Power Act. Maxim Respondents therefore waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

32. The Agreement can be modified only if in writing and signed by Enforcement and the Maxim Respondents, and any modifications will not be effective unless approved by the Commission.

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

34. The undersigned representatives of the Maxim Respondents affirm that he or she has read the 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, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

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

ACCEPTED AND AGREED TO:

Larry R. Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: September 19, 2016

Michael Mayder
Senior Vice President of Finance and Chief Financial Officer
Maxim Power Corp.

Date: September 20, 2016