142 FERC ¶ 61,088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Oceanside Power, LLC Docket No. IN11-5-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued February 1, 2013)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) signed by the Office of Enforcement (Enforcement), Oceanside Power, LLC (Oceanside), and Robert Scavo. 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 (2012), into whether Oceanside violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2. Oceanside agrees to disgorgement of $29,563 and to pay a civil penalty of $51,000 to the U.S. Treasury. In addition, Oceanside agrees to require its personnel to attend compliance training and Scavo agrees not to trade in FERC- regulated electric electricity markets, or in products or instruments that are based on the price of electricity, for one year.

I. Background

2. As described in the Agreement, Oceanside is a limited liability company that placed Up To Congestion (UTC) transactions in PJM Interconnection, LLC (PJM) during 2010. Scavo conducted the trades at issue here on behalf of Oceanside.

3. PJM is a Commission-jurisdictional Regional Transmission Organization and Independent Service Operator. The UTC transaction is a PJM product that enables a trader to profit if the congestion price spread between two nodes changes favorably between the Day Ahead Market (DAM) and the Real Time Market (RTM). For a trade to be profitable, the spread change must exceed the costs of engaging in the trade.

4. The costs of engaging in UTC transactions consist of ancillary service charges and transmission service charges. Ancillary service charges typically amount to between $0.20 and $0.30 per MWh. In addition, before a change in PJM's tariff in September 2010, a party that scheduled a UTC transaction could also incur a cost for reserving

transmission service. During the summer of 2010, PJM charged $0.67 per MWh for non-firm point-to-point transmission service, with the exception of transmission paths flowing from PJM to MISO, which were free.

5. Pursuant to section 5.5 of the appendix to Attachment K of PJM's tariff (section 5.5), certain scheduled trades associated with paid-for transmission in a given hour are eligible to receive a share of the surplus transmission line loss charges collected for the hour. Transmission line losses are a component of the per-MWh price of electricity in the PJM market. PJM uses the marginal loss method to calculate charges to cover these line losses, which generates revenue greater than the cost of the losses. Distribution of the surplus is known as the Marginal Loss Surplus Allocation (MLSA).

II. Investigation

6. During the summer of 2010, PJM observed certain market participants reserving unusually large volumes of non-firm point-to-point transmission service. PJM subsequently determined that these market participants had scheduled against these transmission reservations certain UTC transactions where the potential for profits (if any) from the change in congestion spread between the DAM and RTM would be insufficient to pay the transaction costs for the trades. These transactions did, however, receive MLSA for the related transmission reservations. PJM requested that the Commission investigate this conduct.

7. On August 25, 2010, the Commission authorized Enforcement to conduct a non-public, formal investigation regarding violations of the Commission's regulations that may have occurred in connection with, or related to, UTC transactions of interest during this period. *Order of Non-Public, Formal Investigation*, 132 FERC ¶ 61,169 (2010).

8. Enforcement determined that from July 29, 2010 through August 4, 2010, Robert Scavo submitted UTC transaction bids at the "South Imp" and "South Exp" node pair on behalf of Oceanside. The spread between the settled hourly prices at these nodes in the DAM is always $0. The spread between the settled hourly prices at these nodes in the RTM is $0 for a majority of hours. The difference between the DAM and RTM congestion price spreads at this node pair is typically no more than a few cents, and not enough to cover the transaction costs of a UTC transaction. In a period of over 25,500 hours of price settlement at these nodes, the congestion price spread difference exceeded $0.20 in fewer than 100 settlement hours and exceeded $1.00 in fewer than 40 hours.

9. Enforcement determined that Oceanside scheduled over 90 percent of the UTC transaction bids it submitted on those days at the South Imp/South Exp node pair. Oceanside's UTC transaction bids for that node pair on those days totaled 33,400 MWhs. Oceanside reserved and paid for 33,400 MWhs of non-firm point-to-point transmission at a cost of $0.67 per MWh, which it associated with the schedules for these UTC transactions.

10. Excluding the credit for MLSA, the transactions resulted in a loss to Oceanside of $29,450, almost all of which reflects the transmission reservation and ancillary service charges associated with the transactions. But because PJM credited the transmission related to these trades with MLSA of $59,012, the company earned a net profit of $29,563 from its South Imp/South Exp UTC transactions.

