156 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

National Energy & Trade, L.P. Docket No. IN16-5-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued September 1, 2016)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and National Energy & Trade, L.P. (National Energy). This order is in the public interest because it resolves the investigation into whether National Energy violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1 (2016), by manipulating physical natural gas prices between January 1, 2011 and September 30, 2015 at the Houston Ship Channel, Tetco M3, Transco Zone 6 (New York), and Henry Hub in order to benefit its related financial positions (the Investigation). National Energy neither admits nor denies the allegations and has agreed to a civil penalty of $1,155,225.91 and disgorgement of $305,780.50.

I. Facts

2. National Energy was the natural gas marketing subsidiary of NET Midstream, LLC. National Energy wound down its operations completely and terminated all employees during the third quarter of 2015. While it was a going concern, National Energy was a company that, among other things, traded physical natural gas as well as financial products that settled based on the price of physical natural gas.

A. Tetco M3, January 2012 Bidweek

3. National Energy sold financial basis at Tetco M3 during the week before the January 2012 bidweek for February 2012 flow.

4. On January 25, 2012, as bidweek opened, a National Energy trader began offering to sell physical basis at 2:17 a.m., almost three hours before any other market participant submitted a bid or offer, and several hours before National Energy's traders typically began working. In testimony, National Energy's trader claimed not to remember trading at this early hour and offered no explanation of why he would have done so.

5. National Energy's January 25, 2012 physical basis opening offer was approximately 10 cents below the most recent prices of consummated physical basis and financial basis offers from twelve hours before on January 24, 2012. Enforcement identified no change in fundamentals that occurred, or was expected to occur, in the overnight hours to explain such a downward departure.

6. National Energy initiated the twenty lowest offers out of the forty-one physical basis offers made at Tetco M3 on January 25, 2012.

7. National Energy's sales of physical basis at Tetco M3 on January 25, 2012 were 63 percent of all sales that day.

8. National Energy consummated all twenty-five of its physical basis sales before beginning to repurchase the financial basis position it sold the week before.

9. The lower price at which National Energy was able to repurchase its financial basis position, as compared to its sales of that position the week before, resulted from the large volume and low prices of its early morning physical basis transactions on January 25, 2012.

10. Enforcement found that National Energy's trades had the effect of moving down prices at Tetco M3. In making these trades, National Energy sold financial basis, sold physical basis, then re-purchased financial basis. National Energy lost money on the physical basis transactions and, in the process, lowered the Inside FERC (IFERC) settlement index. Simultaneously, National Energy held financial positions that benefited from this lowered settlement index. National Energy financially benefited from the difference between the price at which it sold financial basis between January 19, 2012 and January 24, 2012 and the price at which it repurchased that financial basis on January 25, 2012.

11. National Energy received $212,780.50 in profits in connection with the transactions set forth in Paragraphs 3 through 10.[1]

B. <u>Henry Hub, April 2014 Bidweek</u>

12. During the April 2014 bidweek for May 2014 flow, National Energy made several sets of both bids and offers (bid-offer spreads) for fixed price monthly IFERC contracts at Henry Hub after the New York Mercantile Exchange (NYMEX) closed.

[1] On September 1, 2016, in an *Order Approving Stipulation and Consent Agreement, In re David Silva*, 156 FERC ¶ 61,155 (2016), the Commission resolved the investigation into the trader's conduct at Tetco M3.

13. Enforcement found that very little physical trading occurs after NYMEX closes. Specifically, from January 2013 to June 2015, less than .1 percent of all physical trading occurred after NYMEX closed.

14. National Energy submitted approximately 80 percent of all bids and offers for fixed price monthly IFERC contracts after NYMEX closed at Henry Hub for May 2014 flow.

15. National Energy made these bids and offers at very similar prices – the differences as small as $.0025. Enforcement identified no bid-offer spreads by any market participant at Henry Hub for May 2014 flow smaller than National Energy's bid-offer spreads.

16. National Energy identified economic and commercial reasons to transact in these physical products at Henry Hub after NYMEX had closed, but Enforcement found those reasons not supported by the trading data.

17. Enforcement found that National Energy's trades gave the impression that there was a market for these transactions at a time when no market existed.

18. National Energy consummated 100 percent of the fixed priced monthly trading at Henry Hub after NYMEX closed. National Energy's 100 percent market share gave National Energy the ability to move the IFERC settlement price in a direction that benefited its financial position, which included basis swaps and index swaps valuated based on the IFERC settlement price.

19. Enforcement found that National Energy's trades had the effect of moving prices at Henry Hub. In making these trades, National Energy executed physical trades at a price (in this case, higher) that moved the IFERC in a direction that benefitted its related financial position.

20. National Energy received $93,000 in profits in connection with the transactions set forth in Paragraphs 12 through 19.

