142 FERC ¶ 61,218
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rumford Paper Company Docket No. IN12-11-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued March 22, 2013)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Rumford Paper Company (Rumford). This order is in the public interest because it resolves the investigation into whether Rumford engaged in fraudulent conduct in its participation in ISO-New England, Inc.'s (ISO-NE) Day-Ahead Load Response Program (DALRP), thereby violating the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 and section 222 of the Federal Power Act (FPA). Rumford admits to the facts set forth in the Agreement, but neither admits nor denies the allegations and has agreed to a civil penalty of $10,000,000 and disgorgement of $2,836,419.08. In addition, Rumford will implement compliance measures designed to ensure that it complies with all applicable Commission regulations and jurisdictional tariffs.

I. Background

2. Following a referral from ISO-NE's market monitoring unit, in March 2008, Enforcement opened a preliminary, non-public investigation pursuant to Part 1b of the Commission's regulations to determine whether Rumford and other market participants had engaged in fraudulent conduct in their participation in ISO-NE's DALRP in violation of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 and section 222 of the FPA.

3. ISO-NE's tariff governed DALRP, which was implemented in June 2005 as a supplemental program to ISO-NE's real-time load response programs.[1] The DALRP

[1] *New England Power Pool and ISO New England, Inc.*, 111 FERC ¶ 61,064 (2005). The Commission has since approved periodic changes to the demand response provisions in ISO-NE's tariff. During the time Rumford participated in the DALRP, ISO-NE further detailed the program through its Load Response Program Manual.

required that enrolled resources "provide a reduction in their electricity consumption in the New England Control Area during peak demand periods."[2] The cost of payments made to DALRP participants was socialized across network load.

4. ISO-NE's tariff provision regarding a reduction in load is consistent with the Commission's long-standing position regarding demand response. The Commission recently memorialized this in 18 C.F.R. § 35.28(b)(4) (2012): "Demand response means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy."

5. Following an investigation, Enforcement concluded that Rumford violated 18 C.F.R. § 1c.2 when the company adopted and implemented a scheme to defraud ISO-NE of demand response payments proposed by an energy consultant, Competitive Energy Services, LLC (CES) and CES's Managing Member, Dr. Richard Silkman (Silkman). Enforcement found that Rumford curtailed its internal generation by approximately 30-40 MW during the five-day period when Rumford's initial baseline load was established for the DALRP. Instead of operating the generator to supply Rumford with virtually all of its energy needs (as was typical for the facility) during this time, Rumford and CES purchased replacement energy during the baseline period at a $120,000 cost. Enforcement concluded that by intentionally ramping down the generator and purchasing energy, instead of producing energy on site, Rumford established a false and inflated baseline.

6. Enforcement determined that, once in the DALRP, Rumford's artificially inflated baseline allowed the company to claim load reductions (the difference between its baseline load and its normal operations) without actually reducing any load. Enforcement concluded that for over six months from 2007 to 2008, Rumford engaged in a scheme that ensured the baseline never appreciably changed, causing electricity consumers in New England to pay $3,336,964.63 for demand response that never occurred, of which Rumford received $2,836,419.08.

7. After unsuccessful settlement discussions, Enforcement set forth its conclusions in a report to the Commission. Based on that report, the Commission on July 17, 2012 issued an Order to Show Cause and Notice of Proposed Penalty requiring Rumford to explain why it should not be required to disgorge its unjust receipts and pay a civil penalty as a result of its allegedly fraudulent conduct.[3] On August 14, 2012, Rumford

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[2] ISO-NE, Tariff, Appendix E to Market Rule 1, § III.E.1.1.

[3] *Rumford Paper Company*, 140 FERC ¶ 61,030 (2012).

elected to apply the civil penalty assessment procedures of FPA section 31(d)(3). On September 14, 2012, Rumford filed its answer to the Order to Show Cause, and on November 13, 2012, Enforcement filed its reply.

8. Meanwhile, on September 7, 2011, NewPage Corporation (NewPage) and certain of its affiliates (Debtors), including Rumford, commenced voluntary cases under chapter 11 of title 11 of the United States Code (Chapter 11 Cases) in the United States Bankruptcy Court for the District of Delaware (Bankruptcy Court). Enforcement filed a proof of claim in Rumford's chapter 11 bankruptcy proceeding asserting claims for civil penalty and disgorgement of revenues (Claims).

9. Rumford and Enforcement resumed settlement discussions, resulting in the attached Agreement, which resolves the Order to Show Cause proceeding, the underlying investigation as to Rumford, and Enforcement's Claims. The Agreement is subject to the approval of the Commission and the Bankruptcy Court, as discussed below.

