

133 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North America Power Partners

Docket No. IN09-6-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 28, 2010)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and North America Power Partners (NAPP). This order is in the public interest because it resolves the investigation into NAPP's compliance with various provisions of the PJM Interconnection, LLC (PJM) Open Access Transmission Tariff (OATT) and 18 C.F.R. § 1c.2 (2010). NAPP has agreed to pay a civil penalty of \$500,000, disgorge \$2,258,127, plus interest, in unjust profits and undertake compliance monitoring.

Background

2. NAPP is a limited liability company formed in July 2006 to participate in various organized energy markets' Demand Response programs. NAPP is a member of PJM and acts as a Curtailment Service Provider (CSP). CSPs act as agents for individual resources who wish to participate in PJM's markets. CSPs are responsible for registering resources into the various Demand Response programs and offering them as available during appropriate periods. In some programs, CSPs must also notify resources when PJM has ordered a demand reduction, and then must measure that reduction and submit related data.

3. PJM referred to Enforcement certain issues related to NAPP's participation in PJM's Demand Response programs. After reviewing the referral, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010). The investigation focused on NAPP's activities in PJM's Synchronized Reserve Market, Interruptible Load for Reliability (ILR) Program, and the Interchange Energy Market in 2007 and 2008.

Violations

A. Synchronized Reserve Market

4. PJM's Synchronized Reserve Market is an hourly ancillary services market that complements PJM's Interchange Energy Market by allowing PJM to respond to sudden changes and serve load immediately in the event of a system contingency. Demand Response resources must be able to reduce demand and respond to sudden deviations in system load and anticipated generation at the request of PJM within 10 minutes.

5. As a CSP participating in PJM's Synchronized Reserve Market during 2007 and 2008, NAPP submitted to PJM offers for its registered resources to reduce their demand in a given hour. In this market, if NAPP's offers were accepted, and PJM called a Synchronized Reserve Event, NAPP was required to notify the resource that it was required to reduce its demand.

6. From 2007 to July 2008, NAPP offered several resources into the market at times when the resources had reported to NAPP they were unavailable to respond to a Synchronized Reserve Event. In addition, between March 2007 and March 2008, PJM called nine separate Synchronized Reserve Events lasting more than 10 minutes, in which NAPP's resources were offered and had cleared in the market. However, NAPP failed to notify NAPP's resources of any of the nine events. Therefore, all of NAPP's resources failed to respond. After each event, NAPP failed to submit meter data for each resource to PJM demonstrating the resource's reduction in demand and therefore compliance with the event.

7. Enforcement determined that NAPP violated section 1.7.4(d) of Attachment K of PJM's OATT by repeatedly submitting offers on behalf of resources at times when NAPP knew such resources were unavailable to respond to Synchronized Reserve Events. Enforcement also determined that by failing to facilitate its resources' response to Synchronized Reserve Events, NAPP violated sections 1.7.4(a) and section 1.8.2 of Attachment K of PJM's OATT. Enforcement further determined that NAPP violated section 1.7.4(d) of Attachment K of PJM's OATT by failing to submit meter data. In addition, Enforcement determined that NAPP's foregoing conduct in connection with the Synchronized Reserve Market constitutes a fraudulent scheme or artifice committed with scienter in connection with a jurisdictional transaction in violation of 18 C.F.R. § 1c.2 (2010).

8. Enforcement determined that NAPP received unjust profits of \$334,116 related to NAPP's participation in the Synchronized Reserve Market.

B. ILR Program

9. ILR is a Demand Response capacity product that is offered on an annual basis and used by PJM in emergency circumstances during times of peak demand to maintain reliability. CSPs, such as NAPP, register resources once per year to participate for that ILR planning season. As part of the registration process, CSPs must submit Peak Load Contribution (PLC) data to PJM, which they obtain from the end-users or the electric distribution companies (EDC). PJM forwards the PLC data submitted for each resource to the relevant EDC for verification and, when necessary, adjusts the PLC data to ensure accuracy. PJM uses PLC data to represent the peak demand of participating resources and to allocate payment to participating ILR resources based upon the reduction from such peak demand for the guaranteed-load-drop-based resources.

