

148 FERC ¶ 61,007
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Indianapolis Power & Light Company

Docket No. IN14-12-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued July 3, 2014)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Indianapolis Power & Light Company (IPL). This Order is in the public interest because it resolves on fair and reasonable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2013), into whether IPL violated the Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) of the Midcontinent Independent System Operator, Inc. (MISO). IPL admitted the violation and agrees to pay a civil penalty of \$32,500, pay disgorgement of \$301,000, and undertake compliance reporting for one year.

I. Background and Investigation

2. As described in the attached Agreement, IPL, part of the AES Corporation, is a public utility that provides retail electric service to about 470,000 customers in and around Indianapolis. IPL owns four power plants, one of which includes the Petersburg 2 unit. IPL is a transmission-owning member of MISO.

3. IPL's Petersburg 2 unit ("the unit"), located near Petersburg, Indiana, is subject to discharge limits into the White River, as set by the Indiana Department of Environmental Management (IDEM). The IDEM discharge limits vary depending on the level and the temperature of the river water. During July 5-6, 2012, weather conditions lowered the IDEM discharge limits from the unit.

4. For July 5, 2012, IPL included in the unit's real-time offer to MISO an Economic Maximum (EcoMax) value of 420 MW. However, at 9:00 AM on July 5, the river level and the temperature of the river limited the unit's output to approximately 297 MW. During that day, the unit also experienced backpressure difficulties, further impairing its ability to produce to its EcoMax offer. As a result, the unit was unable to fully respond to MISO's dispatch instructions. IPL did not, however, reform the unit's real-time offer

until 6:31 PM. As a result, the unit incorrectly remained eligible for and received Day-Ahead Margin Assurance Payments (DAMAP) and avoided Revenue Sufficiency Guarantee (RSG) charges for all hours ending 1 through 20.

5. For the following day, July 6, 2012, IPL carried over into its real-time offer the day-ahead EcoMax value of 420 MW. The unit went off-control at IPL's request at 12:50 PM on July 6, as a result of which MISO adjusted its dispatch instructions to correspond to the unit's actual generation (which varied between 104 MW and 183 MW). However, IPL did not adjust its real-time offer, and thereby continued to incorrectly avoid RSG charges.

6. Following a referral by the MISO Independent Market Monitor (IMM), Enforcement opened a non-public, preliminary investigation of IPL to determine whether it had violated the Commission's regulations and the MISO Tariff. Section 39.2.5(c) of the MISO Tariff requires that capacity offers from generation resources "reflect the actual known physical capabilities and characteristics" of the resource on which the offer is based.¹

7. Enforcement concluded, and IPL agreed, that IPL violated section 39.2.5(c) of the MISO Tariff on July 5, 2012, and again on July 6, 2012, by failing to adjust its real-time offers for the unit to reflect the unit's actual capacity.

II. Stipulation and Consent Agreement

8. Enforcement and IPL resolved Enforcement's investigation by means of the attached Agreement.

9. As described in the Agreement, IPL stipulates to the facts set forth therein and admits its violation of section 39.2.5(c) of the MISO Tariff by failing to adjust its real-time offer on July 5, 2012 and again on July 6, 2012.

10. IPL agrees to disgorge to MISO \$301,000, of which \$286,000 restores previously received DAMAP and \$15,000 represents avoided RSG charges. IPL also agrees to pay a civil penalty of \$32,500 and to submit to one year of compliance monitoring, with another year of monitoring at Enforcement's discretion.

¹ MISO, FERC Electric Tariff, Module C, "Energy and Operating Reserve Markets," § 39.2.5(c).

III. Determination of the Appropriate Sanctions and Remedies

11. In determining the appropriate remedy for IPL, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,² including the fact that IPL accepted responsibility for its violations and avoided a trial-type hearing.

12. The Commission concludes that the civil penalty, disgorgement, and compliance monitoring reports set forth in the Agreement are fair and equitable resolutions of the matters concerned and are in the public interest.

13. The Commission also concludes that the civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.³ The Commission orders MISO to bill IPL and receive disgorgement payments from IPL as described in the Agreement.

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.

² *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010).

³ *Id.*

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Indianapolis Power & Light Company

Docket No. IN14-12-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Indianapolis Power & Light Company (IPL) enter into this Stipulation and Consent Agreement (Agreement) to resolve a non-public investigation (Investigation) conducted by Enforcement staff pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2013). The Investigation examined whether IPL had operated its Petersburg 2 unit at a derated capacity for substantial portions of July 5-6, 2012 without adjusting the unit's real-time offer to reflect the derate, thereby violating the Energy and Operating Reserve Markets Tariff (Tariff) of the Midcontinent Independent System Operator, Inc. (MISO). This Agreement resolves the Investigation.

II. STIPULATED FACTS

2. Enforcement and IPL hereby stipulate and agree to the following facts as set forth in paragraphs 3 through 7.

A. IPL

3. IPL, part of the AES Corporation, is a public utility that provides retail electric service to about 470,000 customers in and around Indianapolis. IPL owns four power plants, one of which includes the Petersburg 2 unit. IPL is a transmission-owning member of MISO.

B. Relevant Facts

4. IPL's Petersburg 2 unit, located near Petersburg, Indiana, draws cooling water from and discharges cooling water into the White River, subject to limits set by the Indiana Department of Environmental Management (IDEM). The IDEM discharge limits vary depending on the level and the temperature of the river water. During July 5-6, 2012, the White River levels were low due to drought conditions, and the Petersburg area experienced air temperatures over 100 degrees Fahrenheit, which raised the temperature of the river water. These events correspondingly lowered the IDEM discharge limits from Petersburg 2.