II. Stipulation and Consent Agreement

10. Enforcement and Rumford have resolved Enforcement's investigation by means of the Agreement. Rumford admits to the facts set forth in the Agreement, but neither admits nor denies that its DALRP conduct was a fraud that violated the Commission's rules, regulations, or policies.

11. Rumford stipulated to the facts recited in the Agreement, including those set forth below in paragraphs 12-23 of this Order.

12. In mid-2007, Silkman approached Rumford regarding its possible ISO-NE load response participation. Silkman developed a plan for Rumford's DALRP participation based upon ramping down on-site generation when the baseline was measured by ISO-NE.

13. According to the plan, once the baseline was established, Rumford would again operate its generation as it typically had operated. Rumford understood, based on its discussions with Silkman, that if Rumford's DALRP offers to reduce load cleared each day, the baseline would stay static and would not change to reflect actual generation or the mill's energy usage. Because the baseline would stay static, Rumford could be regularly compensated for its claimed load reduction.

14. Before enrolling in DALRP, Rumford senior managers repeatedly questioned CES about the legitimacy of its plan to participate in DALRP, and were advised by Silkman and CES that the plan was proper. After these discussions, Rumford accepted Silkman's proposal that CES be allowed to manage day-to-day participation in DALRP.

15. Rumford anticipated an increased out-of-pocket cost of $120,000 to purchase additional energy from the grid due to its ramping down of generation during the baseline period, but also expected to recoup this expense within a week of DALRP participation.

16. After consulting with Rumford operators, CES suggested and Rumford agreed that it would claim 20-30 MW of load response in the DALRP.

17. CES, representing Rumford, enrolled Rumford in the DALRP.

18. Based on then-existing conditions, Rumford anticipated very limited, if any, changes to its operations as a consequence of its enrollment in the DALRP. Rumford authorized CES to communicate to ISO-NE a claimed load response capability for Rumford of 20 MW, which CES did.

19. Constellation NewEnergy, Inc. (Constellation) served as Rumford's "Enrolling Participant" – in effect a middle-man between Rumford and ISO-NE. As compensation for CES's referral of Rumford to Constellation, CES received a monthly broker's fee of 5 percent of all revenues related to the customer's load response participation. Constellation retained 10 percent of all revenues and Rumford received the remaining 85 percent.

20. Rumford allowed CES, primarily via Silkman, to act as the main point of contact for Constellation regarding Rumford's load response participation.

21. Rumford set its baseline in July 2007. During the baseline period, Rumford ramped down the generator during DALRP program hours and otherwise operated as it would have absent its DALRP participation. At no time did Rumford inform Constellation that it had ramped down generation.

22. Beginning on July 31, 2007, through early February 2008, Rumford and CES submitted daily, non-holiday weekday load reduction offers for each program hour in the DALRP. The daily DALRP offers were virtually always submitted at the minimum offer values and virtually always cleared the market. Rumford thus received DALRP revenues for each day and its baseline therefore generally remained unchanged.

23. Once the baseline had been established, Rumford operated its paper mill and generation facilities the same way it had operated them before the baseline period. Rumford did not increase its generation in response to the DALRP. Likewise, Rumford neither had written procedures in place regarding reduction of energy consumption on days when its DALRP offers were accepted nor ever actually reduced its electrical consumption as a consequence of its DALRP offers being accepted.

24. Enforcement found that these and the other facts developed in its investigation established a violation of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 because: (a) Rumford's artificial ramping down of the generator resulted in Rumford knowingly misrepresenting to ISO-NE its typical load and willingness and ability to reduce load; (b) by submitting daily to reduce load, Rumford and CES falsely communicated a willingness and ability to reduce load because, as Rumford understood, Rumford was not reducing load and did not intend to reduce load as a result of its DALRP participation; and (c) the result of Rumford's knowing misrepresentations was perpetuation of its inflated baseline, defrauding ISO-NE at the expense of all rate payers in New England as the cost of demand response is allocated to all Network Load.

25. Rumford agrees in the Agreement to disgorgement of $2,836,419.08, as well as a $10,000,000 civil penalty.

26. Rumford agrees in the Agreement to satisfy its disgorgement and civil penalty obligations by a payment of $3,036,419.08 (Settlement Payment).

27. Given Rumford's bankruptcy, Enforcement agrees that the Settlement Payment is acceptable satisfaction of Rumford's disgorgement and civil penalty obligations.

28. Rumford agrees in the Agreement to take all steps necessary to obtain permission from the Bankruptcy Court to make the Settlement Payment, including filing a motion for approval of the Agreement.