11. Enforcement determined that Oceanside deliberately chose the South Imp/South Exp pricing nodes for its UTC transactions in the period July 29 through August 4, 2010 because that node pair had little or no potential to yield any change – profitable or loss-incurring – in the congestion price differential between the DAM and RTM. Enforcement determined that these UTC transactions were designed to be trades that would enable Oceanside to reserve and schedule against large amounts of transmission service without the risk of losses from the UTC transactions. Instead, Oceanside would lose only the transaction costs (transmission service charges and ancillary service charges), which were known amounts that could be estimated with reasonable certainty and accuracy. Enforcement determined that Oceanside used the UTC transaction at the South Imp/South Exp pricing nodes as a pretext to reserve a large volume of transmission and thereby earn larger share of the MLSA for the hours in which it submitted a schedule. Enforcement determined that this conduct violates the Commission's prohibition against manipulation in the electricity markets, 18 C.F.R. 1c.2 (2012), because it was a scheme to defraud the PJM market.[1]

III. <u>Stipulation and Consent Agreement</u>

12. Enforcement staff, Oceanside and Scavo resolved Enforcement's investigation by means of the attached Agreement. Under the Agreement, Oceanside stipulates to the facts as set forth in the Agreement, but neither admits nor denies the violations. Oceanside agrees to disgorgement of $29,563, plus interest (accrued consistent with 18 C.F.R. § 35.19a(a)(2)), and to pay a civil penalty of $51,000 to the United States Treasury. Oceanside also agrees that its personnel will attend ISO/RTO compliance training and Scavo agrees not to trade in FERC- regulated electric electricity markets, or in products or instruments that are based on the price of electricity, for one year.

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[1] The conduct stipulated to by Oceanside is directly analogous to the manipulative conduct addressed by the Securities and Exchange Commission (SEC) in *In The Matter Of Irfan Mohammed Amanat*, 89 S.E.C. Docket 672 (Release No. 54708), 2006 WL 3199181 (Nov. 3, 2006). Amanat's wash and matched trades were executed to ensure a flat position while creating a high volume of trades that would earn rebates for generating market data. *Id*. at *2-3. The SEC found "that the [trades] entered by Amanat for the purpose of obtaining rebates . . . constituted fraud . . . by generating [ ] rebates in a manner that deceived . . . ." *Id*. at *7-8.

IV. Determination of the Appropriate Sanctions

13. In determining the appropriate remedy for Oceanside, Enforcement considered the seriousness of Oceanside's actions pursuant to the Commission's Penalty Guidelines,[2] including the harm to the market caused by the conduct, Oceanside's cooperation with the investigation, and the avoidance of a trial-type hearing as a result of this settlement. The civil penalty that Oceanside has agreed to pay is consistent with the Penalty Guidelines.

14. The Commission concludes that the Agreement is a fair and equitable resolution of this matter and is in the public interest, as it reflects the nature and seriousness of Oceanside's conduct, and recognizes the company-specific considerations as stated above and in the attached Agreement.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Oceanside Power, LLC) Docket No. IN11-5-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Oceanside Power, LLC, (Oceanside) and Robert Scavo 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 (2011).

2. Enforcement concludes that Oceanside violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2, through its trading activity in Up To Congestion transactions (UTC transactions) during July and August 2010. Enforcement and Oceanside agree that Oceanside will disgorge $29,563, with interest, and pay a civil penalty of $51,000 to the United States Treasury. Oceanside further commits to improving compliance going forward. Finally, Scavo agrees not to engage in the trading of products or instruments in FERC-regulated electric energy markets, or products or instruments that are based on the price of electricity, for one year.

II. STIPULATIONS

3. Enforcement and Oceanside hereby stipulate and agree to the following facts.

4. Oceanside is a limited liability company owned by its president, Jason Day. Day created the company in January 2010, but the company remained inactive until Scavo joined as the sole employee and began trading July 2010. Day was not involved in any manner in the trading in PJM that Scavo conducted on behalf of Oceanside.

