

158 FERC ¶ 61,102
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Norman C. Bay, and Colette D. Honorable.

GDF SUEZ Energy Marketing NA, Inc.

Docket No. IN17-2-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued February 1, 2017)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and GDF SUEZ Energy Marketing NA, Inc. (GSEMNA). This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2016), into whether GSEMNA violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c (2016), by improperly targeting and increasing its receipt of lost opportunity cost credits (LOCs) in the PJM Interconnection, L.L.C. (PJM) market (the Investigation).

2. GSEMNA agrees to pay disgorgement of \$40,800,000 to PJM and a civil penalty of \$41,000,000 to the United States Treasury, and to be subject to monitoring that includes submission of an annual compliance monitoring report, with the requirement of a second annual report at Enforcement's option. GSEMNA neither admits nor denies the alleged violations.

I. Background

3. As described in the Agreement, GSEMNA is a Houston-based power marketer that has been authorized by the Commission to make wholesale sales of energy, capacity and ancillary services at market-based rates.

4. During the period relevant to the Investigation, May 2011 to September 2013 (Relevant Period), GSEMNA offered generating resources owned and operated by GSEMNA affiliates in PJM, including twelve simple cycle combustion turbine units at four plants located in PJM (the CT units) with an aggregate capacity of approximately 1,800 MW.

5. PJM established LOCs to encourage generators to keep their resources as part of PJM's pool-scheduled resources and thereby allow PJM to control their output to manage system operations and maintain reliability. The PJM tariff provides for the payment of LOCs to combustion turbine units that receive a day-ahead (DA) award and that PJM directs to reduce output or does not dispatch in the real-time (RT) market. During the Relevant Period, PJM's tariff provided that certain units (including CT units) that cleared the DA market and were not dispatched in the RT market would be paid LOCs that were equal to the higher of: (a) the difference between the RT locational marginal price (RTLMP) and the DA locational marginal price (DALMP); or (b) the difference between the RTLMP and the higher of the unit's price-based or cost-based incremental energy offers, computed hourly based on the amount of the unit's awarded megawatts. The LOC formula did not subtract start-up and no-load costs, although such costs would be incurred if the unit were dispatched by PJM in the RT market. As a result, a generator with a DA award could earn a greater margin when it received LOC and was not dispatched by PJM in the RT market than the margin it would earn if it was dispatched.

6. After GSEMNA took over commercial operations of the CT units in March 2011, it identified LOCs as a potential source of profits when the units cleared the DA market and were not dispatched by PJM in the RT market. Starting in or around June 2011, GSEMNA implemented a strategy to profit from LOCs by offering one or more CT units in the DA market below the CT unit's calculated costs with the goal of clearing the DA market and then collecting LOCs if the units were not dispatched. GSEMNA discounted its DA price-based offers below calculated costs, knowing that the CT units likely would run at a loss if dispatched.

7. In November 2011, GSEMNA began discounting the cost-based offers for the CT units. This change was prompted by a change in how PJM calculated LOCs. Prior to this change, PJM erroneously calculated LOCs based on a unit's price-based offers rather than the higher of the price-based or cost-based offers, as then required by the PJM tariff. When PJM started calculating LOCs correctly, GSEMNA modified its offer behavior to discount the cost-based offers down to the level of the price-based offers. As a result, the LOCs it received for the CT units would continue to be based on the discounted offer and would be higher than if based on the units' estimated costs.

8. Continuing through the Relevant Period, GSEMNA implemented its strategy of offering the units into the DA market with discounted price-based and cost-based offers, seeking to obtain a DA award and to profit from LOCs at times when the CT units would have operated at a loss if dispatched. GSEMNA would discount a given CT unit's DA offer based on an assessment of the likelihood that the CT unit would not be dispatched in the RT market, weighing the risk of running the CT unit at a loss if dispatched against the potential reward of LOCs if the unit was not dispatched. When GSEMNA expected that a CT unit would be dispatched in the RT market, it typically offered the unit at or above cost and did not discount its DA energy offer. GSEMNA typically offered

uncommitted units (which were not eligible for LOC) in the RT market without discounting.

9. GSEMNA's strategy of offering CT units into the DA market at discounted prices resulted in GSEMNA obtaining DA commitments and LOCs at times when the units would be out of the money had they not been offered at discounted prices.

10. Upon Enforcement questioning the appropriateness of the GSEMNA bidding behavior in September 2013, GSEMNA discontinued its strategy of offering the CT units with discounted price-based and cost-based offers. GSEMNA also cooperated fully with Enforcement during the Investigation.