29. The Commission concludes that because of Rumford's bankruptcy, the Settlement Payment is a reasonable resolution of these obligations.

30. The Commission directs Rumford to pay $2,836,419.08 of the Settlement Payment to ISO-NE within ten business days of the effective date of the Agreement.[4]

31. The Commission directs ISO-NE to allocate the $2,836,419.08 *pro rata* to network load during the applicable period.

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[4] The Effective Date of the Agreement is the earliest date on which: (a) the Commission has approved the Agreement without material modification; (b) the Bankruptcy Court has (i) approved this Agreement without material modification and (ii) authorized Rumford to make the Settlement Payment; and (c) the Bankruptcy Court's order is final and unappealable. Agreement at ¶ 44.

32. The Commission directs Rumford to pay the remainder of the Settlement Payment to the United States Treasury within ten business days of the Effective Date of the Agreement.

33. The Agreement also requires Rumford to put in place measures to ensure compliance with all Commission regulations and jurisdictional tariffs, and provide at least one monitoring report to Enforcement. The Commission directs Rumford to comply with these requirements.

34. Pursuant to section 316(A) of the FPA, the Commission may assess a civil penalty up to $1,000,000 for each day that a given violation continues.[5] In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines.[6]

35. The Penalty Guidelines consider the gain to the organization or the loss caused by the violation, and either the amount of energy involved in the violation or the duration of the violation, whichever is greater. Enforcement therefore based its assessment in part on the seriousness of the violation, with respect to which Enforcement concluded that Rumford's violation: (a) resulted in a loss of $3,336,964.63 to electricity customers in New England (i.e., the amount paid by Network Load for Rumford's phantom load response); and (b) lasted for a period greater than 50 days, but less than 250 days.

36. Enforcement also considered the variety of factors listed in the Penalty Guidelines in deriving a culpability score, concluding that: (a) Rumford high-level personnel and substantial authority personnel participated in and condoned the violation; (b) Rumford does not have a prior history of violations before the Commission or other enforcement agencies; (c) Rumford did not engage in obstruction of justice; (d) Rumford cooperated with the investigation; and (e) at the time of its violation, Rumford lacked an effective compliance program.

Conclusion

37. Legitimate demand response can be an important factor in efficient organized wholesale energy markets. When legitimate, demand response in organized wholesale

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[5] 16 U.S.C. §825o-1(b) (2006).

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

energy markets helps to increase competition in those markets.[7] Demand response participants provide these benefits to the market through reductions of the energy they consume from the wholesale electrical grid.

38. As we have stated, demand response is a "reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy."[8] Many demand response programs, like the DALRP, have utilized a baseline as a means of measuring demand response performance. As the Commission reiterated in Order No. 719, "[b]aselines are designed to depict, as accurately as possible, a customer's normal load on a given day. Establishing this baseline helps system operators to measure and verify load reductions, thus giving RTOs and ISOs the ability to not only determine if demand response resources showed up, but also what the proper value of the demand reduction should be."[9]

39. It has been the Commission's policy to encourage legitimate demand response, requiring organized markets to adopt accurate baseline methodologies as part of overall measurement and verification programs.[10] However, even rigorous measurement and verification programs may not stop deceptive conduct. If a baseline is fraudulently established, claimed demand response may not reflect an actual reduction in consumption. In such circumstances, consumers of electricity ultimately pay for demand response that does not really occur. The Commission's Anti-Manipulation Rule and FPA section 222 prohibit such fraud.[11]

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[7] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281, at P 48 (2008) (Order No. 719).

[8] 18 C.F.R. § 35.28(b)(4) (2012).

[9] Order No. 719 at P 57.

[10] *See, e.g.*, Order No. 745 at P 94.

[11] *Id.* at P 95. *See also North America Power Partners*, 133 FERC ¶ 61,089 (2010) (approving settlement involving allegations of violations of the Anti-Manipulation Rule related to demand response program); *In re Joseph Polidoro*, 138 FERC ¶ 61,018 (2012) (approving settlement involving allegations of violations of the Anti-Manipulation Rule related to demand response program); *Enernoc, Inc.*, 141 FERC ¶ 61,211 (2012) (approving settlement involving allegations of tariff violations related to demand response program).

40. Having considered the factors set forth by the Penalty Guidelines, we conclude that the $10,000,000 penalty in this case falls within a range that is consistent with the Penalty Guidelines and is appropriate.

41. We conclude that the disgorgement, penalty, compliance measures, and compliance monitoring 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 Rumford's conduct.