5. For July 5, 2012, IPL included in its real-time offer for Petersburg 2 an Economic Maximum (EcoMax) value of 420 MW. However, at 9:00 AM on July 5, the river level and the temperature of the river limited the unit's output to approximately 297 MW. During that day, the unit also experienced backpressure difficulties, further impairing its ability to produce to its EcoMax offer. As a result, the unit was unable to fully respond to MISO's dispatch instructions. For instance, at 9:00 AM, MISO instructed IPL to produce 298 MW from the unit, but the unit produced 291 MW in response. Similar gaps between instructions and output continued throughout the day.

6. At 2:56 PM on July 5, 2012, IPL entered a derated value of 265 MW into the MISO Control Room Operations Window (CROW) portal. It did not, however, reform the unit's real-time offer until 6:31 PM, at which time it updated its EcoMax to reflect the CROW-entered value of 265 MW. As a result, the unit remained eligible for Day-Ahead Margin Assurance Payments (DAMAP) and avoided Revenue Sufficiency Guarantee (RSG) charges for all hours ending 1 through 20.

7. For the following day, July 6, 2012, IPL included an EcoMax value of 420 MW in its day-ahead offer. Although it let stand in CROW the previously reported derate of 265 MW, IPL carried over into its real-time offer the day-ahead EcoMax value of 420 MW. The unit went off-control at IPL's request at 12:50 PM on July 6, as a result of which MISO adjusted its dispatch instructions to correspond to the unit's actual generation (which varied between 104 MW and 183 MW). However, IPL did not adjust its real-time offer, and although no longer eligible for DAMAP as a result of going off-control, IPL thereby continued to avoid RSG charges.

III. VIOLATIONS

8. Enforcement and IPL agree that on July 5, 2012, and again on July 6, 2012, IPL failed to adjust its real-time offers to reflect the diminished capability of the Petersburg 2 unit. IPL asserts that this failure was inadvertent and unintentional. Enforcement has determined, and IPL agrees, that in doing so, IPL violated section 39.2.5(c) of the MISO Tariff, which reads in pertinent part as follows:

Values in Offers. The values in Offers representing the non-price information identified in Section 39.2.5.b. shall reflect the actual known physical capabilities and characteristics of the Generation Resource and/or Demand Response Resource—Type II on which the Offer is based....

IV. REMEDIES AND SANCTIONS

9. In conjunction with settling any and all civil and administrative disputes arising out of, related to, or connected with Enforcement's investigation of the circumstances set forth in Section II of this Agreement, IPL agrees with the facts as stipulated in Section II of this Agreement and admits the violations described in Section III of this Agreement. Enforcement and IPL agree to the following:

A. Disgorgement

10. IPL shall disgorge to MISO \$301,000, with the manner or conditions of payment to be determined by MISO. Of this total, \$286,000 restores previously received DAMAP and \$15,000 represents avoided RSG charges.

B. Civil Penalty

11. IPL shall pay a civil penalty in the amount of \$32,500 to the United States Treasury, by wire transfer, within ten (10) days after the Effective Date of this Agreement, as defined herein. Except as required by law, this civil penalty shall not be deducted or otherwise treated favorably to IPL for tax purposes nor recovered in any way by IPL.

C. Compliance Plan

12. IPL shall make semi-annual reports to Enforcement for one year 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 second report shall be submitted six months thereafter. In its reports, IPL shall demonstrate that training on the requirements of section 39.2.5(c) of the MISO Tariff has been provided to IPL personnel engaged in submitting offers to MISO, on at least a semi-yearly basis. IPL shall also provide summary data demonstrating that it has adjusted its real time offers as needed to reflect any change in the physical capability of its generating units, for the preceding six-month period covered by the report. Each report shall include an affidavit, executed by an officer of IPL, averring that the compliance report is true and accurate.

13. Upon request by Enforcement, IPL shall provide documentation supporting its reports. After receipt of the second semi-annual report, Enforcement may, at its sole discretion, require IPL to submit semi-annual reports for one additional year.

V. TERMS

14. 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, and which arose on or before the Effective Date, as to IPL, any affiliated entity, any successor in interest to IPL, and their respective agents, officers, directors, and employees, past and present.

15. Commission approval of this Agreement without material modification shall release IPL and forever bar the Commission from holding IPL, any affiliated entity, any successor in interest to IPL, and their respective agents, officers, directors, and employees, past and present, liable for any and all administrative or civil claims, known or unknown, arising out of, related to, or connected with the Investigation as defined in this Agreement. Moreover, on the Effective Date of the Agreement, the Investigation shall terminate.

16. Failure to make timely disgorgement or civil penalty payments or to comply with the compliance plan 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 IPL to additional action under the enforcement provisions of the FPA.

17. If IPL does not make the civil penalty payment described above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) (2013) from the date that payment is due, in addition to the penalty specified above and any other enforcement action and penalty that the Commission may take or impose.

18. IPL shall not seek to, and shall take no action to, pass through to ratepayers or customers any part of the civil penalty.

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

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

21. 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 IPL shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and IPL.

22. In connection with the civil penalty provided for herein, IPL agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under the Federal Power Act, 16 U.S.C. § 792, *et seq.*, as amended. IPL 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.

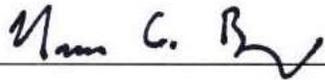
23. This Agreement can be modified only if in writing and signed by Enforcement and IPL, and any modifications will not be effective unless approved by the Commission.

24. 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.

25. The undersigned representative of IPL affirms 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.

26. 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

Date: 5.22.14



Kelly Huntington

President, Indianapolis Power & Light Company

Date: 5/15/14