A. PJM's Up To Congestion Product

5. PJM Interconnection, LLC (PJM) is a Commission-jurisdictional Regional Transmission Organization and Independent Service Operator. The UTC transaction is a PJM product that enables a trader to profit on the change in congestion prices between two price nodes in PJM's system. A UTC transaction references the congestion price between two PJM pricing nodes, at least one of which is a pricing node at the boundary, or interface, of PJM's system. To place the trade, the trader identifies a node pair in PJM representing an import, export, or wheel-through (i.e., import and export), and submits to

PJM's Day Ahead Market (DAM) a bid for the congestion price differential – also known as the price "spread" – between the nodes in the pair. If the bid price is greater than the DAM congestion price spread between the nodes, the bid will likely clear. Whether the transaction earns a profit or loses money depends on whether the congestion price spread between the same nodes in the Real Time Market (RTM) changes favorably when compared to the DAM congestion price spread. PJM charges or credits the trader the difference between the DAM and RTM congestion price spreads for each transaction bid and scheduled.

B. Economics of Up To Congestion Transactions

6. As originally designed, a UTC transaction is profitable when the profit-making change in the congestion price spread exceeds the costs of engaging in a UTC trade. PJM assesses to each UTC transaction that is successfully scheduled the following ancillary service charges: "market support"; a charge to support the market monitoring unit (MMU); an assessment for the secondary control center; a monthly reactive transmission charge; and a monthly blackstart charge. These charges fluctuate little and typically cumulate to between $0.20 and $0.30 for each transaction.

7. Prior to a change in PJM's tariff in September 2010, a party that scheduled a UTC transaction could also incur a cost for reserving transmission service. At that time, traders submitting bids for UTC transactions were required to associate the requested schedule with a transmission reservation ID procured through PJM's Open Access Same-Time Information System (OASIS). Traders typically submit hourly schedules when placing bids for UTC transactions, and the least-cost transmission choice for these hourly schedules is non-firm point-to-point transmission service. During the summer of 2010, PJM charged $0.67 per MWh for non-firm point-to-point transmission service, with the exception of the transmission paths flowing from PJM to MISO, which are free of charge.

8. The UTC transaction may be associated with a physical power flow and the path required for that flow, but need not be. The energy scheduling software allowed traders to associate the UTC schedule with transmission on any available transmission path. Thus, a trader could opt to reserve transmission on the PJM-to-MISO transmission paths at no cost. By doing so, the trader would reduce the cost for scheduling the transaction and thereby maximize net profit from the transaction.

C. The Marginal Loss Surplus Allocation

9. Transmission line losses are a component of the per-MWh price of electricity in the PJM market. PJM uses the marginal loss method to calculate charges to cover these line losses, which generates revenue greater than the cost of the losses. Pursuant to section 5.5 of the appendix to Attachment K of PJM's tariff (section 5.5), certain

scheduled trades associated with paid-for transmission in a given hour are eligible to receive a share of the surplus collected for the hour. This distribution is known as the Marginal Loss Surplus Allocation (MLSA). As of September 17, 2009 and until September 17, 2010, the relevant tariff provision expressly provided for distribution of the MLSA to load-serving transactions, power exports, and UTC transactions that had scheduled against paid-for transmission. A trade associated with free transmission is not eligible for a share of the MLSA. Thus, if a trader scheduled the UTC transaction against a transmission reservation on a PJM-to-MISO path, which has no charge, that transaction did not receive a share of the MLSA.

10. Before September 17, 2010, PJM distributed the MLSA collected each hour to market participants based on their pro-rata share of total MWhs of transmission reservations eligible in that hour to receive the allocation, and did so without regard to the type and cost of the transmission reserved. The cost associated with a MWh of transmission service depends on multiple factors, including the scheduling increments in which it is purchased and whether it is interruptible service. Non-firm point-to-point transmission service has the lowest rate. Also, it may be purchased for hourly schedules, which allows the trader to purchase service for only those hours in which (s)he has a transaction scheduled (as opposed to purchasing daily or longer blocks of transmission service for a schedule that does not use all hours of each day). Because all MWhs of transmission were treated as equal for the purpose of sharing in the MLSA, MWhs of non-firm point-to-point transmission service received the highest rate of return per unit cost of transmission.

