

163 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

PSEG Energy Resources & Trade, LLC

Docket No. IN18-4-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued April 25, 2018)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and PSEG Energy Resources & Trade, LLC (PSEG). This order is in the public interest because it resolves on fair and equitable terms the investigation into whether PSEG violated sections 1.2 and 6.4.2(a)(ii) of Schedule 1 of the PJM Operating Agreement (Operating Agreement) and Attachment K – Appendix of the PJM Open Access Transmission Tariff (PJM Tariff), and the Market Behavior Rule, 18 C.F.R. § 35.41(a) (2017), when it submitted incorrect cost-based offers into the PJM energy market between 2005 and 2014 (Applicable Period). PSEG admits to the facts set forth in the Agreement, but neither admits nor denies the violations. PSEG agrees to pay a civil penalty of \$8,000,000, to pay PJM disgorgement of \$26,905,736, plus \$4,494,264 interest, and to submit annual reports designed to ensure compliance with applicable Commission regulations and jurisdictional tariffs.

I. Facts

2. PSEG, a subsidiary of the Public Service Enterprise Group Incorporated, operates as a wholesale energy business and is the trading arm of its affiliate, PSEG Power. PSEG markets the output of PSEG Power's generation assets. The Commission authorized PSEG to make sales at market-based rates in 1997.¹

¹ PSEG Energy Resources & Trade LLC, *Order Conditionally Accepting for Filing Proposed Market-Based Rates*, Docket No. ER97-837-000, 78 FERC ¶ 61,119 (1997).

3. The PJM Tariff and Schedule 1 of the Operating Agreement permit market participants to submit cost-based offers into the PJM Energy Market, which must be based on the costs permissible under the PJM Tariff, Operating Agreement, and Manual 15, including a permitted 10% adder (cost + 10%).² Cost-based offers “shall not exceed the variable cost of producing such energy or other service, as determined in accordance with Schedule 2 to this Agreement and applicable regulatory standards, requirements and determinations.” PJM Tariff, Attachment K-Appendix, § 1.2 (2010); PJM Operating Agreement, Schedule 1 § 1.2 (2010). The PJM Tariff, Operating Agreement, and Manuals 11³ and 15,⁴ provide guidance on how to develop and submit cost-based offers.

4. Section 35.41(b) of the Commission’s regulations, 18 C.F.R. § 35.41(b), provides that a seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers.

5. Enforcement initiated a non-public preliminary investigation following PSEG’s April 2014 self-report of inaccuracies in its cost-based offers for some of its fossil units related to the inclusion of incorrect environmental adders for the prior two years. PSEG subsequently submitted a comprehensive written self-report and supplemental self-report providing the results of PSEG’s internal investigation, which had identified additional errors in other cost-based offer components going as far back as 2005. In addition to responding to Enforcement’s data requests, PSEG provided extensive data, conducted extensive data analyses regarding the cost-based offers, and demonstrated exemplary cooperation during the investigation.

6. PSEG’s cost-based offers included multiple types of errors: (1) inclusion of CO₂ adders in its cost-based offers after the State of New Jersey withdrew from the Regional Greenhouse Gas Initiative; (2) inclusion of seasonal NO_x adders in offers outside the

² See PJM Tariff, Attachment K-Appendix, §§ 1.2 and 6.4.2(a)(ii); PJM Operating Agreement, Schedule 1 §§ 1.2 and 6.4.2(a)(ii).

³ PJM, PJM Manual 11: Energy and Ancillary Services Market Operations (47) (June 1, 2011) (Manual 11).

⁴ PJM, PJM Manual 15: Cost Development Guidelines (16) (April 6, 2011) (Manual 15).

NOx compliance season; (3) incorrect amounts of fuel required to maintain minimum operations for the Bergen 2 unit; and (4) inaccurate performance factor data, which affected the heat rate or fuel burned per unit of output, for some of its units. In addition, PSEG did not regularly update emission allowance prices and ozone fees and did not update emission rates such as after the installation of back-end technology for environmental compliance. PSEG also made errors in its variable operations and maintenance and other fuel-related cost components. Collectively, these errors resulted in over-statements and under-statements of the costs included in PSEG's cost-based offers.

7. PSEG's compliance program and existing compliance procedures did not detect the errors in the cost-based components of the offers, in some cases, for multiple years. Following the self-report, PSEG took a number of steps to improve its compliance program including, but not limited to: (1) PSEG adopted new procedures requiring that daily offers be double-checked as to accuracy with a sign-off procedure; (2) PSEG revised its fuel policy to more clearly articulate the calculation of cost-based offers in accordance with PJM's rules; (3) PSEG's Enterprise Risk Management department now verifies calculations and confirms source data is updated and the fossil units have new procedures to verify the accuracy of the source data for the cost-based offers; (4) PSEG added resources to its Internal Audit department dedicated to independent oversight of PSEG's improved processes; (5) PSEG retained an independent audit company to develop a compliance matrix of all PJM requirements applicable to PSEG's trading operations and to assist in developing additional procedures to ensure compliance with these requirements; (6) acting on the recommendation of a different independent auditor, PSEG enhanced its enterprise-wide compliance program; and (7) PSEG made personnel changes in the trading and asset optimization groups to impose additional accountability and focus attention on compliance issues.

II. Violations

8. Enforcement determined that PSEG submitted cost-based offers for some of its fossil units in the PJM energy market that contained impermissible and/or erroneous cost components and overcharged the market above the incremental cost + 10% offer cap in some hours, in violation of §§ 1.2 and 6.4.2(a)(ii) of the PJM Operating Agreement and PJM Tariff.

9. Enforcement determined that PSEG violated section 35.41(b) of the Commission's regulations because its cost-based offers into the PJM energy market did not accurately represent the cost-basis for these offers, in violation of the obligation to submit offers that reflect a unit's incremental costs under §§ 1.2 and 6.4.2(a)(ii) of the PJM Operating Agreement and Tariff.

III. Stipulation and Consent Agreement

10. Enforcement and PSEG resolved this matter by means of the attached agreement.
11. PSEG stipulates to the facts set forth in Paragraphs 2-8 of the Agreement, but neither admits nor denies the violations set out in the Agreement.
12. PSEG agrees to pay a civil penalty of \$8,000,000 to the United States Treasury. PSEG agrees to pay PJM disgorgement of \$26,905,736, plus \$4,494,264 in interest.
13. PSEG also agrees to provide to Enforcement annual compliance reports on the progress of recently-implemented compliance measures.

IV. Determination of the Appropriate Sanctions and Remedies

14. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,⁵ recognizing, in particular, that PSEG self-reported the violations, cooperated fully and comprehensively throughout the investigation, and has no prior history of violations. The remedy also reflects that although PSEG had a compliance program in place, it was not sufficiently robust to detect or prevent the violations.
15. PJM customers bore the cost of PSEG's errors. Refunding to PJM the excess revenues (plus interest) from the incorrect cost components is the appropriate remedy.
16. We conclude that the disgorgement, penalty, 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 the violations.
17. The Commission directs PSEG to make the disgorgement and civil penalty payments as required by the Agreement within ten business days of the Effective Date of the Agreement.
18. The Commission directs PSEG to comply with the provisions in the Agreement also requiring them to submit annual compliance reports for at least two years.
19. The Commission directs PJM to allocate the disgorgement funds *pro rata* to affected market participants.

⁵ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

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

PSEG Energy Resources & Trade, LLC

Docket No. IN18-4-000

STIPULATION AND CONSENT AGREEMENT

I. Introduction

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and PSEG Energy Resources & Trade, LLC (PSEG) enter into this Stipulation and Consent Agreement (Agreement) to resolve a non-public investigation conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2017). The investigation addressed whether certain of PSEG's fossil unit cost-based offers into the PJM energy market, identified in a self-report, were consistent with sections 1.2 and 6.4.2(a)(ii) of Schedule 1 of the PJM Operating Agreement (Operating Agreement) and Attachment K – Appendix of the PJM Open Access Transmission Tariff (PJM Tariff) between 2005 and 2014; and whether incorrect costs included in the offers to PJM comprised inaccurate statements inconsistent with 18 C.F.R. §35.41(b) (2017); and, other matters that were self-reported by PSEG. Enforcement initiated its investigation following an April 2014 self-report from PSEG.

2. PSEG stipulates to the facts in Section II, but neither admits nor denies the alleged violations. It agrees to: (a) disgorge to PJM \$26,905,736, plus \$4,494,264 in interest calculated pursuant to section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2017); (b) pay a civil penalty of \$8,000,000 to the United States Treasury; and (c) for at least two years, submit annual reports on the progress of recently-implemented compliance measures.