The Commission orders:

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

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Rumford Paper Company Docket No. IN12-11-000

STIPULATION AND CONSENT AGREEMENT

I. Introduction

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Rumford Paper Company (Rumford) 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 (2012) (Investigation). The Investigation led Enforcement to allege that Rumford had engaged in fraudulent conduct in its participation in ISO-New England's (ISO-NE) Day-Ahead Load Response Program (DALRP), thereby violating the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 and section 222 of the Federal Power Act (FPA). Based on Enforcement's allegations, memorialized in Enforcement's Report and Recommendation, the Commission issued an Order to Show Cause requiring Rumford to explain why it should not be required to disgorge certain payments received and pay a civil penalty as a result of its allegedly fraudulent conduct. 140 FERC ¶ 61,030 (2012). Rumford filed an Answer to the Order to Show Cause in which it disputed the allegations. The Commission filed a Proof of Claim in Rumford's chapter 11 case asserting a civil penalty, disgorgement, and interest. This Agreement resolves the Order to Show Cause proceeding as well as the underlying investigation and the Proof of Claim.

II. Stipulations

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

A. Rumford

2. Rumford is a subsidiary of NewPage Corporation (NewPage), one of the largest manufacturers of paper products in North America. On September 7, 2011 (Petition Date), NewPage and certain of its affiliates (Debtors), including Rumford, commenced voluntary cases under chapter 11 of title 11 of the United States Code (Chapter 11 Cases) in the United States Bankruptcy Court for the District of Delaware (Bankruptcy Court). The Bankruptcy Court entered an order confirming the Debtors' Modified Fourth Amended Joint Chapter 11 Plan (Plan) on December 14, 2012. The effective date of the Plan occurred on December 21, 2012.

3. Rumford owns and operates a large paper mill in Rumford, Maine and produces a wide variety of paper products. During the time frame covered by the Investigation, the mill's electricity load was generally 95 MW when fully operational. As the mill operated 24-hours a day in equal work shifts, the mill's load did not fluctuate appreciably between day and night hours. During the relevant time period, Rumford usually operated an on-site generator (referred to as G4) with a nameplate capacity of 110 MW to meet virtually all of its electricity needs, with Rumford purchasing additional power or selling excess energy as necessary. When generating, G4 also produced steam which Rumford used as part of its paper manufacturing process.

4. Effective March 17, 2006, under section 205 of the FPA, the Commission authorized Rumford to make wholesale sales of power at market based rates. *Rumford Paper Co.*, Docket Nos. ER06-761-000 and ER06-761-001 (June 15, 2006) (delegated letter order).

B. ISO-NE's Day-Ahead Load Response Program

5. The Department of Energy has defined demand response as a "change[] in electric usage by end-use customers from their normal consumption patterns in response to changes in the price of electricity over time, or to incentive payments designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized."[12] Also, in Order No. 745, the Commission stated that demand response happens when "customers reduce electricity consumption from normal usage levels in response to price signals . . . ."[13] The Commission stated that demand response "can generally occur in two ways: (1) customers reduce demand by responding to retail rates that are based on wholesale prices (sometimes called 'price-responsive demand'); and (2) customers provide demand response that acts as a resource in organized wholesale energy markets to balance supply and demand."[14] The Commission

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[12] *U.S. Department of Energy, Benefits of Demand Response in Electricity Markets and Recommendations for Achieving Them: A Report to the United States Congress Pursuant to Section 1252 of the Energy Policy Act of 2005*, February 2006.

[13] *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322, at P 9, *order on reh'g and clarification*, Order No. 745-A, 137 FERC ¶ 61,215 (2011), *reh'g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012), *appeal pending*, *Electric Power Supply Ass'n, et al. v. FERC*, No. 11-1486, et al. (D.C. Cir. filed Dec. 23, 2011 and later).

further stated that "active participation by customers in the form of demand response in organized wholesale energy markets helps to increase competition in those markets."[15] And the Commission has stated, "[i]mproving the competitiveness of organized wholesale energy markets is … integral to the Commission fulfilling its statutory mandate under the FPA to ensure supplies of electric energy at just, reasonable, and not unduly discriminatory or preferential rates."[16]

6. ISO-NE's DALRP was implemented in June 2005 as a supplemental program to ISO-NE's real-time load response programs.[17] The ISO New England Load Response Program Manual at 1-1 (LRP Manual, Revision 9, Effective Date April 7, 2006) states that ISO-NE and its market participants decided to "continu[e] the Load Response Program (LRP) with the goal of reducing peak electricity demand by large power users." At the relevant time, ISO-NE's tariff provided that "Load Response Program incentives are available to any Market Participant which, consistent with the requirements set forth [in the Tariff], enrolls itself . . . to provide a reduction in their electricity consumption in the New England Control Area during peak demand periods." *See* ISO-NE Tariff, Appendix E to Market Rule 1, § III.E.1.1 (2nd Rev Sheet No. 7902, Effective Dec. 1, 2006).