D. Summer 2010 Up To Congestion Transactions of Interest

11. In the summer months of 2010, PJM observed certain market participants reserving unusually large volumes of non-firm point-to-point transmission service. PJM subsequently determined that certain market participants had scheduled against these transmission reservations certain UTC transactions with the potential for profits (if any) from the change in congestion spread between the DAM and RTM that would be insufficient to pay the transaction costs for the trades. These transactions received MLSA for the related transmission reservations, however, and the MLSA per MWh of transmission reservation exceeded the $0.67 per MWh cost for non-firm point-to-point transmission for many hours of the day.

12. On August 18, 2010, PJM proposed a revision to section 5.5 of its tariff to eliminate UTC transactions as eligible to receive MLSA. On August 25, 2010, the Commission authorized Enforcement to conduct a non-public, formal investigation regarding violations of the Commission's regulations that may have occurred in connection with, or related to, these UTC transactions of interest during this period. *Order of Non-Public, Formal Investigation*, 132 FERC ¶ 61,169 (2010). On September

17, 2010, the Commission accepted PJM's proposed tariff change and its proposal to: (1) eliminate the requirement to reserve transmission service for Up-To Congestion bids in the Day-ahead Energy Market; (2) discount the amount of MLSA paid to transactions associated with non-firm point-to-point transmission service to reflect the discounted rate for that service as compared to firm point-to-point transmission service; and (3) initiate a stakeholder process to analyze, among other things, the trading incentives created by the MLSA. *Order Accepting Tariff Revisions*, 132 FERC ¶ 61,244 (2010).

13. Both PJM and its market monitoring unit, Monitoring Analytics (PJM MMU), referred the observed transactions to Enforcement for further examination and inquiry in the context of the non-public, formal investigation. The referred trading activity included UTC transactions scheduled at the nodes "South Imp" and "South Exp," a wheel-through transaction. The spread between the settled hourly prices at these nodes in the DAM is always $0. The spread between the settled hourly prices at these nodes in the RTM is $0 for a majority of hours. The difference between the DAM and RTM congestion price spreads at this node pair is typically no more than a few cents, and not enough to cover the transaction costs of a UTC transaction. Relevant data indicates that in a period of over 25,500 hours of price settlement at these nodes, the difference exceeded $0.20 in fewer than 100 settlement hours and exceeded $1.00 in fewer than 40 hours.

14. From July 29, 2010 through August 4, 2010, Robert Scavo submitted UTC transaction bids at the South Imp/South Exp node pair to PJM on behalf of Oceanside. Oceanside scheduled over 90% of the UTC transaction bids it submitted on those days at that node pair. The UTC transaction bids that Oceanside submitted for South Imp/South Exp on those days totaled 33,400 MWhs, all of which cleared. Oceanside reserved and paid for 33,400 MWhs of non-firm point-to-point transmission at a cost of $0.67 per MWh, which it associated with the schedules for these UTC transactions.

15. Settlement of these 33,400 MWhs of UTC transactions earned Oceanside a net credit. Excluding the credit for MLSA, the transactions resulted in a charge – a loss – to Oceanside of $29,450, almost all of which reflects the transmission reservation and ancillary service charges associated with the transactions. But because PJM credited Oceanside for these trades with MLSA of $59,012, the company earned a net profit of $29,563 from its South Imp/South Exp UTC transactions.

III. VIOLATIONS

16. Enforcement finds that Oceanside deliberately chose the South Imp/South Exp pricing nodes for its UTC transactions in the period July 29 through August 4, 2010 because that node pair had little or no potential to yield any change – profitable or loss-incurring – in the congestion price differential between the DAM and RTM. Enforcement finds that these UTC transactions were designed to be trades without intrinsic economic value, which would enable Oceanside to reserve and schedule against

large amounts of transmission service without the risk of losses from the UTC transactions. Instead, Oceanside would lose only the transaction costs (transmission service charges and ancillary service charges), which were known amounts that could be estimated with reasonable certainty and accuracy. Enforcement finds that Oceanside used the UTC transaction at the South Imp/South Exp pricing nodes as a pretext to reserve a large volume of transmission and thereby earn larger share of the MLSA for the hours in which it submitted a schedule. Enforcement finds that this conduct violates the Commission's prohibition against manipulation in the electricity markets, 18 C.F.R. 1c.2 (2012), because it was a scheme to defraud the PJM market.

IV. REMEDIES AND SANCTIONS

17. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, Oceanside agrees with the facts as stipulated in Section II of this Agreement but neither admits nor denies the alleged violations described in Section III of this Agreement.

