

164 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wheelabrator Claremont Company, L.P.

Docket No. IN18-10-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued September 28, 2018)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Wheelabrator Technologies Inc. (WTI) on behalf of itself and its subsidiary, Wheelabrator Claremont Company, L.P. (Claremont). This order is in the public interest because it resolves on fair and equitable terms the investigation into whether the collection of certain capacity payments by ISO New England Inc. (ISO-NE) associated with Capacity Supply Obligations (CSO) held by Claremont violated ISO-NE Transmission, Markets and Services Tariff, at Market Rule 1, § III.13 (hereafter ISO-NE Tariff, § III.13). Claremont admits the violations herein and agrees to (a) pay a civil penalty of \$250,000 to the United States Treasury; (b) disgorge to ISO-NE \$107,231.34 in capacity payments and interest calculated pursuant to section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2018); and (c) for two years, submit annual reports on the progress of WTI's recently-implemented compliance measures and any new incidents of non-compliance.

I. Facts

2. ISO-NE Tariff, § III.13 provides that “a Capacity Supply Obligation is an obligation to provide capacity from a resource.” A permanently closed generator may not continue to collect capacity payments and must shed its CSO prior to delivery pursuant to one of the shedding options available under the ISO-NE Tariff, including through participation in a Reconfiguration Auction¹ or by entering into bilateral contracts.²

¹ ISO-NE Tariff, §III.13.4; *and see* ISO-NE Forward Capacity Market Participation guide, at <https://www.iso-ne.com/markets-operations/markets/forward-capacity-market/fcm-participation-guide/reconfigurations-auctions>.

² ISO-NE Tariff, §III.13.5.1; *and see* FCM Participation Guide, CSO Bilateral Periods, at <https://www.iso-ne.com/markets-operations/markets/forward-capacity-market/fcm-participation-guide/cso-bilateral-periods>.

3. Enforcement initiated a non-public preliminary investigation in March 2015 following a referral from ISO-NE. Claremont subsequently responded to data requests and requests for investigative testimony, and demonstrated cooperation during the investigation.

4. Claremont operated a waste-to-energy generator with 4.5 megawatts (MW) of nameplate capacity located in Claremont, New Hampshire (hereafter the Claremont facility). Pursuant to a power purchase agreement with Public Service New Hampshire (PSNH), PSNH purchased Claremont's generation and operated as its Lead Market Participant (for the Asset and the Resource) and Asset Owner in the ISO-NE market such that PSNH managed Claremont's participation in the ISO-NE auctions and received the payments issued by ISO-NE. On December 1, 2013, PSNH transferred Lead Market Participant and Asset Owner status for the Claremont facility to an affiliate of Claremont, Wheelabrator North Andover Inc. (North Andover), which operates a WTI generation facility in North Andover, Massachusetts and, as of that date, began receiving capacity payments on Claremont's behalf.

5. WTI closed the Claremont facility as of September 30, 2013, after which time it was inoperable. At the time of its closure, Claremont had outstanding CSOs for Forward Capacity Auction (FCA) 4 (June 2013 – May 2014); FCA 5 (June 2014 – May 2015); FCA 7 (June 2016 – May 2017); and FCA 8 (June 2017 – May 2018).

6. Following the Claremont facility's closure, ISO-NE continued to issue monthly capacity payments in exchange for Claremont's continuing obligation to supply capacity. From October 2013 to October 2014, ISO-NE issued \$140,488.97 in capacity payments while the Claremont facility was inoperable and unable to meet its CSOs. ISO-NE later clawed back the July 2014 to October 2014 payments through ISO-NE's Tariff-based reconciliation process.

7. At the time North Andover assumed Lead Market Participant and Asset Owner status, WTI management did not fully understand its obligation to shed its CSOs for FCA 4 and FCA 5 or how to shed such obligations and continued to collect capacity payments for the closed Claremont facility. Accordingly, Claremont did not successfully shed those obligations. Claremont did shed its obligation for FCA9 through a non-price retirement request. Claremont's obligations in FCA8 were eventually unwound by ISO-NE after it discovered Claremont's permanent closure. WTI's compliance measures were insufficient to identify the violation.