7. Under section 4.2.1 of the LRP Manual, a load response resource began participation through the establishment of an initial customer load baseline. The initial load baseline was calculated by an average of hourly meter data from 7:00

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[14] *Id.*

[15] *Id.*

[16] *Id.* at 8.

[17] *New England Power Pool and ISO New England, Inc.*, 111 FERC ¶ 61,064 (2005). All references to ISO-NE's tariff and manuals are to the versions of these documents in effect during the time covered by Enforcement's investigation, unless otherwise noted. Capitalized terms in this Agreement have the same meaning as provided in ISO-NE's FERC-approved tariff or relevant manuals as they existed during the time covered by Enforcement's investigation. During and after Rumford's participation in the DALRP ended, the Commission approved periodic changes to the demand response provisions in ISO-NE's tariff. The DALRP expired on May 31, 2012, and the Commission has since approved revised tariff provisions governing demand response resources.

AM through 6:00 PM for energy taken from the grid for the initial five business days after the asset was approved for the DALRP and hourly meter data began to be recorded, with any missing data during the initial 5-day period assigned a value of zero. Once an initial baseline was established, the baseline adjusted on a rolling basis using actual load data from the resource.

8. Under section 4.2.2 of the LRP Manual, not all days were included in the rolling baseline calculation. Certain holidays (specified by ISO-NE), weekends, Load Response Event Days, and any days on which a customer's daily DALRP offer was accepted for a given day were to be excluded from the rolling customer baseline.

9. Unlike some other demand response programs, the DALRP was not a program in which ISO-NE contacted participants to request load reductions. Instead, DALRP participants offered load reductions for the next day from the hours of 7:00 AM through 6:00 PM on non-holiday weekdays and, if ISO-NE accepted the offer, the participant was obligated to reduce load the next day. Under section 4.5.1.1 of the LRP Manual, resources were allowed to offer load reductions by specifying a minimum price (in $/MWh) and a fixed amount (in MW/h) of load reduction. The participant's real-time load was measured against its baseline to quantify the load reduction, as discussed in section 4.3.13 of the LRP Manual. As an example, in a given hour if a resource's baseline was 90 MW and actual electrical consumption from the grid was 87 MW, the calculated load reduction was 3 MW.

10. During the relevant time period, the minimum DALRP offer price was $50.00 per MWh.[18] Per section 4.5.1.1 of the LRP Manual, demand response resources with offers that cleared the day-ahead market were paid the Locational Marginal Price (LMP) in the Day-Ahead Energy Market for the amount of load reduction that cleared. If resources reduced more in Real-Time than the amount cleared in the DALRP as measured against their customer baseline, they were paid the excess at the LMP in the Real-Time Energy Market. If they reduced less in Real-Time relative to a cleared offer, they were required to buy back the difference at the Real-Time LMP.

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[18] Effective February 7, 2008, the Commission approved modifications to ISO-NE's tariff to tie the DALRP minimum offer price to an indexed amount that reflects fuel prices. *See ISO New England, Inc.*, 123 FERC ¶ 61,021, *reh'g denied*, 124 FERC ¶ 61,235 (2008). Rumford ceased offering load response into the DALRP at this time, although it remained enrolled in the DALRP program.

11. Under section 2.2.1 of the LRP Manual, demand response resources could participate in the DALRP through entities known as Enrolling Participants. Under section 5, the Enrolling Participant registered the resource in the DALRP and arranged for ISO-NE to receive load response and meter data from the resource. ISO-NE made DALRP payments to the Enrolling Participant, and the Enrolling Participant then distributed these revenues to the load response resource and any other entities based upon agreements among those parties, per section 4.5.4 of the LRP Manual.

12. Rumford became aware of DALRP and its eventual Enrolling Participant through Competitive Energy Services, LLC (CES). CES is an independent energy services company based in Portland, Maine. Beginning in 2003, CES has provided consulting services to Rumford regarding several energy-related initiatives. Rumford worked on these initiatives with, among others, Richard Silkman (Silkman), CES's managing partner.

C. Rumford's Participation in DALRP

13. In mid-2007, Silkman approached NewPage's Senior Counsel, Ron Guay, regarding Rumford's possible ISO-NE load response participation. Silkman developed a plan for Rumford's DALRP participation based upon ramping down generation from G4 when the baseline was measured by ISO-NE. According to the plan, Rumford would participate in the DALRP by ramping down generation during the initial, five-day baseline creation period and subsequently communicating daily load reduction offers at the minimum offer price. The effect of ramping down generation from G4 during the baseline period would be to temporarily increase Rumford's purchases of electricity.

