

163 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

ETRACOM LLC and Michael Rosenberg

Docket No. IN16-2-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued April 10, 2018)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and ETRACOM LLC and Michael Rosenberg (together, Respondents). Approval of the Agreement is in the public interest because the Agreement resolves on fair and equitable terms: (a) the Commission's claims against Respondents for violations of section 222 of the Federal Power Act (FPA) and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2017), and (b) the Commission's action captioned *FERC v. ETRACOM LLC*, No. 2:16-CV-01945-SB (E.D. Cal.) ("Federal Court Lawsuit").

2. The Respondents neither admit nor deny the violations and agree that ETRACOM shall make payments totaling \$1,900,000.

I. Factual and Procedural Background

3. ETRACOM is a privately-held financial trading company formed in 2008 and incorporated in Nevada. During May 2011 ("Relevant Period"), ETRACOM participated exclusively in the California Independent System Operator ("CAISO") wholesale electric market and specifically traded virtual supply and demand, also known as virtual transactions or convergence bidding, and Congestion Revenue Rights.

4. As detailed in the Commission Orders referenced below, Enforcement investigated certain of ETRACOM's trades at the New Melones intertie during the Relevant Period. The investigation culminated in the issuance of an Order to Show Cause on December 16, 2015. *ETRACOM LLC*, 153 FERC ¶ 61,314 (2015) ("Order to Show Cause").

5. After briefing by Respondents and Enforcement, on June 17, 2016, the Commission issued an Order Assessing Civil Penalties against Respondents. *ETRACOM LLC*, 155 FERC ¶ 61,284 (2016) ("Order Assessing Civil Penalties"). In the Order Assessing Civil Penalties, the Commission set forth the basis for its findings, specifically

that certain of Respondents' trades violated section 222 of the FPA and 18 C.F.R. § 1c.2, the Commission's Anti-Manipulation Rule.

6. On August 17, 2016, the Commission filed the Federal Court Lawsuit in the United States District Court for the Eastern District of California to request an order affirming the Commission's Order Assessing Civil Penalties.

7. Enforcement and Respondents engaged in mediation on March 8, 2018, a process which ultimately led to the Agreement.

II. Stipulation and Consent Agreement

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

9. The Respondents stipulate to the facts recited in Section II of the Agreement, but neither admit nor deny that they violated the FPA or the Anti-Manipulation Rule.

10. ETRACOM agrees to pay \$1,900,000 in disgorgement, interest and civil penalties. Disgorgement of \$315,072, plus interest of \$84,419.72, shall be paid to CAISO for distribution to market participants impacted by ETRACOM's trading at issue during the Relevant Period. The remainder, \$1,500,508.28, shall constitute a civil penalty to be paid to the United States Treasury.

11. ETRACOM will also develop and implement a compliance program and provide Enforcement annual compliance reports for a period of two years.

III. Determination of Appropriate Sanctions and Remedies

12. 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.

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

ETRACOM LLC and
Michael Rosenberg

Docket No. IN16-2-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (“Enforcement”) of the Federal Energy Regulatory Commission (“Commission”) and ETRACOM LLC (“ETRACOM”) and Michael Rosenberg (together, “Respondents”) (Enforcement and Respondents collectively, the “Parties”) enter into this Stipulation and Consent Agreement (“Agreement”) to resolve (i) the Commission’s claims against Respondents for violations of section 222 of the Federal Power Act (“FPA”) and the Commission’s Anti-Manipulation Rule, 18 C.F.R. § 1c.2, and (ii) the Commission’s lawsuit captioned *FERC v. ETRACOM LLC*, No. 2:16-CV-01945-SB (E.D. Cal.) (“Federal Court Lawsuit”). In order to fully resolve these matters, Respondents agree that ETRACOM shall make certain payments in accordance with the terms set forth below totaling \$1,900,000. Respondents neither admit nor deny the violations.

II. STIPULATED FACTS

2. ETRACOM is a privately-held financial trading company formed in 2008 and incorporated in Nevada. During May 2011 (the “Relevant Period”), ETRACOM participated exclusively in the California Independent System Operator (“CAISO”) wholesale electric market and specifically traded virtual supply and demand, also known as virtual transactions or convergence bidding, and Congestion Revenue Rights.

3. Enforcement investigated ETRACOM’s trading at the New Melones intertie during the Relevant Period. The investigation culminated in the issuance of an Order to Show Cause on Dec. 16, 2015. *ETRACOM LLC*, 153 FERC ¶ 61,314 (2015) (“Order to Show Cause”).

4. On January 14, 2016, Respondents submitted a joint notice under section 31(d)(3) of the FPA electing that the Commission institute an action in the appropriate district court of the United States to affirm the assessment of a civil penalty if assessed by the Commission.

5. The filings in the Order to Show Cause proceeding made by the Office of Enforcement and by Respondents, in opposition, are available in Docket No. IN16-2-000 in the Commission's eLibrary system (<https://elibrary.ferc.gov>).
6. On June 17, 2016, the Commission issued an Order Assessing Civil Penalties against Respondents. *ETRACOM LLC*, 155 FERC ¶ 61,284 (2016) ("Order Assessing Civil Penalties").
7. On August 17, 2016, the Commission filed the Federal Court Lawsuit in the United States District Court for the Eastern District of California to request an order affirming the Commission's Order Assessing Civil Penalties. Respondents opposed the Commission's filing in the Federal Court Lawsuit.
8. On March 8, 2018, the parties engaged in mediation in an attempt to resolve the Federal Court Lawsuit. At the time of mediation, at least one month remained in fact discovery and expert discovery had not begun.