II. Violations

8. Enforcement determined that Claremont's receipt of capacity payments associated with its CSOs from October 2013 to October 2014 violated ISO-NE Tariff, §III.13.1. As a result of the Claremont facility closing, Claremont was required to shed its CSOs

through one of the enumerated shedding options in the ISO-NE Tariff such as through a bilateral agreement or through monthly reconfiguration auctions.

III. Stipulation and Consent Agreement

9. Enforcement and Claremont resolved this matter by means of the attached Stipulation and Consent Agreement.
10. Claremont admits the violation set out in Paragraph 9 of the Agreement and stipulates to the facts set forth in Paragraphs 3-7 of the Agreement.
11. Claremont agrees to pay a civil penalty of \$250,000 to the United States Treasury. Claremont agrees to pay ISO-NE disgorgement of \$107,231.34, which includes the outstanding capacity payments that ISO-NE issued from October 2013 through June 2014, and interest calculated pursuant to section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2018).
12. Claremont 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

13. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,³ recognizing, in particular, that Claremont cooperated fully and comprehensively throughout the investigation, and has no prior history of violations. The remedy also reflects that although Claremont had a compliance program in place, it was insufficient to prevent the violations, and that Claremont personnel with substantial authority participated in the violation.
14. ISO-NE market participants in the capacity market bore the cost of Claremont's violation. Refunding to ISO-NE the net amount that it issued to Claremont in capacity payments from October 2013 to October 2014, while the Claremont facility was inoperable and unable to meet its CSOs, less the July 2014 to October 2014 payments that ISO-NE later clawed back through ISO-NE's Tariff-based reconciliation process, plus interest, is the appropriate remedy.
15. 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.

³ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

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

17. The Commission directs Claremont to comply with the provisions in the Agreement also requiring them to submit annual compliance reports for at least two years.

18. The Commission directs ISO-NE to allocate the disgorgement funds to effected market participants, using its best efforts to allocate the disgorgement funds to those market participants who paid for capacity charges during the time period of the violation.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Wheelabrator Claremont Company, L.P.

Docket No. IN18-10-000

STIPULATION AND CONSENT AGREEMENT

I. Introduction

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Wheelabrator Technologies Inc. (WTI) on behalf of itself and its subsidiary, Wheelabrator Claremont Company, L.P. (Claremont), enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic investigation conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2018) (hereinafter, the Investigation). The Investigation addressed whether the collection of certain capacity payments by ISO New England Inc. (ISO-NE) associated with Capacity Supply Obligations (CSO) held by Claremont violated ISO-NE Transmission, Markets and Services Tariff, at Market Rule 1, §III.13 (hereafter ISO-NE Tariff, §III.13). Enforcement initiated this investigation in March 2015 following a referral from ISO-NE.

2. Claremont admits the violations herein and agrees to (a) pay a civil penalty of \$250,000 to the United States Treasury; (b) disgorge to ISO-NE \$107,231.34 in capacity payments and interest calculated pursuant to section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2018); and (c) for two years, submit annual reports on the progress of WTI's recently-implemented compliance measures and any new incidents of non-compliance.

II. Stipulations

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

3. ISO-NE Tariff, §III.13 provides that "a Capacity Supply Obligation is an obligation to provide capacity from a resource." A permanently closed generator may not continue to collect capacity payments and must shed its CSO prior to delivery pursuant to one of the shedding options available under the ISO-NE Tariff, including through participation in a Reconfiguration Auction⁴ or by entering into bilateral contracts.⁵

¹ ISO-NE Tariff, §III.13.4; *and see* ISO-NE Forward Capacity Market Participation guide, at <https://www.iso-ne.com/markets-operations/markets/forward-capacity-market/fcm-participation-guide/reconfigurations-auctions>.

² ISO-NE Tariff, §III.13.5.1; *and see* FCM Participation Guide, CSO Bilateral Periods, at

4. Enforcement initiated a non-public preliminary investigation in March 2015 following a referral from ISO-NE. Claremont subsequently responded to data requests and requests for investigative testimony, and demonstrated cooperation during the investigation.