II. <u>Violations</u>

21. Enforcement determined that National Energy violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1.

22. The Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1, 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 National Energy violated the Commission's Anti-Manipulation Rule.

23. Enforcement determined that the unlawful trades constituted a scheme or artifice. Enforcement also determined that the requisite *scienter* existed, as the only explanation for the trades was that they were designed and intended to lower the Inside FERC index so as to benefit National Energy's related financial positions. Finally, the physical gas trades are within the Commission's jurisdiction.

III. Stipulation and Consent Agreement

24. Enforcement and National Energy have resolved the Investigation by means of the Agreement. National Energy stipulates and agrees to the facts set forth in the Agreement, but neither admits nor denies that its trading violated the Commission's rules, regulations, or policies. National Energy agrees to disgorge $305,780.50 ($212,780.50 for the Tetco M3 allegations and $93,000 for the Henry Hub allegations), as well as pay a $1,155,225.91 civil penalty. National Energy shall disgorge this amount to the Low Income Home Energy Assistance Program (LIHEAP) of the state of Texas within ten days of the Effective Date.

25. The Commission directs National Energy to make the disgorgement and civil penalty payments as required by the Agreement within ten business days of the Effective Date of the Agreement.

26. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines.[2] After considering all of the circumstances of this matter, including the fact that National Energy is no longer a going concern, Enforcement recommended a downward departure from the Penalty Guidelines.

27. We conclude that the disgorgement and penalty 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 National Energy's conduct.

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[2] *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Policy Statement on Penalty Guidelines); *Enforcement of Statutes, Orders, Rules, and Regulations*, 130 FERC ¶ 61,220 (2010) (Initial Policy Statement on Penalty Guidelines).

<u>The Commission orders:</u>

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

By the Commission. Chairman Bay is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

National Energy & Trade, L.P. Docket No. IN16-5-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and National Energy & Trade, L.P. (National Energy) enter into this Stipulation and Consent Agreement (Agreement) to resolve a non-public, preliminary investigation conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2016). The investigation examined whether National Energy violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1 (2016), by manipulating physical natural gas prices between January 1, 2011 and September 30, 2015 at the Houston Ship Channel, Tetco M3, Transco Zone 6 (New York), and Henry Hub in order to benefit its related financial positions (the Investigation).

2. National Energy stipulates and agrees to the facts but neither admits nor denies that it violated 18 C.F.R. § 1c.1, and agrees to pay a civil penalty of $1,155,225.91, which shall be paid to the United States Treasury. National Energy also agrees to disgorge $305,780.50 plus interest.

II. STIPULATED FACTS

3. Enforcement and National Energy hereby stipulate and agree to the following facts.

4. National Energy was the natural gas marketing subsidiary of NET Midstream, LLC. National Energy wound down its operations completely and terminated all employees during the third quarter of 2015. While it was a going concern, National Energy was a company that, among other things, traded physical natural gas as well as financial products that settled based on the price of physical natural gas.

5. National Energy cooperated in the Investigation. Neither of the two Co-Presidents of National Energy initiated or directed the trading strategies or activities at issue in the Investigation.

A. Tetco M3, January 2012 Bidweek

6. National Energy sold financial basis at Tetco M3 during the week before the January 2012 bidweek for February 2012 flow.

7. On January 25, 2012, as bidweek opened, a National Energy trader began offering to sell physical basis at 2:17 a.m., almost three hours before any other market participant submitted a bid or offer, and several hours before National Energy's traders typically began working. In testimony, National Energy's trader claimed not to remember trading at this early hour and offered no explanation of why he would have done so.

8. National Energy's January 25, 2012 physical basis opening offer was approximately ten cents below the most recent prices of consummated physical basis and financial basis offers from twelve hours before on January 24, 2012. Enforcement identified no change in fundamentals that occurred, or was expected to occur, in the overnight hours to explain such a downward departure.

9. National Energy initiated the twenty lowest offers out of the forty-one physical basis offers made at Tetco M3 on January 25, 2012.

10. National Energy's sales of physical basis at Tetco M3 on January 25, 2012 were 63 percent of all sales that day.

11. National Energy consummated all twenty-five of its physical basis sales before beginning to repurchase the financial basis position it sold the week before.

12. The lower price at which National Energy was able to repurchase its financial basis position, as compared to its sales of that position the week before, resulted from the large volume and low prices of its early morning physical basis transactions on January 25, 2012.

13. Enforcement found that National Energy's trades had the effect of moving down prices at Tetco M3. In making these trades, National Energy sold financial basis, sold physical basis, then re-purchased financial basis. National Energy lost money on the physical basis transactions and, in the process, lowered the Inside FERC (IFERC) settlement index. Simultaneously, National Energy held financial positions that benefited from this lowered settlement index. National Energy's financial positions benefited from the difference between the price at which it sold financial basis between January 19, 2012 and January 24, 2012 and the price at which it repurchased that financial basis on January 25, 2012.