14. According to the plan, once the baseline was established, Rumford would operate G4 as it typically had operated. Rumford understood, based on its discussions with Silkman, that if Rumford's DALRP offers to reduce load cleared each day, the baseline would stay static and would not change to reflect actual generation or the mill's energy usage. Because the baseline would stay static, Rumford could be regularly compensated for its claimed load reduction. Rumford also commissioned CES to prepare a "White Paper" describing potential load response participation. In this paper, CES stated that it had been tracking "zero baseline facilities," (facilities that were neither net importers nor exporters of energy, like Rumford) and concluded that such facilities could participate and receive full compensation.

15. In June and July 2007, Silkman, other CES personnel, and groups of Rumford personnel, including mill managers, met multiple times to discuss Rumford's participation in the DALRP based on CES's plan. Rumford accepted

Silkman's proposal that CES be allowed to manage day-to-day activities associated with submitting DALRP offers with Constellation New Energy, Inc. (Constellation) acting as the Enrolling Participant for Rumford. Before enrolling in DALRP, Rumford senior managers repeatedly questioned CES about the legitimacy of its plan to participate in DALRP, and were advised by Silkman and CES that the plan was proper.

16. Rumford evaluated the cost of purchasing replacement energy during the baseline period to make up for the planned ramping down of G4. Based on discussions with Silkman, Rumford anticipated an increased out-of-pocket cost of $120,000 to purchase additional energy from the grid but also that it would be able to recoup this expense within a week of DALRP participation.

17. After consulting with Rumford operators, CES suggested and Rumford agreed that it would claim 20-30 MW of load response in the DALRP.

18. CES, representing Rumford, contacted Constellation and initiated the load response enrollment process with Constellation as Rumford's Enrolling Participant. Rumford executed an agreement with Constellation in July 2007 permitting Constellation to enroll Rumford in the DALRP.

19. Based on then-existing conditions, Rumford anticipated very limited, if any, changes to its operations as a consequence of its enrollment in the DALRP. Rumford authorized CES to communicate to ISO-NE a claimed load response capability for Rumford of 20 MW, and CES made this communication on Rumford's behalf.

20. As compensation for CES's referral of Rumford to Constellation, CES received a monthly broker's fee of 5% of all revenues related to the customer's load response participation. Constellation retained 10% of all revenues and Rumford received the remaining 85%.

21. Rumford allowed CES, primarily via Silkman, to act as the main point of contact for Constellation regarding Rumford's load response participation.

22. Rumford's initial five-day baseline period ran from July 24, 2007 through July 30, 2007 (excluding July 28 and 29, 2007, which were non-business days). Consistent with the agreed upon plan, Rumford ramped down generation from G4 during the baseline period. Rumford managers instructed generation plant operators to reduce the generation output of G4 during the DALRP program hours of 7:00 AM through 6:00 PM. Other than ramping down the generator, Rumford operated as it otherwise would have absent DALRP participation. Other than ramping down generation, Rumford did not increase its load. The ramping down

during the baseline period resulted in Rumford's load spiking to 30-45 MW just prior to 7:00 AM, continuing at that level until 6:00 PM, and dropping to 5-10 MW just after 6:00 PM. At no time did Rumford inform Constellation that it had ramped down generation.

23. Beginning on July 31, 2007, through early February 2008, Rumford and CES submitted daily, non-holiday weekday load reduction offers for each program hour in the DALRP. The daily DALRP offers were virtually always submitted at the minimum offer values ($50.00 per MW/h for a minimum of 1 hour each day). As LMP prices in ISO-NE were virtually always above $50.00 during program hours, Rumford's offers to reduce load virtually always cleared the market and the company received DALRP revenues for each day. Rumford's baseline therefore generally remained unchanged and Rumford was compensated at the relevant LMP. The only circumstances in which Rumford's offers did not clear were when: (1) CES inadvertently submitted an invalid offer; (2) Rumford expected to repair on-site equipment during the next day; or (3) ISO-NE directed Rumford to restore the baseline following a November 2007 generator outage.

24. Once the baseline had been established, Rumford operated its paper mill and generation facilities the same way it had operated them before the baseline period. Rumford did not increase its generation in response to the DALRP. Likewise, Rumford neither had written procedures in place regarding reduction of energy consumption on days when its DALRP offers were accepted nor ever actually reduced its electrical consumption as a consequence of its DALRP offers being accepted.

25. As a result of Rumford's demand response offers, ISO-NE paid $3,336,964.63. Of this amount, Rumford received $2,836,419.08 and CES received $166,841.13, with the remainder going to Constellation.

