

144 FERC ¶ 61,104  
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.

North America Power Partners

Docket No. IN09-6-000

ORDER MODIFYING STIPULATION AND CONSENT AGREEMENT

(Issued August 5, 2013)

1. The Commission approves a revision to Paragraph 27 of the Stipulation and Consent Agreement between the Office of Enforcement (Enforcement), and North America Power Partners (NAPP) approved by the Commission in October 2010<sup>1</sup> (Settlement Agreement) and modified by the Commission in April 2013<sup>2</sup> (Modified Settlement Agreement). Under the revised Paragraph 27, NAPP will pay \$304,063.50, plus interest, in disgorgement to PJM Interconnection, LLC (PJM) in five monthly installments of \$50,000, plus interest, beginning 5 days from the issuance of this order, with subsequent payments due on the last day of the month beginning with August 31, 2013, and a final payment of \$54,063.50, plus interest, on December 31, 2013. Under the revised Paragraph 27, NAPP will also pay \$500,000, plus interest, in civil penalty to the United States Treasury in six monthly installments of \$15,000, plus interest, from January 31, 2014 through June 30, 2014, five monthly installments of \$68,333.00, plus interest, from July 31, 2014 through November 30, 2014, and a final payment of \$68,335.00, plus interest, on December 31, 2014. Interest on the civil penalty shall accrue commencing January 1, 2014. This order is in the public interest because it ensures payment of the disgorgement and civil penalty amounts approved by the Commission.

2. Under the Settlement Agreement, NAPP agreed to pay a \$500,000 civil penalty, disgorge \$2,258,127, plus interest, in unjust profit and undertake compliance monitoring after Enforcement determined that NAPP violated various provisions of the PJM Open Access Transmission Tariff and 18 C.F.R. § 1c.2 (2010). Paragraph 27 established a payment plan requiring that: \$1,150,000, plus interest, in disgorgement be paid to PJM within 30 days of the Effective Date of the Settlement Agreement; \$804,063.50, plus interest, in disgorgement be paid to PJM

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<sup>1</sup> *North America Power Partners*, 133 FERC ¶ 61,089 (2010).

<sup>2</sup> *North America Power Partners*, 143 FERC ¶ 61,064 (2013).

by December 31, 2011; and \$304,063.50, plus interest, in disgorgement be paid to PJM and \$500,000 in civil penalty be paid to the United States Treasury by December 31, 2012. NAPP made the first two payments to PJM as required by the Settlement Agreement.

3. On December 28, 2012, NAPP submitted a motion to amend Paragraph 27 of the Settlement Agreement to extend the deadline of the final disgorgement and civil penalty payment. NAPP stated it earned significantly less revenue in 2012 than it originally anticipated when it entered into the Settlement Agreement with Enforcement. On April 23, 2013, the Commission issued an order modifying Paragraph 27 of the Settlement Agreement. Under the Modified Settlement Agreement, NAPP was required to pay \$304,063.50, plus interest, in disgorgement to PJM by June 30, 2013, and \$500,000 in civil penalty to the United States Treasury by December 31, 2013.

4. On July 2, 2013, NAPP filed a motion to further extend the deadline for NAPP's final disgorgement and civil penalty payments. On July 12 and 15, 2013, NAPP revised and supplemented its motion. It requests Paragraph 27 be further modified to require it pay the \$304,063.50, plus interest, in disgorgement to PJM in five monthly installments of \$50,000, plus interest, beginning July 31, 2013 and a final payment of \$54,063.50, plus interest, on December 31, 2013. NAPP also requests Paragraph 27 be modified to require it to pay the \$500,000 civil penalty to the United States Treasury in six monthly installments of \$15,000, plus interest, from January 31, 2014 through June 30, 2014, five monthly installments of \$68,333.00, plus interest, from July 31, 2014 through November 30, 2014, and a final payment of \$68,335.00, plus interest, on December 31, 2014. Interest on the civil penalty shall accrue commencing January 1, 2014.

5. In its request, NAPP states during the period of January through June 2013 it continued to earn less revenues than originally anticipated. NAPP states the large lump sum payments required by the Modified Settlement Agreement would severely hamper its continued operations, hence, its request for regular smaller monthly payments. In support of its motion, NAPP provided an affidavit from its Vice President of Finance detailing NAPP's current financial condition and future projections. NAPP also states that the Office of Enforcement does not object to the request for additional time to comply with Paragraph 27 of the Modified Settlement Agreement.

6. NAPP has demonstrated that its ability to pay has changed since the Modified Stipulation Agreement was approved in April 2013. NAPP's proposal is consistent with the intent of the Stipulation Agreement and ensures that NAPP's unjust profits are disgorged and a civil penalty is paid.

The Commission finds:

The revision to Paragraph 27 of the Modified Settlement Agreement proposed by NAPP is in the public interest.

The Commission orders:

Paragraph 27 of the Settlement Agreement between Enforcement and NAPP is modified to require NAPP to pay \$304,063.50, plus interest, in disgorgement to PJM in five monthly installments of \$50,000, plus interest, beginning 5 days from the issuance of this order, with subsequent payments due on the last day of the month beginning with August 31, 2013, and a final payment of \$54,063.50, plus interest, on December 31, 2013. NAPP is also required to pay \$500,000, plus interest, in civil penalty to the United States Treasury in six monthly installments of \$15,000, plus interest, from January 31, 2014 through June 30, 2014, five monthly installments of \$68,333.00, plus interest, from July 31, 2014 through November 30, 2014, and a final payment of \$68,335.00, plus interest, on December 31, 2014. Interest on the civil penalty shall accrue commencing January 1, 2014 pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii).

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.