10. As part of the registration process for the 2007/2008 ILR planning season, NAPP submitted 52 inaccurate PLC values, which in the aggregate, overstated the PLC values of NAPP's registered resources by 39.5 MW. Enforcement determined that NAPP's submission of inaccurate PLC data for the 2007/2008 ILR program violated Attachment DD-1(I) of PJM's OATT.

11. After the deadline for the 2008/2009 ILR planning season, NAPP disclosed to Enforcement that it may have improperly registered several resources for the 2008/2009 ILR planning season. Following a review of NAPP's documents, Enforcement determined that NAPP registered 101 resources before obtaining their authorization or verification of their willingness and ability to participate in that year's program prior to the registration deadline.

12. Enforcement determined that the registration of 101 resources in the 2008/2009 ILR program without authorizations violated sections A(2), (3) and (7) of Attachment DD-1 of PJM's OATT. Enforcement also determined that such conduct constitutes a fraudulent scheme or artifice committed with scienter in connection with a jurisdictional transaction in violation of 18 C.F.R. § 1c.2 (2010).

13. Enforcement determined that NAPP received unjust profits of \$1,924,011 related to its unauthorized registrations of ILR resources.

C. Other Violations

14. Enforcement also determined that NAPP engaged in two minor tariff violations connected with its activities as a CSP. Enforcement determined that in early 2007, NAPP offered a resource with a real-time Locational Marginal Pricing rate into PJM's day-ahead energy market in violation of section 3.3A.5(c) of Attachment K of PJM's OATT. Enforcement also determined that from early

2007 until early 2008, when NAPP upgraded its operations facility, NAPP transacted during some hours in the day-ahead Interchange Energy Market without having such transactions controlled by a sufficiently staffed and communications enabled market operations center in violation of section 1.7.20(a) of Attachment K of PJM's OATT.

Stipulation and Consent

15. Enforcement staff and NAPP resolved Enforcement staff's investigation by means of the attached Agreement. NAPP neither admits nor denies the violations.

16. The agreement requires NAPP to pay a civil penalty of \$500,000 to the United States Treasury and disgorge \$2,258,127, plus interest to PJM for pro-rata distribution to the Load Serving Entities that were assigned the costs for the respective demand response programs during the applicable periods. These amount shall be paid according to the payment schedule outlined in the Agreement.

17. NAPP shall also develop and maintain a compliance program and make semi-annual reports to Enforcement for two years.

Determination of the Appropriate Civil Penalty

18. In determining the appropriate remedy, Enforcement considered the factors described in the *Revised Policy Statement on Enforcement*.¹ Specifically, staff considered the seriousness of NAPP's violations and that its behavior violated both PJM's OATT and amounted to fraudulent conduct in violation of 18 C.F.R §1c.2 (2010). Staff also considered the following factors: NAPP's most serious violations were committed willfully and intentionally through the participation or oversight of NAPP's former Senior Vice President of Operations (whom NAPP has since terminated); NAPP has strengthened its commitment to compliance; NAPP's violations had the potential to cause harm, even though its actions in this particular matter did not affect market prices or cause actual harm to system reliability; NAPP's failure to fully cooperate during the initial stages of the investigation; and NAPP's improved cooperation during later stages of the investigation.

¹ 123 FERC ¶ 61,156 (2008). Enforcement did not consider the *Revised Policy Statement on Penalty Guidelines* because staff had initiated settlement negotiations prior to its issuance. See 132 FERC ¶ 61,216 at n.2 (2010).

19. Enforcement also considered the risk that a high penalty or an immediate large payment could jeopardize NAPP's continued financial viability and thereby hinder the Commission's ability to disgorge NAPP's unjust profits and obtain a civil penalty. Absent consideration of NAPP's financial viability, Enforcement would have sought a significantly higher civil penalty and would likely seek a higher penalty for similar conduct by a more financially viable entity in the future.