5. Claremont operated a waste-to-energy generator with 4.5 megawatts (MW) of nameplate capacity located in Claremont, New Hampshire (hereafter the Claremont facility). Pursuant to a power purchase agreement with Public Service New Hampshire (PSNH), PSNH purchased Claremont's generation and operated as its Lead Market Participant (for the Asset and the Resource) and Asset Owner in the ISO-NE market such that PSNH managed Claremont's participation in the ISO-NE auctions and received the payments issued by ISO-NE. On December 1, 2013, PSNH transferred Lead Market Participant and Asset Owner status for the Claremont facility to an affiliate of Claremont, Wheelabrator North Andover Inc. (North Andover), which operates a WTI generation facility in North Andover, Massachusetts and, as of that date, began receiving capacity payments on Claremont's behalf.

6. WTI closed the Claremont facility as of September 30, 2013, after which time it was inoperable. At the time of its closure, Claremont had outstanding CSOs for Forward Capacity Auction (FCA) 4 (June 2013 – May 2014); FCA 5 (June 2014 – May 2015); FCA 7 (June 2016 – May 2017); and FCA 8 (June 2017 – May 2018).

7. Following the Claremont facility's closure, ISO-NE continued to issue monthly capacity payments in exchange for Claremont's continuing obligation to supply capacity. From October 2013 to October 2014, ISO-NE issued \$140,488.97 in capacity payments while the Claremont facility was inoperable and unable to meet its CSOs. ISO-NE later clawed back the July 2014 to October 2014 payments through ISO-NE's Tariff-based reconciliation process.

8. At the time North Andover assumed Lead Market Participant and Asset Owner status, WTI management did not fully understand its obligation to shed its CSOs for FCA 4 and FCA 5 or how to shed such obligations and continued to collect capacity payments for the closed Claremont facility. Accordingly, Claremont did not successfully shed those obligations. Claremont did shed its obligation for FCA9 through a non-price retirement request. Claremont's obligations in FCA8 were eventually unwound by ISO-NE after it discovered Claremont's permanent closure. WTI's compliance measures were insufficient to identify the violation.

III. Violations

9. Enforcement determined that Claremont's receipt of capacity payments associated with its CSOs from October 2013 to October 2014 violated ISO-NE Tariff, §III.13.1. As a result of the Claremont facility closing, Claremont was required to shed its CSOs through one of the enumerated shedding options in the ISO-NE Tariff such as through a bilateral agreement or through monthly reconfiguration auctions.

IV. Remedies and Sanctions

10. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to conduct evaluated in the Investigation, WTI agrees with the facts as stipulated in Section II of this Agreement, and admits the violations described in Section III of this Agreement. WTI further agrees to undertake obligations set forth in the following paragraphs.

A. Civil Penalty

11. WTI agrees to pay a civil penalty of \$250,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

B. Disgorgement

12. WTI agrees to pay disgorgement to ISO-NE for the purpose of restitution and compensating market participants in the amount of \$107,231.34, which includes the outstanding capacity payments that ISO-NE issued from October 2013 through June 2014, and interest calculated pursuant to section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2018).

C. Compliance

13. Following the initiation of Enforcement's investigation, WTI instituted new compliance policies and procedures aimed at preventing violations of the ISO-NE Tariff requirements of the various markets in which it operates and of Commission rules and regulations.

14. WTI shall maintain an effective written FERC compliance program.

15. WTI 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 October 30, 2019. The second report shall be submitted on or before October 30, 2020. Each report shall cover the 12-month period that ends one month before the report's submission date. If the second annual

report contains compliance issues, Enforcement may, at its sole discretion, require WTI to submit a third annual report on or before October 30, 2021.

16. Each compliance monitoring report shall: (1) identify any known violations of the ISO-NE Tariff 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 ISO-NE Tariff and Commission regulations that the WTI instituted or modified during the applicable period; and (3) describe all ISO-NE and Commission-related compliance training that the WTI 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 the WTI.

18. Upon request by Enforcement, WTI 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 WTI or any affiliated entity.

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

21. Failure by WTI 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 WTI to additional action under the enforcement provisions of the FPA.

22. If WTI 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 (2018) 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 WTI and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on WTI, 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 WTI 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 WTI shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and WTI.

26. In connection with the civil penalty provided for herein, WTI 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. WTI 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 WTI, 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 WTI 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 R. Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission
Date: *Sept. 24, 2018*



Michael O'Friel
Senior Vice President & General Counsel
Wheelabrator Technologies Inc.
Date: