

161 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Barclays Bank PLC, Daniel Brin, Scott Connelly, and Karen Levine Docket No. IN08-8-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued November 7, 2017)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Barclays Bank PLC (Barclays), Daniel Brin, Scott Connelly, and Karen Levine (together, Defendants). Approval of the Agreement is in the public interest because the Agreement resolves on fair and equitable terms: (a) the Commission's claims against Defendants for violations of section 222 of the Federal Power Act (FPA) and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c (2017), and (b) the Commission's action captioned *FERC v. Barclays Bank PLC et al.*, No. 2:13-cv-02093-TLN-DB (E.D. Cal.) (the Federal Court Lawsuit).

2. The Defendants neither admit nor deny the alleged violations and agree that Barclays shall make payments totaling \$105,000,000.

I. Factual and Procedural Background

3. Barclays is a financial institution based in London, England.

4. In the 2006-2008 period ("Relevant Period"), Barclays traded electricity-based products and instruments in the Western United States. As detailed in the Commission Orders referenced below, Enforcement investigated certain of Defendants' trades in that period, and the Commission issued an Order to Show Cause on October 31, 2012. *See Barclays Bank PLC*, 141 FERC ¶ 61,084 (2012) ("Order to Show Cause"). The Order to Show Cause required Defendants to explain why their behavior should not be found to have violated the Commission's regulations and the FPA.

5. After briefing by Defendants and Enforcement, on July 16, 2013, the Commission issued an Order Assessing Civil Penalties against Defendants. *Barclays Bank PLC*, 144 FERC ¶ 61,041 (2013), available at <https://www.ferc.gov/eventcalendar/Files/20130716170107-IN08-8-000.pdf>. In its 85-

page Order Assessing Civil Penalties, the Commission set forth its factual and legal conclusions, finding that certain of Defendants' trades violated section 222 of the FPA and the Commission's Anti-Manipulation Rule. The Commission ordered disgorgement of unjust profits from Barclays and assessed civil penalties against Defendants.

6. After Defendants failed to make the payments required by the Commission's order, on October 9, 2013, the Commission filed the Federal Court Lawsuit in the United States District Court for the Eastern District of California, seeking affirmance of the Order.

7. Enforcement and Defendants engaged in court-supervised settlement discussions on October 11-12, 2017, a process which ultimately led to the Agreement.

II. Stipulation and Consent Agreement

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

9. The Defendants 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. The Defendants agree that Barclays shall make payments totaling \$105,000,000. This shall consist of a civil penalty payment of \$70,000,000 to the United States Treasury and the payment of \$35,000,000 in disgorgement (Disgorgement Payment). Of the Disgorgement Payment, \$20,000,000 will be paid into escrow and disbursed for remediation in a manner consistent with the Agreement, and \$15,000,000 will be paid to the Commission and left to the Commission's discretion. The Commission directs that the \$15,000,000 of Disgorgement Payment owed to the Commission, as well as any amount of the \$20,000,000 of Disgorgement Payment that is not used for remediation as discussed in the Agreement, shall go to the Low Income Home Energy Assistance Program (LIHEAP) of the states of Arizona, California, Oregon and Washington for the benefit of their respective electric energy customers in the following amounts: (i) Arizona LIHEAP will receive 19 percent of the total disgorgement; (ii) California LIHEAP will receive 63 percent of the total disgorgement; (iii) Oregon LIHEAP will receive 9 percent of the total disgorgement; and (iv) Washington LIHEAP will receive 9 percent of the total disgorgement.

III. Determination of Appropriate Sanctions and Remedies

11. 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

Barclays Bank PLC, Daniel Brin, Scott Connelly, Docket No. IN08-8-000
and Karen Levine

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

The Office of Enforcement (“Enforcement”) of the Federal Energy Regulatory Commission (“Commission”) and Barclays Bank PLC (“Barclays”), Daniel Brin, Scott Connelly, and Karen Levine (together, “Defendants”) enter into this Stipulation and Consent Agreement (“Agreement”) to resolve (i) the Commission’s claims against Defendants 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. Barclays Bank PLC et al.*, No. 2:13-cv-02093-TLN-DB (E.D. Cal.) (“Federal Court Lawsuit”). The Defendants neither admit nor deny the alleged violations. In order to fully resolve this matter, Defendants agree that Barclays shall make payments totaling \$105,000,000 in accordance with the terms set forth below.

II. STIPULATED FACTS

1. Barclays is a financial institution based in London, England.
2. In the November 2006-December 2008 period (“Relevant Period”), Barclays traded electricity-based products and instruments in the Western United States. Enforcement investigated certain of Defendants’ trades in that period, and the Commission issued an Order to Show Cause on October 31, 2012. *See Barclays Bank PLC*, 141 FERC ¶ 61,084 (2012) (“Order to Show Cause”).
3. On November 29, 2012, Defendants submitted notices of their elections under section 31(d)(3)(A) of the FPA. On December 14, 2012, Defendants answered the Order to Show Cause. On January 28, 2013, Enforcement filed a reply to Defendants’ Answers.
4. On July 16, 2013, the Commission issued an Order Assessing Civil Penalties against Defendants. *Barclays Bank PLC*, 144 FERC ¶ 61,041 (2013).
5. On October 9, 2013, 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.