20. We conclude that the penalties and other remedies set forth in the Agreement are a fair and equitable resolution of this matter and are in the public interest, as they reflect the nature and seriousness of NAPP's conduct, and recognize the company-specific considerations as stated above and in the attached Agreement. We also conclude that the payment schedule outlined in the Agreement is appropriate given NAPP's ability to pay.

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

North America Power Partners

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Docket No. IN09-6-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and North America Power Partners, LLP (NAPP) 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 (2010). Enforcement determined that NAPP committed violations of various provisions of the PJM Interconnection, LLC (PJM) Open Access Transmission Tariff (OATT) and 18 C.F.R. § 1c.2 (2010). NAPP has agreed to pay a civil penalty of \$500,000 and disgorge \$2,258,127, plus interest, in unjust profits.

II. STIPULATIONS

Enforcement and NAPP hereby stipulate to the following:

A. Background

2. NAPP is a limited liability company formed under the laws of the State of Delaware in July 2006 to participate in various organized energy markets' Demand Response programs. NAPP is a member of PJM and acts as a Curtailment Service Provider (CSP). CSPs act as agents for individual resources who wish to participate in PJM's markets. CSPs are responsible for registering resources into the various Demand Response programs and offering them as available during appropriate periods. In some programs, CSPs must also notify resources when PJM has ordered a demand reduction, and then must measure that reduction and submit related data.

3. Initially, when NAPP was formed, it employed three individuals, including the two founding partners (managing members), and one contractor. One partner served as the President, while the other served as the Senior Vice President of Operations. The President, who had significant experience with energy services, including energy efficiency, was primarily responsible for sales and marketing activities. The Senior Vice President of Operations, who also had significant energy experience and had been involved in the development of PJM's Demand Response programs while previously employed by PJM, was primarily responsible

for NAPP's operations and participation in PJM's Demand Response programs. In addition to the founding partners (managing members), other members have also invested in NAPP. In 2007 and early 2008, NAPP's scope of operations significantly increased and it opened a second larger office with a control center and hired additional employees. The Senior Vice President of Operations remained primarily responsible for NAPP's participation in PJM's Demand Response programs.

4. In March 2008, PJM referred to Enforcement certain issues related to NAPP's participation in PJM's Demand Response programs. After reviewing the referral, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010). The investigation focused on NAPP's activities in PJM's Synchronized Reserve Market, Interruptible Load for Reliability (ILR) Program, and the Interchange Energy Market in 2007 and 2008.

5. In September 2008, litigation arose between NAPP and its members when NAPP's President attempted to suspend the Senior Vice President of Operations and he subsequently interfered with the business' orderly operations. As a result of the ongoing litigation, a stalemate between the two managing members developed. With the support of the members, the state court subsequently appointed an Interim CEO, to address the stalemate. In December 2008, the Interim CEO terminated the employment of the Senior Vice President of Operations, which was confirmed by the court.

B. Violations

1. Synchronized Reserve Market

6. PJM's Synchronized Reserve Market is an hourly ancillary services market that complements PJM's Interchange Energy Market by allowing PJM to respond to sudden changes and serve load immediately in the event of a system contingency. Demand Response resources must be able to reduce demand and respond to sudden deviations in system load and anticipated generation at the request of PJM within 10 minutes.

7. As a CSP participating PJM's Synchronized Reserve Market during 2007 and 2008, NAPP submitted to PJM offers for its registered resources to reduce their demand in a given hour. In this market, if NAPP's offers were accepted, and PJM called a Synchronized Reserve Event, NAPP was required to notify the resource that it was required to reduce its demand. Resources that cleared in the market were paid for their availability whether or not an event was called. PJM provided additional compensation if a resource responded to a Synchronized Reserve Event or imposed a limited penalty on resources that failed to comply.