III. COMMISSION DETERMINATION OF VIOLATIONS

9. In its Order Assessing Civil Penalties, the Commission set forth the basis for its findings that ETRACOM's virtual trading in May 2011 at the New Melones intertie violated section 222 of the FPA and 18 C.F.R. § 1c.2, the Commission's Anti-Manipulation Rule.

IV. REMEDIES AND SANCTIONS

10. For the purposes of this Agreement, Respondents stipulate to the facts set forth in Section II of this Agreement, but neither admit nor deny the determinations set forth in Section III of this Agreement or the Commission's findings in its Order Assessing Civil Penalties.
11. For purposes of settling any and all disputes, allegations, and claims within the jurisdiction of the Commission relating to the alleged violations and the Federal Court Lawsuit, ETRACOM agrees to pay, within 30 days of the Effective Date of this Agreement or May 29, 2018, whichever is later, \$1,900,000, in disgorgement, interest and civil penalties. Disgorgement of \$315,072, plus interest of \$84,419.72, shall be paid to CAISO for distribution to impacted market participants. The remainder, \$1,500,508.28, shall constitute a civil penalty to be paid to the United States Treasury, per payment instructions to be provided by Enforcement.
12. ETRACOM shall promptly notify Enforcement when it makes the required payments by providing proof of payment by email to the Director of the Office of

Enforcement. Enforcement shall promptly confirm the receipt of such payments from ETRACOM.

13. Within three business days of receiving proof of the required payments described above, the Commission shall file on behalf of the parties a Joint Stipulation of Dismissal with Prejudice in the Federal Court Lawsuit. The Commission and Respondents agree to bear their own costs and fees from the case.

14. ETRACOM will also engage outside counsel, approved by Enforcement, to assist it in developing and implementing a compliance program. The compliance program shall be consistent with the principles described in the Commission's "Staff White Paper on Effective Energy Trading Compliance Practices" dated November 2016. For a period of two years, ETRACOM will provide Enforcement with annual compliance reporting. The first compliance report shall be due one year after the Effective Date of this Agreement. The report shall: (1) identify any known violations of Commission regulations that occurred during the reporting period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe in detail all compliance measures and procedures instituted or modified, and all compliance training administered, during the reporting period; and (3) include an affidavit executed by an owner or Manager of ETRACOM, stating that the compliance monitoring report is true and accurate to the best of his or her knowledge. The second compliance report shall be due two years after the Effective Date of this Agreement and shall list any material changes since the first compliance report. Upon request by Enforcement, ETRACOM shall provide Enforcement with documentation to support its reports.

V. TERMS

15. The Effective Date of this Agreement ("Effective Date") shall be the earliest date on which the Commission has issued an order approving this Agreement without material modification or conditions. When effective, this Agreement shall resolve the matters specifically addressed herein as to Respondents and any affiliated entity, and their agents, officers, directors, and employees, both past and present, and any successor in interest to Respondents.

16. Commission approval of the Agreement without material modification shall release Respondents and any successor or affiliate, and forever bar the Commission from holding Respondents and any successor or affiliate, and their respective agents, officers, directors, and employees, past and present, liable for any and all administrative or civil claims arising out of the conduct addressed in the Commission's Order Assessing Civil Penalties.

17. ETRACOM's failure to (a) make timely the disgorgement and civil penalty payments set forth in Section IV above, (b) comply with the compliance requirements specified herein, or (c) comply with the other provisions 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 Respondents and any successor companies to additional action under the enforcement and penalty provisions of the FPA.

18. If ETRACOM fails to make the disgorgement and civil penalty payments set forth in Section IV above by the deadlines set forth in this Agreement, interest shall accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii)(A) from the date each payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose.

19. This Agreement binds Respondents and their agents, successors, and assigns. The Agreement does not create any additional or independent obligations on Respondents, or any affiliated entity, 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 Respondents has been made to induce the signatories or any other party to enter into the Agreement.

21. Notwithstanding anything to the contrary herein, unless the Commission issues an order approving this Agreement in its entirety and without material modification, the Agreement (including, without limitation, the disgorgement, civil penalty, and any and all stipulations and representations) shall be null and void and of no effect whatsoever, and neither Enforcement nor Respondents shall be bound by any provision or term of this Agreement, unless otherwise agreed to in writing by Enforcement and Respondents.

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

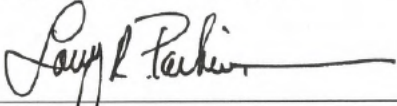
23. This Agreement may be modified only if in writing and signed by Enforcement and Respondents. No modification will be effective unless approved by the Commission.

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 this Agreement on the entity's behalf.

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

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

Agreed to and Accepted:

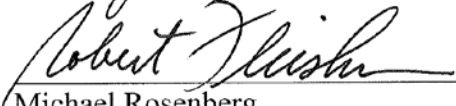


Larry R. Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission
Date: April 6, 2018



ETRACOM LLC
By: Robert Fleishman

Date: April 5, 2018



Michael Rosenberg
By: Robert Fleishman

Date: April 5, 2018