A. Disgorgement

18. Oceanside shall disgorge twenty-nine thousand five hundred sixty-three dollars ($29,563), plus interest (accrued consistent with 18 C.F.R. § 35.19a(a)(2)), in unjust profits resulting from the above-described Up To Congestion transactions. Oceanside will pay the disgorged funds and interest to PJM, to be used or distributed in PJM's discretion for the benefit of electric ratepayers upon approval of its plan for doing so by Enforcement. Such disgorgement shall be made within thirty (30) days from the Effective Date of this Agreement.

B. Civil Penalty

19. Oceanside shall pay a civil penalty in the total amount of fifty-one thousand dollars ($51,000) to the United States Treasury, and submit proof of payment to the Commission, within ten (10) days of the Commission issuing an order approving this Agreement in its entirety without material modification.

C. Suspension of Trading Activity by Scavo for One Year

20. The prohibitions of this section IV(C) shall apply for a period of one year after the effective date of this Agreement, beginning 30 days after the Effective Date.

21. Oceanside and Robert Scavo agree that Scavo, or any individual acting on behalf of Scavo, will not engage in the trading of products or instruments in FERC-regulated electric energy markets or products or instruments that are based on the price of electricity for one year. Neither Scavo nor any individual acting on behalf of Scavo shall purchase or sell electric energy at wholesale in interstate commerce. Nor will Scavo or

an individual acting on behalf of Scavo manage, operate, or provide consulting services related to the purchase or sale of electric energy at wholesale in interstate commerce or the trading of product or instruments based on the price of electricity.

D. Compliance Training

22. Oceanside agrees that all its principals, managers and employees, including Day and Scavo, will take at least six hours of RTO-approved compliance training for each RTO in which they plan to conduct future trading. Scavo shall take such training within the final three months of the one-year trading prohibition described in the preceding paragraph.

V. TERMS

23. 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 Oceanside and Scavo and their affiliates, parents, owners, subsidiaries, related parties or any of their principals, employees, agents, representatives and attorneys, both past and present, and any successor in interest to Oceanside and Scavo.

24. Commission approval of this Agreement in its entirety and without material modification shall fully and finally release, individually and collectively, Oceanside and Scavo, their affiliates, parents, owners, subsidiaries, or any of their principals, directors, officers, employees, agents, representatives and attorneys, both past and present, and any successor in interest to Oceanside and Scavo from any and all administrative or civil claims, actions, remedies or penalties known or unknown, arising from, related to, or connected with the conduct addressed in this Agreement and occurring on or before the Agreement Effective Date

25. Oceanside and Scavo's failure to: (a) make a timely civil penalty payment; (b) make a timely disgorgement payment; (c) comply with the restriction against energy trading by Scavo; or (d) comply with 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), and may subject Oceanside to additional action under the enforcement and penalty provisions of the FPA.

26. If Oceanside and Scavo do not timely make the civil penalty payment at the time agreed to 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. § 154.501(d) (2011) from the date that payment is due, in addition to the penalty specified above.

27. This Agreement binds Oceanside and Scavo and their affiliates, parents, owners, subsidiaries, or any of their principals, directors, officers, employees, agents, representatives and attorneys both past and present, and any successor in interest to Oceanside and Scavo. The Agreement does not create any additional or independent obligations on Oceanside or Scavo, or their affiliates, parents, owners, subsidiaries, or any of their principals, directors, officers, employees, agents, representatives and attorneys, both past and present, and any successor in interest to Oceanside or Scavo, other than the obligations identified in this Agreement.

28. 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 Oceanside or Scavo has been made to induce the signatories or any other party to enter into the Agreement.

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

30. In connection with the payment of the civil penalty provided for herein, Oceanside and Scavo agree 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. Oceanside and Scavo further waive rehearing of any Commission order approving the Agreement without material modification or condition, and judicial review by any court of any Commission order approving the Agreement without material modification or condition.

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

32. The undersigned representative of Oceanside and Scavo affirm that he has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

33. This Agreement is executed in triplicate, 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: 1·15·13

Name: *Jason Day*
Title: *President*
Oceanside Power, LLC

Date: 11/29/2012

Robert Scavo

Date: 11/29/2012