8. From 2007 to July 2008, after registering resources for PJM's Synchronized Reserve Market, the Senior Vice President of Operations (either directly or through employees under his supervision) submitted offers for NAPP's resources into the Synchronized Reserve Market. NAPP offered several resources into the market at times when the resources had reported to NAPP they were unavailable to respond to a Synchronized Reserve Event. For example, one resource notified NAPP it was only available during certain business hours, however NAPP offered it into the Synchronized Reserve Market during evening hours. Additionally, NAPP offered a resource into the Synchronized Reserve Market after it had ended its contractual relationship with NAPP, and therefore was not prepared to respond to a Synchronized Reserve Event.

9. Between March 2007 and March 2008, PJM called nine separate Synchronized Reserve Events lasting more than 10 minutes, in which NAPP's resources were offered and had cleared in the market. NAPP, through the Senior Vice President of Operations, received the Synchronized Reserve Event calls from PJM but failed to notify NAPP's resources of any of the nine events. Therefore, all of NAPP's resources failed to respond to the nine Synchronized Reserve Events. After each event, NAPP failed to submit meter data for each resource to PJM demonstrating the resource's reduction in demand and therefore compliance with the event. PJM notified NAPP operational staff of the noncompliance with Synchronized Reserve Events on three occasions. NAPP failed to implement remedial measures until after the third notification. PJM informed Enforcement that these facts led, in part, to PJM's referral to Enforcement. In July 2008, after the start of the investigation, PJM called a tenth Synchronized Reserve Event. NAPP initiated calls to its resources with cleared offers, but its resources did not fully respond.

10. Enforcement determined that NAPP violated section 1.7.4(d) of Attachment K of PJM's OATT by repeatedly submitting offers on behalf of resources at times when NAPP knew such resources were unavailable to respond to Synchronized Reserve Events. Enforcement also determined that by failing to facilitate its resources' response to Synchronized Reserve Events, NAPP violated sections 1.7.4(a) and section 1.8.2 of Attachment K of PJM's OATT. Enforcement further determined that NAPP violated section 1.7.4(d) of Attachment K of PJM's OATT by failing to submit meter data. In addition, Enforcement determined that NAPP's foregoing conduct in connection with the Synchronized Reserve Market violated 18 C.F.R. § 1c.2 (2010).

11. Enforcement determined that NAPP received unjust profits of \$334,116 related to NAPP's participation in the Synchronized Reserve Market.

2. ILR Program

12. ILR is a Demand Response capacity product that is offered on an annual basis and used by PJM in emergency circumstances during times of peak demand to maintain reliability. ILR provides PJM operators with the ability to request load reduction from CSPs during times of generation capacity emergencies and other events. CSPs, such as NAPP, register resources once per year to participate for that ILR planning season. As part of the registration process, CSPs must submit Peak Load Contribution (PLC) data to PJM, which they obtain from the end-users or the electric distribution companies (EDC). PJM forwards the PLC data submitted for each resource to the relevant EDC for verification and, when necessary, adjusts the PLC data to ensure accuracy. PJM uses PLC data to represent the peak demand of participating resources and to allocate payment to participating ILR resources based upon the reduction from such peak demand for the guaranteed-load-drop-based resources.

13. As part of the registration process for the 2007/2008 ILR planning season, NAPP, under the supervision of the Senior Vice President of Operations, submitted PLC data for its resources. Fifty-two of NAPP's PLC values were inaccurate and, in the aggregate, overstated PLC values by 39.5 MW. NAPP did not benefit from submitting inaccurate PLC data because PJM detected and corrected the erroneous information prior to the start of the ILR season.

14. Enforcement determined that NAPP's submission of inaccurate PLC data for the 2007/2008 ILR program violated Attachment DD-1(I) of PJM's OATT.

