

158 FERC ¶ 61,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Norman C. Bay, and Colette D. Honorable.

Covanta Haverhill Associates LP

Docket No. IN17-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued February 1, 2017)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Covanta Haverhill Associates LP (Company). This order is in the public interest because it resolves on fair and equitable terms the investigation into whether the Company failed to provide instantaneous metered power output data to ISO-New England (ISO-NE), as was required by the ISO-NE Tariff, during the period September 1, 2007 through June 29, 2016 (Relevant Period). The Company stipulates to the facts in the Agreement but neither admits nor denies the alleged violations. It agrees to: (a) pay a civil penalty of \$36,000 to the United States Treasury and (b) implement procedures to improve compliance, subject to monitoring via submission of semi-annual reports for at least two years.

I. Facts

2. The Company owns and operates a 45 MW waste-to-energy generator (Generator) in Haverhill, MA, and it sells energy from the Generator into the ISO-NE energy markets. It entered into a Market Participant Services Agreement with ISO-NE as of September 1, 2007, thereby becoming a Market Participant, as that term is defined in the ISO-New England Tariff.

3. Section I.3.2 of the Tariff requires all such Market Participants to operate in accordance with all of ISO-NE's Operating Procedures. Such procedures include Operating Procedure No. 18, which requires resources like the Generator to provide instantaneous metering data.

4. In addition to being a Market Participant, the Company also was a Network Customer, as that term is defined in the Tariff. Section II.22.1 of the Tariff obligates all Network Customers to operate in accordance with the ISO New England Operating Documents, which include Operating Procedure No. 18.

5. Section II.22.2 of the OATT further obligates all Network Customers like the Company to operate and maintain certain communications and control equipment (including an RTU), and to supply “accurate and reliable information to the system operators regarding . . . MW.”

6. During the Relevant Period, the Company failed to provide instantaneous metered data from an RTU to ISO-NE, as was required by the ISO-NE Tariff, relying instead on its Local Control Center (LCC) to provide such output data through its settlement system. The Company did not complete installing the necessary equipment to provide such data until June 29, 2016.

7. Failure to provide such instantaneous data can affect system reliability.

II. Violations

8. Enforcement initiated this investigation in January 2016, following a referral from ISO-NE.

9. After completing its fact-finding, Enforcement concluded that by failing to provide instantaneous metered data through an RTU, the Company had violated sections 1.3.2, II.22.1, II.22.2 of the ISO-NE Tariff.

10. Section 35.41(a) of the Commission’s regulations mandates that “[w]here a Seller participates in a Commission-approved organized market, Seller must operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable market.” The Company was a “Seller” during the period relevant to this investigation, as that term is defined in section 35.36(a)(1) of the Commission’s regulations. Accordingly, Enforcement concluded that the Company’s violations of the ISO-NE Tariff also constituted violations of section 35.41(a).

III. Stipulation and Consent Agreement

11. Enforcement and the Company resolved this matter by means of the attached Agreement.

12. The Company stipulates to the facts in the Agreement but neither admits nor denies that those facts establish violations of the Commission’s rules, regulations, or policies. It agrees to: (a) pay a civil penalty of \$36,000 to the United States Treasury and (b) implement procedures to improve compliance, subject to monitoring via submission of semi-annual reports for at least two years.

IV. Determination of Appropriate Sanctions and Remedies

13. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,¹ recognizing, in particular, that any loss was relatively small and that the Company cooperated fully and comprehensively throughout the investigation.

14. The Commission directs the Company to make the civil penalty payment required by the Agreement within ten business days of the Effective Date of the Agreement and to comply with the provisions in the Agreement requiring it to implement procedures to improve compliance and to submit the required monitoring reports.

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

¹ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Covanta Haverhill Associates LP

Docket No. IN17-3-000

STIPULATION AND CONSENT AGREEMENT

I. Introduction

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Covanta Haverhill Associates LP (Company) enter into this Stipulation and Consent Agreement (Agreement) to resolve a non-public, investigation conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2016). The investigation addressed the Company's failure to provide required instantaneous power output metering data to ISO-New England (ISO-NE) during the period September 1, 2007 through June 29, 2016 (Relevant Period). Enforcement initiated this investigation in January 2016, following a referral from ISO-NE.