III. Violations

26. The Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2012), prohibits any entity from (a) using a fraudulent device, scheme or artifice, or engaging in any act, practice, or course of business, that operates or would operate as a fraud, (b) with the requisite *scienter*, (c) in connection with a transaction subject to the jurisdiction of the Commission. Enforcement determined that Rumford violated the Commission's Anti-Manipulation Rule.

27. Enforcement determined Rumford's actions constitute a fraudulent scheme or artifice. Enforcement found that Rumford's scheme was based on misrepresentations to ISO-NE about Rumford's typical load and willingness and ability to reduce load and that because of these misrepresentations, Rumford and

CES were compensated for load response that they knew would never occur and in fact never occurred.

28. Enforcement determined that by ramping down generation and buying more grid power, Rumford and CES knowingly established and communicated to ISO-NE an inflated baseline that did not reflect Rumford's genuine load response capability, as Rumford did not intend to reduce its consumption or increase its generation once the baseline was established.

29. Enforcement concluded that the submission to ISO-NE of load response registration information was also false, claiming that the mill had a DALRP load response capability of 20 MW.

30. Enforcement determined that by submitting daily offers to reduce load, Rumford and CES communicated a willingness and ability to reduce load. Enforcement found these communications to be false because, as Rumford understood, Rumford was not reducing load and did not intend to reduce load as a result of its DALRP participation. Enforcement determined that Rumford and CES instead used the offers to perpetuate the inflated baseline, defrauding ISO-NE at the expense of all rate payers in New England as the cost of demand response is socialized across all Network Load.

31. With respect to *scienter*, Enforcement determined that Rumford knowingly adopted and participated in a scheme that established an inflated DALRP baseline so that it would be compensated for neither increasing generation nor decreasing consumption.

32. Enforcement concluded that offers of demand response for day-ahead energy reductions are in connection with transactions subject to the Commission's jurisdiction because sections 201 and 205 of the FPA gives the Commission jurisdiction over the sale of electric energy at wholesale in interstate commerce and demand response has both a direct and indirect effect on wholesale rates.

33. In sum, Enforcement determined that Rumford violated the Commission's Anti-Manipulation Rule by knowingly providing misleading information to Constellation and ISO-NE regarding its participation in DALRP, thereby committing and profiting from fraud in connection with a jurisdictional transaction.

IV. Additional Factors

34. The Commission filed a Proof of Claim in Rumford's Chapter 11 Case asserting claims for a civil penalty, disgorgement, and interest (Claims).

Enforcement maintains that the Commission's Claims against Rumford are non-dischargeable under 11 U.S.C. § 1141(d)(6) (2012).

35. Rumford maintains that if any disgorgement or civil penalty was to be assessed following a hearing, that debt would be resolved and discharged under 11 U.S.C. § 1141 (2012) in its bankruptcy proceeding. The Parties reserved their rights relating to this issue on the record at the December 13, 2012 hearing regarding confirmation of the Plan. *See* Dec. 13, 2012 Hr'g Tr. at 30:4–25.

V. Remedies and Sanctions

36. In conjunction with settling any and all civil and administrative disputes arising out of, related to, or connected with Enforcement's Investigation, Rumford agrees with the facts as stipulated in Section II of this Agreement, but neither admits nor denies the violations described in Section III of this Agreement. Rumford and Enforcement agree to the following:

A. Disgorgement and Civil Penalty

37. Rumford agrees to disgorgement of $2,836,419.08 received in connection with the DALRP program and a civil penalty of $10,000,000.

38. Given Rumford's bankruptcy proceeding, the obligations set forth in paragraph 37 of this Agreement will be collectively satisfied in full with a cash payment of $3,036,419.08 (Settlement Payment), to be paid as directed by the Commission in its order approving this Agreement, no later than ten (10) days after the Effective Date of this Agreement. Upon payment of the Settlement Payment, the obligations set forth in paragraph 37 of this Agreement will be satisfied and the Claims shall be discharged in their entirety.

39. Rumford shall make all filings necessary to secure approval by the Bankruptcy Court of this Agreement.

40. Rumford shall provide all necessary cooperation with the Commission to ensure approval of this Agreement.

B. Compliance

41. Rumford shall adopt compliance measures and procedures related to all of its activities that fall within the Commission's jurisdiction, including demand response.

42. Rumford shall make an initial compliance monitoring report one year following the Effective Date of this Agreement. The initial compliance

monitoring report shall cover the period from the Effective Date through December 31, 2013 and shall be submitted no later than January 31, 2014.