11. Enforcement concluded that GSEMNA violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2016), by engaging in a strategy to target and inflate the receipt of LOCs in PJM. That rule prohibits any entity from 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; with the requisite scienter; in connection with a transaction subject to the jurisdiction of the Commission.

12. Enforcement determined that GSEMNA carried out its strategy to target and inflate LOCs by offering one or more CT units into PJM's DA market with below-cost offers when it anticipated that PJM would not dispatch the CT unit(s) in the RT market, seeking and obtaining LOCs when the discounted CT units were expected to otherwise be out of the money. Enforcement determined that GSEMNA's offers did not reflect the price at which it wanted to generate power, but rather the price at which it could obtain a DA award and then receive LOCs during periods when the discounted CT units likely could not have been operated profitably. Enforcement further determined that, in order to increase LOCs, GSEMNA discounted the cost-based offers for the units when it discounted their price-based offers.

13. Enforcement concluded that GSEMNA's strategy of targeting and inflating LOCs was contrary to supply and demand fundamentals and impaired the functioning of the LOC provisions of the PJM market and PJM's unit commitment process.

II. Stipulation and Consent Agreement

14. Enforcement and GSEMNA have resolved the Investigation by means of the Agreement.

15. GSEMNA stipulates to the facts recited in the Agreement, but neither admits nor denies that it violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c (2016).

16. GSEMNA agrees to disgorge \$40,800,000 (inclusive of interest) to PJM. GSEMNA also agrees to pay a civil penalty of \$41,000,000 to the United States Treasury. In addition, GSEMNA agrees to be subject to monitoring that includes submission of an annual compliance monitoring report, with the requirement of a second annual report at Enforcement's option.

III. Determination of Appropriate Sanctions and Remedies

17. In determining the appropriate remedy for GSEMNA, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,¹ including the fact that GSEMNA cooperated fully with Enforcement during the Investigation.

18. 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.

19. The Commission emphasizes that offering uneconomic generation into the day-ahead market for the purpose of targeting and collecting LOCs violates the Commission's Anti-Manipulation Rule.

20. The Commission also concludes that GSEMNA's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.²

21. The Commission directs PJM to allocate the disgorged funds in its discretion for the benefit of PJM customers and upon approval by Enforcement of PJM's plan for doing so.

¹ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

² *Id.*

The Commission orders:

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

By the Commission. Commissioner Bay is voting present.

(S E A L)

Kimberly D. Bose,
Secretary

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

GDF SUEZ Energy Marketing NA, Inc.

Docket No. IN17-2-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and GDF SUEZ Energy Marketing NA, Inc. (GSEMNA) 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) ("Investigation"). The Investigation examined whether GSEMNA violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2016), by improperly targeting and increasing its receipt of lost opportunity cost credits (LOCs) in the PJM Interconnection, L.L.C. (PJM) market during the period May 2011 to September 2013 (Relevant Period).

2. GSEMNA neither admits nor denies that it violated 18 C.F.R. § 1c.2, and agrees to pay to PJM disgorgement of \$40,800,000 and to pay a civil penalty of \$41,000,000 to the United States Treasury, and to be subject to monitoring that includes submission of an annual compliance monitoring report, with the option of an additional year at Enforcement's discretion.

II. STIPULATED FACTS

Enforcement and GSEMNA hereby stipulate and agree to the following facts.

3. GSEMNA is a Houston-based power marketer that has been authorized by the Commission to make wholesale sales of energy, capacity and ancillary services at market-based rates.

4. During the Relevant Period, GSEMNA offered generating resources owned and operated by GSEMNA affiliates in PJM, including twelve simple cycle combustion turbine units at four plants located in PJM (the CT units) with an aggregate capacity of approximately 1,800 MW.

5. PJM established LOCs to encourage generators to keep their resources as part of PJM's pool-scheduled resources and thereby allow PJM to control their output to manage system operations and maintain reliability. The PJM tariff provides for the payment of LOCs to combustion turbine units that receive a day-ahead (DA) award and that PJM directs to reduce output or does not dispatch in the real-time (RT) market. During the

Relevant Period, PJM's tariff provided that certain units (including CT units) that cleared the DA market and were not dispatched in the RT market would be paid LOCs that were equal to the higher of (a) the difference between the RT locational marginal price (RTLMP) and the DA locational marginal price (DALMP), or (b) the difference between the RTLMP and the higher of the unit's price-based or cost-based incremental energy offers, computed hourly based on the amount of the unit's awarded megawatts. The LOC formula did not subtract start-up and no-load costs, although such costs would be incurred if the unit were dispatched by PJM in the RT market. As a result, a generator with a DA award could earn a greater margin when it received LOC and was not dispatched by PJM in the RT market than the margin it would earn if it was dispatched.