2. The Company stipulates to the facts in section II, but neither admits nor denies the alleged violations. It agrees to: (a) pay a civil penalty of \$36,000 to the United States Treasury and (b) implement procedures to improve compliance going forward, subject to monitoring via submission of semi-annual reports for at least two years.

II. Stipulations

Enforcement and the Company hereby stipulate and agree to the following facts:

A. The Company's Obligation To Provide Instantaneous Metered Data

3. The Company is an indirect subsidiary of Covanta Holding Corporation, a publicly-traded corporation that, through its various subsidiaries, owns nearly 50 waste-to-energy plants around the world. The Company owns and operates a 45 MW waste-to-energy generator (Generator) in Haverhill, MA, and it sells energy from the Generator into the ISO-NE energy markets.

4. The Company entered into a Market Participant Services Agreement with ISO-NE as of September 1, 2007, thereby becoming a Market Participant, as that term is defined in the ISO-New England Tariff.

5. Section I.3.2 of the ISO-New England Tariff requires each such Market Participant:

[T]o the fullest extent practicable, cause all of the Assets it owns or

operates to be designed, constructed, maintained and operated in accordance with Good Utility Practice and the provisions of this Tariff, the ISO New England Operating Procedures, and the ISO New England Planning Procedures.

6. Such ISO-New England Operating Procedures include Operating Procedure No. 18, which states:

Instantaneous metering is required for all Generators . . . which are modeled and defined in the ISO Energy Management System (EMS) and are eligible to participate in the hourly markets.

7. The Company is, and during the relevant period was, modeled and defined in the ISO Energy Management System. Operating Procedure No. 18 clarifies that generators must provide telemetered data from a Remote Terminal Unit (RTU) regarding net MW output.¹

8. As a Market Participant, the Company also was a Network Customer, as that term is defined in the ISO-New England Open Access Transmission Tariff (OATT). Accordingly, it was bound by the terms and conditions of the ISO-NE OATT. Such terms and conditions include section II.22.1 of the OATT, which obligates all Network Customers to:

[P]lan, construct, operate and maintain all of its equipment and facilities connected to the New England Transmission System in a safe and efficient manner and in accordance with manufacturers' recommendations, Good Utility Practice, applicable regulations, [and] the ISO New England Operating Documents

9. These Operating Documents include Operating Procedure No. 18. In addition, section II.22.2 of the OATT obligates all Network Customers to:

(i) [O]perate and maintain equipment necessary for integrating the Network Customer within the PTF [(Pool Transmission Facility)] (including, but not limited to, remote terminal units, metering, communications equipment and relaying equipment)

10. Subsection (c) of section II.22.2 further states:

The Network Customer shall supply accurate and reliable information to the system operators regarding metered values for MW, MVAR, volt, amp, frequency, breaker status indication, and all other information deemed necessary by the ISO

¹ See ISO-New England, Operating Procedure No. 18: Metering and Telemetering Criteria (OP-18), at 9.

and the applicable PTO(s) [(Participating Transmission Owners)] for reliable operation. Information shall be gathered for electronic communication using a methodology acceptable to the ISO. All equipment used for metering, SCADA [(supervisory control and data acquisition)], RTU [(Remote Terminal Unit)], RAPR [(remote access pulse recorder)], and communications must be approved by the ISO and the applicable PTO(s).

B. The Company's Failure To Provide Instantaneous Metered Data

11. During the Relevant Period, the Company failed to provide instantaneous metered data from an RTU to ISO-NE, as was required by the ISO-NE Tariff, relying instead on its Local Control Center (LCC) to provide such output data through its settlement system. The LCC downloaded the power output data from the onsite meters at the Generator, processed and validated that data, and then submitted the data to ISO-NE through the financial settlement system. It took up to a day or more for the Company to submit the power output data to ISO-NE through the LCC's settlement system.

12. ISO-NE uses instantaneous meter data for various purposes, including ensuring that transmission lines do not exceed their limits and avoiding reliability events resulting from too little (or too much) power within certain areas. Accordingly, failure to provide such instantaneous data can affect system reliability.

13. The Company started installing the necessary equipment and communications links in 2007, but that process stalled in mid-2008 when it ran into technical difficulties with its communications provider. It tried again in 2011, but the process stalled in 2012.

14. On more than one occasion during the period 2007-2012, ISO-NE reminded the Company of its obligation to provide instantaneous metered data. ISO-NE did not attempt further communications with the Company regarding the violation after mid-2012.

15. The Company restarted the process once again after Enforcement contacted it regarding the referral from ISO-NE. The Company finished installing and commissioning its RTU on June 29, 2016. At that point, it began providing the instantaneous metered data required by the ISO-NE Tariff.

III. Violations

16. Enforcement determined that by failing to provide instantaneous metered data through an RTU, the Company violated sections 1.3.2, II.22.1, II.22.2 of the ISO-NE Tariff and section 35.41(a) of the Commission regulations.²

IV. Remedies and Sanctions

17. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from Enforcement's investigation, the Company agrees with the facts as stipulated in Section II of this Agreement, but it neither admits nor denies the violations described in Section III of this Agreement. The Company further agrees to undertake obligations set forth in the following paragraphs.

A. Civil Penalty

18. The Company agrees to pay a civil penalty of \$36,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

B. Compliance

19. The Company shall institute new policies and associated processes to improve compliance with the ISO-NE Tariff, the FPA, and Commission regulations and orders.

20. The Company shall make semi-annual compliance monitoring reports to Enforcement for two years following the Effective Date of this Agreement. The first semi-annual compliance monitoring report shall be submitted on or before June 1, 2017. Future reports shall be submitted at six month intervals thereafter. Each report following the first such report shall cover the six-month period that ends one month before the report's submission date. After the receipt of the fourth semi-annual report, Enforcement may, at its sole discretion, require the Company to submit semi-annual reports for one additional year.

21. Each compliance monitoring report shall: (1) identify any known violations of the ISO-NE Tariff or Commission regulations that occurred during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures related to compliance

² Section 35.41(a) of the Commission's regulations mandates that "[w]here a Seller participates in a Commission-approved organized market, Seller must operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the commission-approved rules and regulations of the applicable market." 18 C.F.R. § 35.41(a) (2016).

with the ISO-NE Tariff and Commission regulations that the Company instituted or modified during the applicable period; and (3) describe all ISO-NE and Commission-related compliance training that the Company administered during the applicable period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

22. Each compliance monitoring report shall also include an affidavit stating that it is true and accurate to the best of his/her knowledge, executed by an officer of the Company.

23. Upon request by Enforcement, the Company shall provide to Enforcement documentation supporting the contents of its reports.

V. Terms

24. 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 that arose on or before the Effective Date, as to the Company or any affiliated entity.

25. Commission approval of this Agreement without material modification shall release the Company and forever bar the Commission from holding the Company, any affiliated entity, and any successor in interest liable for any and all administrative or civil claims arising out of the conduct addressed and stipulated to in this Agreement that occurred on or before the Agreement’s Effective Date.

26. Failure by the Company to make civil penalty payment or comply with the compliance obligations 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 FPA, 16 U.S.C. § 792, et seq., and may subject the Company to additional action under the enforcement provisions of the FPA.

27. If the Company does not make the required civil penalty payment described above at the time agreed by the parties, interest will begin to accrue pursuant to the Commission’s regulations at 18 C.F.R. § 35.19a (2016) 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.

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

29. 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 the Company 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 neither Enforcement nor the Company shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and the Company.

31. In connection with the civil penalty provided for herein, the Company 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 FPA, 16 U.S.C. § 792, et seq., as amended. The Company 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.

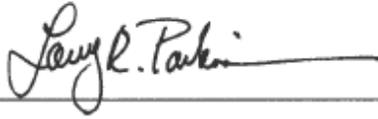
32. This Agreement can be modified only if in writing and signed by Enforcement and the Company, and any modifications will not be effective unless approved by the Commission.

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.

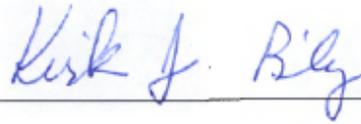
34. The undersigned representative of the Company affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

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

Agreed to and accepted:



Larry Parkinson
Director
Office of Enforcement
Federal Energy Regulatory Commission
DATE: *Jan. 30, 2017*



Kirk J. Bily
V.P. & Deputy G.C. of the G.P. of
Covanta Haverhill Associates LP
DATE: January 27, 2017