14. National Energy received $212,780.50 in profits in connection with the transactions set forth in Paragraphs 6 through 13.

B. Henry Hub, April 2014 Bidweek

15. During the April 24 bidweek for May 2014 flow, National Energy made several sets of both bids and offers (bid-offer spreads) for fixed price monthly IFERC contracts at Henry Hub after the New York Mercantile Exchange (NYMEX) closed.

16. Enforcement found that very little physical trading occurs after NYMEX closes. Specifically, from January 2013 to June 2015, less than .1 percent of all physical trading occurred after NYMEX closed.

17. National Energy submitted approximately 80 percent of all bids and offers for fixed price monthly IFERC contracts after NYMEX closed at Henry Hub for May 2014 flow.

18. National Energy made these bids and offers at very similar prices – the differences as small as $.0025. Enforcement identified no bid-offer spreads by any market participant at Henry Hub for May 2014 flow smaller than National Energy's bid-offer spreads.

19. National Energy identified economic and commercial reasons to transact in these physical products at Henry Hub after NYMEX had closed, but Enforcement found those reasons not supported by the trading data.

20. Enforcement found that National Energy's trades gave the impression that there was a market for these transactions at a time when no market existed.

21. National Energy consummated 100 percent of the fixed priced monthly trading at Henry Hub after NYMEX closed. National Energy's 100 percent market share gave National Energy the ability to move the IFERC settlement price in a direction that benefited its financial position, which included basis swaps and index swaps valuated based on the IFERC settlement price.

22. Enforcement found that National Energy's trades had the effect of moving prices at Henry Hub. In making these trades, National Energy executed physical trades at a price (in this case, higher) that moved the IFERC in a direction that benefitted its related financial position.

23. National Energy received $93,000 in profits in connection with the transactions set forth in Paragraphs 15 through 22.

III. VIOLATIONS

24. Enforcement commenced the Investigation and issued data requests to National Energy, obtained trade data from the Intercontinental Exchange (ICE), and took testimony

from several National Energy employees. After a detailed analysis of the ICE and National Energy data, as well as the testimony, Enforcement concluded that National Energy manipulated natural gas prices at both Tetco M3 during the January 2012 bidweek and Henry Hub during the April 2014 bidweek in violation of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1.

IV. REMEDIES AND SANCTIONS

25. National Energy stipulates to the facts as described in Section II of this Agreement, but neither admits nor denies Enforcement's determination described in Section III of this Agreement that its conduct violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1. For purposes of settling any and all civil and administrative disputes arising from the matters examined during the Investigation, National Energy agrees to the remedies set forth in the following paragraphs.

26. National Energy agrees to a total civil penalty in the amount of $1,155,225.91, which it will pay to the United States Treasury within ten days of the Effective Date.

27. National Energy agrees to total disgorgement of $305,780.50 ($212,780.50 for the Tetco M3 allegations and $93,000 for the Henry Hub allegations) plus interest calculated pursuant to 18 C.F.R. § 154.501(d) (2016). National Energy shall disgorge this amount to the Low Income Home Energy Assistance Program (LIHEAP) of the state of Texas within ten days of the Effective Date.

V. TERMS

28. 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 Investigation as to National Energy or any affiliated entity.

29. Commission approval of this Agreement without material modification shall release National Energy and forever bar the Commission from holding National Energy, any affiliated entity, agents, officers, owners, and directors, both past and present, and any successor in interest to National Energy liable for any and all administrative or civil claims arising out of the Investigation.

30. Failure by National Energy to make the civil penalty payment or comply with any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Natural Gas Act (NGA), 15 U.S.C. §717, *et seq.* (2012), and may subject National Energy to additional action under the enforcement provisions of the NGA.

31. If National Energy does not make the required civil penalty payment or the disgorgement payment described above within ten days of the Effective Date, interest will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 154.501(d) from the date that payment is due, in addition to the penalty specified above and any other enforcement action and penalty that the Commission may take or impose.

32. The Agreement binds National Energy and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on National Energy, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

33. National Energy agrees that it enters 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 National Energy has been made to induce the signatories or any other party to enter into the Agreement.

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

35. In connection with the disgorgement and civil penalty provided for herein, National Energy agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22 of the NGA, 15 U.S.C. § 717t-1 (2012). National Energy waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

36. This Agreement can be modified only if in writing and signed by Enforcement and National Energy, and any modifications will not be effective unless approved by the Commission.

37. Each of the undersigned representatives of National Energy warrants that he is an authorized representative of National Energy, is authorized to bind National Energy, and accepts the Agreement on National Energy's behalf.

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

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

Agreed to and accepted:

Larry Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission
Date 8-22-16

Jerry Dearing
Co-President
National Energy & Trade, L.P.
Date 8/17/2016

Joe Gutierrez
Co-President
National Energy & Trade, L.P.
Date 8/19/2016