II. Stipulations

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

3. PSEG, a subsidiary of the Public Service Enterprise Group Incorporated, operates as a wholesale energy business and is the trading arm of its affiliate, PSEG Power. PSEG

markets the output of PSEG Power's generation assets. The Commission authorized PSEG to make sales at market-based rates in 1997.¹

4. The PJM Tariff and Schedule 1 of the Operating Agreement permit market participants to submit cost-based offers into the PJM Energy Market, which must be based on the costs permissible under the PJM Tariff, Operating Agreement, and Manual 15, including a permitted 10% adder (cost + 10%).² Cost-based offers "shall not exceed the variable cost of producing such energy or other service, as determined in accordance with Schedule 2 to this Agreement and applicable regulatory standards, requirements and determinations." PJM Tariff, Attachment K-Appendix, § 1.2 (2010); PJM Operating Agreement, Schedule 1 § 1.2 (2010). The PJM Tariff, Operating Agreement, and Manuals 11³ and 15,⁴ provide guidance on how to develop and submit cost-based offers.

5. Section 35.41(b) of the Commission's regulations, 18 C.F.R. § 35.41(b), provides that a seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers.

6. Enforcement initiated a non-public preliminary investigation following PSEG's April 2014 self-report of inaccuracies in its cost-based offers for some of its fossil units related to the inclusion of incorrect environmental adders for the prior two years. PSEG subsequently submitted a comprehensive written self-report and supplemental self-report providing the results of PSEG's internal investigation, which had identified additional

¹ PSEG Energy Resources & Trade LLC, *Order Conditionally Accepting for Filing Proposed Market-Based Rates*, Docket No. ER97-837-000, 78 FERC ¶ 61,119 (1997).

² See PJM Tariff, Attachment K-Appendix, §§ 1.2 and 6.4.2(a)(ii); PJM Operating Agreement, Schedule 1 §§ 1.2 and 6.4.2(a)(ii).

³ PJM, PJM Manual 11: Energy and Ancillary Services Market Operations (47) (June 1, 2011) (Manual 11).

⁴ PJM, PJM Manual 15: Cost Development Guidelines (16) (April 6, 2011) (Manual 15).

errors in other cost-based offer components going as far back as 2005. In addition to responding to Enforcement's data requests, PSEG provided extensive data, conducted extensive data analysis regarding the cost-based offers, and demonstrated exemplary cooperation during the investigation.

7. PSEG's cost-based offers included multiple types of errors: (1) inclusion of CO₂ adders in its cost-based offers after the State of New Jersey withdrew from the Regional Greenhouse Gas Initiative; (2) inclusion of seasonal NO_x adders in offers outside the NO_x compliance season; (3) incorrect amounts of fuel required to maintain minimum operations for the Bergen 2 unit; and (4) inaccurate performance factor data, which affected the heat rate or fuel burned per unit of output, for some of its units. In addition, PSEG did not regularly update emission allowance prices and ozone fees and did not update emission rates such as after the installation of back-end technology for environmental compliance. PSEG also made errors in its variable operations and maintenance and other fuel-related cost components. Collectively, these errors resulted in over-statements and under-statements of the costs included in PSEG's cost-based offers.

8. PSEG's compliance program and existing compliance procedures did not detect the errors in the cost-based components of the offers, in some cases, for multiple years. Following the self-report, PSEG took a number of steps to improve its compliance program including, but not limited to: (1) PSEG adopted new procedures requiring that daily offers be double-checked as to accuracy with a sign-off procedure; (2) PSEG revised its fuel policy to more clearly articulate the calculation of cost-based offers in accordance with PJM's rules; (3) PSEG's Enterprise Risk Management department now verifies calculations and confirms source data is updated and the fossil units have new procedures to verify the accuracy of the source data for the cost-based offers; (4) PSEG added resources to its Internal Audit department dedicated to independent oversight of PSEG's improved processes; (5) PSEG retained an independent audit company to develop a compliance matrix of all PJM requirements applicable to PSEG's trading operations and to assist in developing additional procedures to ensure compliance with these requirements; (6) acting on the recommendation of a different independent auditor, PSEG enhanced its enterprise-wide compliance program; and (7) PSEG made personnel changes in the trading and asset optimization groups to impose additional accountability and focus attention on compliance issues.