15. For the 2008/2009 ILR planning season, NAPP, through the actions of the Senior Vice President of Operations and operational employees under his supervision, registered numerous resources by the March 2008 deadline. After the deadline, NAPP disclosed to Enforcement that it may have improperly registered several resources for the 2008/2009 ILR planning season. PJM's OATT did not allow NAPP to remove these resources from the ILR program, therefore NAPP reserved revenues associated with the identified resources with the objective of returning these payments. Following a review of NAPP's documents, Enforcement determined that NAPP registered 101 resources before obtaining their authorization or verification of their willingness and ability to participate in that year's program prior to the registration deadline. Of these resources, Enforcement determined that all but 27 subsequently agreed to participate in the 2008/2009 ILR planning season. No ILR events were called during the 2008/2009 ILR season, therefore there were no impacts on system reliability.

16. Enforcement determined that the registration of 101 resources in the 2008/2009 ILR program without authorizations violated sections A(2), (3) and (7)

of Attachment DD-1 of PJM's OATT. Enforcement also determined that such conduct violated 18 C.F.R. § 1c.2 (2010).

17. Enforcement determined that NAPP received unjust profits of \$1,924,011 related to its determination of unauthorized 2008/2009 ILR registrations by NAPP.

3. Other OATT Violations

18. Enforcement also determined that NAPP engaged in two minor tariff violations connected with its activities as a CSP. Enforcement determined that in early 2007, NAPP offered a resource with a real-time Locational Marginal Pricing rate into PJM's day-ahead energy market in violation of section 3.3A.5(c) of Attachment K of PJM's OATT. Enforcement also determined that from early 2007 until early 2008, when NAPP upgraded its operations facility, NAPP transacted during some hours in the day-ahead Interchange Energy Market without having such transactions controlled by a sufficiently staffed and communications enabled market operations center in violation of section 1.7.20(a) of Attachment K of PJM's OATT.

C. Additional Factors

19. Since the start of the investigation, NAPP has strengthened its compliance procedures and has provided additional training for its employees. NAPP has also undertaken significant efforts to develop a compliance program and bring itself in compliance with PJM's OATT and the Commission's regulations. Throughout 2009, NAPP has improved compliance with applicable provisions of the PJM OATT.

20. Enforcement determined that NAPP's most serious violations were committed willfully and intentionally through the participation or oversight of NAPP's former Senior Vice President of Operations, a member of NAPP's senior management at the time. As noted above, during the investigation, NAPP, through the authority granted to the interim CEO, terminated this individual's employment.

21. Enforcement finds that, while no actual harm occurred to the market or the reliability of the system, NAPP's violations had the potential to cause harm under different market and system conditions.

22. In the early stages of the investigation, NAPP failed to cooperate fully with Enforcement's investigation, at times providing incomplete and misleading information. Some or all of the initial cooperation issues were the result of actions taken by the Senior Vice President of Operations. NAPP's cooperation improved in late 2008 and continued through the end of the investigation.

23. Significant in Enforcement's determination of the appropriate remedies and sanctions to settle this matter was consideration of the risk that a high penalty could jeopardize NAPP's continued financial viability. Enforcement reviewed NAPP's prior and projected income statements and determined that the monetary penalties agreed to under this Agreement will allow NAPP to continue its operations, yet also imposes a substantial penalty on NAPP. Enforcement might seek a significantly higher penalty for similar conduct by an organization in different financial circumstances.

III. REMEDIES AND SANCTIONS

24. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, NAPP agrees with the facts as stipulated but neither admits nor denies Enforcement's determinations that NAPP violated sections 1.7.4(a) and (d), 1.7.20(a), 1.8.2, and 3.3A.5(c) of Attachment K of PJM's OATT, sections A(2), (3) and (7) and provision I of Attachment DD-1 of PJM's OATT and 18 C.F.R. § 1c.2 (2009). Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving the dispute between Enforcement and NAPP without further proceedings, NAPP agrees to undertake the obligations set forth in this Agreement.

A. Civil Penalty and Disgorgement

25. Without admitting or denying liability, NAPP shall pay a civil penalty of \$500,000 to the United States Treasury.

26. NAPP shall also disgorge \$2,258,127, plus interest, which represents Enforcement's determination of unjust profits related to NAPP's violations. The disgorgement will be distributed to PJM for pro-rata distribution to the Load Serving Entities that were assigned the costs for the respective demand response programs during the applicable periods.

27. Taking into account NAPP's size and ability to pay, the disgorgement and civil penalty payments shall be made as follows:

1. \$1,150,000, plus interest in disgorgement to PJM within 30 days of the Effective Date;
2. \$804,063.50, plus interest in disgorgement to PJM by December 31, 2011;

3. \$304,063.50, plus interest in disgorgement to PJM by December 31, 2012; and
4. \$500,000 civil penalty to the United States Treasury by December 31, 2012.

Within 10 days of the date of each payment to PJM, NAPP will certify to Enforcement that it has satisfied the payment obligation.

B. Compliance Monitoring

28. NAPP agrees to develop and maintain a compliance program focusing on compliance with PJM's OATT requirements, the OATT requirements of any other regions in which NAPP participates, and applicable Commission regulations. NAPP shall make semi-annual reports to Enforcement for two years following the Effective Date of this Agreement. The first semi-annual 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 remainder of the reports shall be submitted in six month increments thereafter. Each report shall: (1) detail NAPP's activities and compliance in PJM's Demand Response markets; (2) describe any updates of compliance measures instituted and training administered during the preceding period; (3) advise Enforcement if any additional violations have occurred; and (4) include an affidavit executed by an officer of NAPP that the compliance reports are true and accurate. Upon request by staff, NAPP shall provide to staff all documentation supporting its reports. NAPP also agrees that one year after the Effective Date of this Agreement it will hire an independent auditor, to be approved by Enforcement, to conduct a comprehensive audit of NAPP's compliance with PJM's OATT and the Commission's requirements.

IV. 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 NAPP, any affiliated entity, and any successor in interest to NAPP.

30. Commission approval of this Agreement without material modification shall release NAPP and forever bar the Commission from holding NAPP, any affiliated entity, and any successor in interest to NAPP liable for any and all administrative or civil claims arising out of, related to, or connected with Enforcement's determination of violations addressed in this Agreement.

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

32. If NAPP does not make the civil penalty payment 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. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

33. The Agreement binds NAPP and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on NAPP, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement. This agreement does not bind NAPP's former Vice President of Operations in his individual capacity, nor does NAPP represent his individual interests.

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 NAPP has been made to induce the signatories or any other party to enter into the Agreement.

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

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

37. NAPP consents to the use of Enforcement's determinations for the purpose of assessing the factors in any further matter, including the factor of determining

the company's history of violations, that are set forth in the *Revised Policy Statement on Enforcement, Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008), or that may be set forth in any successor policy statement or order. Such use may be in any other proceeding before the Commission or to which the Commission is a party; provided, however, that NAPP does not consent to the use of specific acts set forth in this Agreement as the sole basis for any other proceeding brought by the Commission, nor does NAPP consent to the use of this Agreement by any other party in any other proceeding. This Agreement shall have no precedential effect except as set forth in the first sentence of this paragraph.

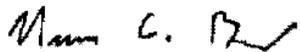
38. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

39. The undersigned representatives of NAPP affirm that they have read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of their knowledge, information and belief, and that they understand that the Agreement is entered into by Enforcement in express reliance on those representations.

40. The Agreement may be signed in counterparts.

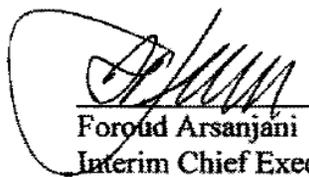
41. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



Norman C. Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

10/5/10
Date



Foroud Arsanjani
Interim Chief Executive Officer
North America Power Partners

10/04/10
Date