43. Each compliance monitoring report shall: (a) advise Enforcement whether violations of Commission regulations or tariff requirements have occurred during the applicable period; (b) provide a detailed update of all compliance measures and procedures instituted, and compliance training administered, by Rumford in the applicable period, including a description of the compliance measures and procedures instituted, the compliance training provided to all relevant personnel concerning all applicable Commission regulations and tariffs, and a statement of the personnel or other evidence demonstrating that the personnel have received such training and when the training took place; and (c) include an affidavit executed by an officer of Rumford that the compliance monitoring reports are true and accurate. Upon request by Enforcement, Rumford shall provide to Enforcement documentation to support its reports. After the receipt of the initial compliance monitoring report, Enforcement may, at its sole discretion, require Rumford to submit a second report for the period January 1, 2014 through December 31, 2014. Any such second report will be due no later than January 31, 2015.

VI. Terms

44. The Effective Date of this Agreement (Effective Date) shall be the earliest date on which each of the following has occurred: (a) the Commission has issued an order approving this Agreement without material modification, (b) the Bankruptcy Court has issued an order (i) approving this Agreement without material modification and (ii) authorizing Rumford to make the payment set forth in Section V above, and (c) any such order issued by the Bankruptcy Court pursuant to subsection (b) of this paragraph is final and unappealable. When effective, this Agreement shall resolve the matters specifically addressed herein as to Rumford and any affiliated entity, and their agents, officers, directors, and employees, both past and present, any successor in interest to Rumford, and "reorganized Rumford" or whatever else Rumford may be designated in any bankruptcy plan confirmed by the Bankruptcy Court (Reorganized Rumford). This agreement shall also resolve all unintentional tariff violations which Rumford and its affiliates may have committed relating to the planned maintenance outage of the G4 unit in September 2008. Upon the Effective Date, this Agreement will resolve this Docket entirely, shall be deemed to render moot the Order to Show Cause designated in paragraph 1 of this Agreement, and shall terminate the Docket.

45. Upon the Effective Date of this Agreement, the Commission shall release Rumford and any successor or affiliate, including Reorganized Rumford, and

forever bar the Commission from holding Rumford and any successor or affiliate, including Reorganized Rumford, 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, upon the Effective Date of this Agreement, the Investigation shall terminate.

46. The Commission shall have the right to void this Agreement should the Settlement Payment set forth in Section V above be subordinated for any reason, including as result of a ruling by any court. The Commission must exercise this right no later than fifteen (15) days after the later of (a) any filing by Rumford seeking to subordinate the Commission's claim or (b) the date on which any court ruling subordinating the Commission's claim becomes final and unappealable.

47. Rumford's failure to (a) make timely the Settlement Payment set forth in Section V above, (b) take all actions necessary to secure approval of this Agreement and the payment as set forth in Section V above, (c) comply with the compliance requirements specified herein, or (d) comply with other provisions of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act, 16 U.S.C. § 792, *et seq.*, and may subject Rumford and any successor companies, including Reorganized Rumford, to additional action under the enforcement and penalty provisions of the Federal Power Act.

48. If Rumford fails to make the Settlement Payment described in Section V above by the deadlines set forth in this Agreement, interest payable to the United States Treasury shall begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii)(A) (2012) from the date each payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose.

49. This Agreement binds Rumford and its agents, successors (including Reorganized Rumford), and assigns. The Agreement does not create any additional or independent obligations on Rumford, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

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

51. Notwithstanding anything to the contrary herein, unless the Commission and the Bankruptcy Court issue orders 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 Rumford shall be bound by any provision or term of this Agreement, unless otherwise agreed to in writing by Enforcement and Rumford.

52. In connection with the civil penalty provided for herein, Rumford agrees that the Commission's order approving this Agreement without material modification shall be a final and unappealable order assessing a civil penalty under § 316(A)(b) of the Federal Power Act, 16 U.S.C. § 825o-1(b). Rumford waives 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.

53. This Agreement may be modified only if in writing and signed by Enforcement and Rumford. No modification will be effective unless any approval of the Commission that may be required with respect to such modification has been received.

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

55. The undersigned representative of Rumford affirms that (a) he has read this Agreement, (b) all of the matters set forth in this Agreement are true and correct to the best of his knowledge, information, and belief, and that he understands that this Agreement is entered into by Enforcement in express reliance on those representations, and (c) he has had the opportunity to consult with counsel.

56. This Agreement may be signed in counterparts.

Agreed to and Accepted:

Norman Bay	Rumford Paper Company
Director, Office of Enforcement	By: David L. Santez
Federal Energy Regulatory Commission	Its: General Counsel, V.P. & Secretary

Date: 3·13·13

Date: 3/11/13