III. Violations

9. Enforcement determined that PSEG submitted cost-based offers for some of its fossil units in the PJM energy market that contained impermissible and/or erroneous cost components and overcharged the market above the incremental cost + 10% offer cap in

some hours, in violation of §§ 1.2 and 6.4.2(a)(ii) of the PJM Operating Agreement and PJM Tariff.

10. Enforcement determined that PSEG violated section 35.41(b) of the Commission's regulations because its cost-based offers into the PJM energy market did not accurately represent the cost-basis for these offers, in violation of the obligation to submit offers that reflect a unit's incremental costs under §§ 1.2 and 6.4.2(a)(ii) of the PJM Operating Agreement and Tariff.

IV. Remedies and Sanctions

11. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to conduct self-reported by PSEG or evaluated in Enforcement's investigation, PSEG agrees with the facts as stipulated in Section II of this Agreement, but it neither admits nor denies the violations described in Section III of this Agreement. PSEG further agrees to undertake obligations set forth in the following paragraphs.

A. Disgorgement

12. PSEG agrees to pay disgorgement to PJM for the purpose of restitution and compensating market participants in the amount of \$26,905,736, plus \$4,494,264 interest, calculated pursuant to section 35.19a of the Commission's regulations.

B. Civil Penalty

13. PSEG agrees to pay a civil penalty of \$8,000,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

C. Compliance

14. Following its self-report and during Enforcement's investigation, PSEG initiated a comprehensive compliance effort which included substantive new policies, procedures and processes to improve compliance with the PJM Tariff, PJM Operating Agreement, and Commission regulations and orders. PSEG shall continue to implement the compliance plan measures previously submitted to Enforcement and described, in part, in Section II, Paragraph 8 or substantially similar compliance measures.

15. PSEG shall make annual compliance monitoring reports to Enforcement for two years following the Effective Date of this Agreement. The first annual compliance monitoring report shall be submitted on or before June 30, 2019. The second report shall

be submitted 12 months later, on or before June 30, 2020. Each report shall cover the 12-month period that ends one month before the report's submission date. After the receipt of the second annual report, Enforcement may, at its sole discretion, require PSEG to submit annual reports for one additional year.

16. Each compliance monitoring report shall: (1) identify any known violations of the PJM Tariff, PJM Operating Agreement or Commission regulations that occurred during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures related to compliance with the PJM Tariff, PJM Operating Agreement and Commission regulations that PSEG instituted or modified during the applicable period; and (3) describe all PJM and Commission-related compliance training that PSEG administered during the applicable period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

17. Each compliance monitoring report shall also include an affidavit stating that it is true and accurate to the best of his/her knowledge, executed by an officer of PSEG.

18. Upon request by Enforcement, PSEG shall provide to Enforcement documentation supporting the contents of its reports.

V. Terms

19. 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 that arose on or before the Effective Date, as to PSEG or any affiliated entity.

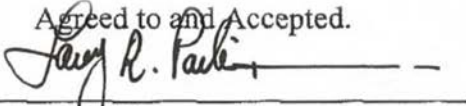
20. Commission approval of this Agreement without material modification shall release PSEG and forever bar the Commission from holding PSEG, any affiliated entity, and any successor in interest liable for any and all administrative or civil claims arising out of the conduct covered by Enforcement's investigation, including that addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date

21. Failure by PSEG to make the disgorgement, interest, or civil penalty payments, or to comply with the compliance obligations agreed to herein, or 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), 16 U.S.C. § 792, et seq., and may subject PSEG to additional action under the enforcement provisions of the FPA.

22. If PSEG does not make the required civil penalty payment described above at the time agreed by the parties, interest will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19a (2017) 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.
23. The Agreement binds PSEG and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on PSEG, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.
24. 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 PSEG has been made to induce the signatories or any other party to enter into the Agreement.
25. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor PSEG shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and PSEG.
26. In connection with the civil penalty provided for herein, PSEG agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under the FPA, 16 U.S.C. § 792, et seq., as amended. PSEG 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.
27. This Agreement can be modified only if in writing and signed by Enforcement and PSEG, and any modifications will not be effective unless approved by the Commission.
28. 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 the Agreement on the entity's behalf.
29. The undersigned representative of PSEG affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that

the Agreement is entered into by Enforcement in express reliance on those representations.

Agreed to and Accepted.



Larry Parkinson
Director,
Office of Enforcement

Date: April 23, 2018



Shahid Malik
President
PSEG Energy Resources & Trade, LLC

Date: April 23rd 2018