6. On October 11-12, 2017, the parties engaged in court-supervised settlement discussions. On October 12, 2017, the Court suspended all further deadlines in the Federal Court Lawsuit.

7. Barclays represents that it no longer engages in any trading transaction (whether physical or financial or virtual) within the Commission's jurisdiction under the FPA and has surrendered its market-based rate authority effective June 2015.

8. Daniel Brin represents that he does not now and has not engaged in any trading transaction (whether physical or financial or virtual) within the Commission's jurisdiction since December 2010.

9. Scott Connelly represents that he does not now and has not engaged in any trading transaction (whether physical or financial or virtual) within the Commission's jurisdiction since June 2012.

10. Karen Levine represents that she does not now and has not engaged in any trading transaction (whether physical or financial or virtual) within the Commission's jurisdiction since about April 2009.

III. COMMISSION DETERMINATION OF VIOLATIONS

11. In its Order Assessing Civil Penalties, the Commission set forth the basis for its finding that certain of Defendants' trades violated section 222 of the FPA and the Commission's Anti-Manipulation Rule. *Barclays Bank PLC*, 144 FERC ¶ 61,041 (2013).

IV. REMEDIES AND SANCTIONS

12. For purposes of this Agreement, Defendants 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.

13. 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, Barclays shall pay, within 30 days of the Effective Date of this Agreement, a civil penalty of \$70,000,000 to the United States Treasury ("Civil Penalty Payment") and disgorgement of \$35,000,000 ("Disgorgement Payment").

14. Barclays shall make \$15,000,000 of the Disgorgement Payment to the Commission to be used as disgorgement in a manner to be determined by the Commission in its sole discretion. Barclays shall make the remaining \$20,000,000 of the Disgorgement Payment ("Remedial Disgorgement Amount") to an escrow agent, unaffiliated with Barclays, that is mutually agreed to by the Commission and Barclays

and paid for solely by Barclays, as reserved remediation for natural persons or other entities claimed to have been harmed as a result of the conduct discussed in the Commission's Order Assessing Civil Penalties in the Western United States during the Relevant Period. *See Barclays Bank PLC*, 144 FERC ¶ 61,041 (2013). The Remedial Disgorgement Amount will be disbursed from escrow according to criteria mutually agreed to by the Office of Enforcement and Barclays; however, no portion of the Remedial Disgorgement Amount may be used in any respect to pay attorney or other legal fees or costs of any person or other entity. If any of the Remedial Disgorgement Amount is not used as reserved remediation as discussed in this paragraph, it shall be paid to the Commission to be used as disgorgement in a manner to be determined by the Commission in its sole discretion.

15. Barclays shall promptly notify Enforcement when it makes the Civil Penalty Payment and the Disgorgement Payment by providing proof of payment by email and United States Mail to the Director of the Office of Enforcement.

16. Within three business days of receiving proof of payment of the \$70,000,000 Civil Penalty Payment to the United States Treasury, the \$15,000,000 Disgorgement Payment to the Commission, and of the \$20,000,000 Remedial Disgorgement Payment into escrow, the Commission shall file a Notice of Dismissal with Prejudice of the Federal Court Lawsuit. The Commission and Defendants agree to bear their own costs and fees from the case.

V. TERMS

17. 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 Defendants and any affiliated entity, and their agents, officers, directors, and employees, both past and present, and any successor in interest to Defendants.

18. Commission approval of the Agreement without material modification shall release Defendants and any successor or affiliate, and forever bar the Commission from holding Defendants 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 and stipulated to in this Agreement.

19. Once the Agreement is effective, Barclays' failure to (a) make timely the disgorgement and civil penalty payments set forth in Section IV above, or (b) 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

Barclays and any successor companies to additional action under the enforcement and penalty provisions of the FPA.

20. If Barclays 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 begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii)(A) (2017) from the date each payment is due, in addition to any other enforcement action and penalty that the Commission or a court may take or impose on Barclays.

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

22. 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 Defendants has been made to induce the signatories or any other party to enter into the Agreement.

23. 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 Defendants shall be bound by any provision or term of this Agreement, unless otherwise agreed to in writing by Enforcement and Defendants.

24. In connection with the civil penalty provided for herein, Defendants 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 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). Defendants 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.

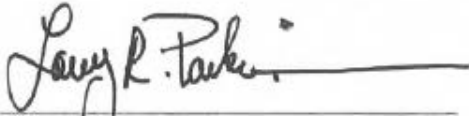
25. This Agreement may be modified only if in writing and signed by Enforcement and Defendants. No modification will be effective unless approved by the Commission.

26. 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.

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

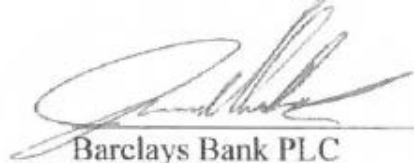
28. This Agreement may be executed in multiple copies, each of which so executed shall be deemed to be an original.

ACCEPTED AND AGREED TO:



Larry R. Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: October 30, 2017



Barclays Bank PLC
BY: James Meadows

Date: October 30, 2017



Daniel Brin
BY: Todd Mullins

Date: October 30, 2017



Scott Connelly
BY: Todd Mullins

Date: October 30, 2017



Karen Levine
BY: Michael L. Spafford

Date: October 30, 2017