6. In March 2011, GSEMNA took over day-to-day commercial operations of the CT units following acquisition of the units by an affiliate. Based on dispatch history, GSEMNA initially expected low energy margins from the units, which did not run often, and that the primary revenue source for the CT units would be capacity payments.

7. GSEMNA began offering the CT units into the DA market and identified LOCs as a potential source of profits when the units cleared the DA market and were not dispatched by PJM in the RT market. Starting in or around June 2011, GSEMNA implemented a strategy to profit from LOCs by offering one or more CT units in the DA market below the CT unit's calculated costs with the goal of clearing the DA market and then collecting LOCs if the units were not dispatched. GSEMNA discounted its DA price-based offers below calculated costs, knowing that the CT units likely would run at a loss if dispatched.

8. In November 2011, GSEMNA began discounting the cost-based offers for the CT units. This change was prompted by a change in how PJM calculated LOCs. Prior to this change, PJM erroneously calculated LOCs based on a unit's price-based offers rather than the higher of the price-based or cost-based offers, as then required by the PJM tariff.

9. When PJM started calculating LOCs correctly, GSEMNA modified its offer behavior to discount the cost-based offers down to the level of the price-based offers. As a result, the LOCs it received for the CT units would continue to be based on the discounted offer and would be higher than if based on the units' estimated costs.

10. Continuing through the Relevant Period, GSEMNA implemented its strategy by following a probabilistic, risk/reward approach to offering the units into the DA market, seeking to obtain a DA award and to profit from LOCs when the CT units would have operated at a loss if dispatched. Under this strategy, GSEMNA would discount a given CT unit's DA offer based on an assessment of the likelihood that the CT unit would not be dispatched in the RT market, weighing the risk of running the CT unit at a loss if dispatched against the potential reward of LOCs if the unit was not dispatched. As GSEMNA gained experience in implementing the strategy, it became more aggressive in

discounting offers for the CT units to get DA awards in order to obtain LOCs, at times offering them with discounts as deep as -\$25/MWh.

11. When GSEMNA expected that a CT unit would be dispatched in the RT market, it typically offered the unit at or above cost and did not discount its DA energy offer. GSEMNA typically offered uncommitted units (which were not eligible for LOC) in the RT market without discounting.

12. GSEMNA's strategy of offering CT units into the DA market at discounted prices resulted in GSEMNA obtaining DA commitments and LOCs at times when the units would be out of the money had they not been offered at discounted prices.

13. Upon Enforcement questioning the appropriateness of the GSEMNA bidding behavior in September 2013, GSEMNA discontinued its strategy of offering the CT units with discounted price-based and cost-based offers. GSEMNA also cooperated fully with Enforcement during the Investigation.

III. VIOLATIONS

14. Enforcement concluded that GSEMNA violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2016), by engaging in a strategy to target and inflate the receipt of LOCs in PJM. That rule prohibits any entity from 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; with the requisite scienter; in connection with a transaction subject to the jurisdiction of the Commission.

15. Enforcement determined that GSEMNA carried out its strategy to target and inflate LOCs by offering one or more CT units into PJM's DA market with below-cost offers when it anticipated that PJM would not dispatch the CT unit(s) in the RT market. By doing so, GSEMNA sought and obtained LOCs at times when the discounted CT units were expected to otherwise be out of the money and could not have been operated profitably. Enforcement further determined that, in order to increase LOCs, GSEMNA discounted the cost-based offers for the units when it discounted their price-based offers.

16. Enforcement concluded that GSEMNA's strategy of targeting and inflating LOCs was contrary to supply and demand fundamentals and impaired the functioning of the LOC provisions of the PJM market and PJM's unit commitment process. GSEMNA's offers did not reflect the price at which it wanted to generate power, but rather the price at which it could obtain a DA award and then receive LOCs during periods when the discounted CT units likely could not be operated economically. Enforcement concluded that this conduct was contrary to LOCs' purpose of compensating generators for lost opportunity costs due to PJM's decision not to dispatch a generation unit. LOCs are not an incentive to offer uneconomic units into the DA market for the purpose of collecting LOCs.

IV. REMEDIES AND SANCTIONS

17. GSEMNA stipulates to the facts set forth in Section II of this Agreement, but neither admits nor denies the violations described in Section III of this Agreement. For purposes of settling any and all civil and administrative disputes arising from the Investigation, GSEMNA agrees to the remedies set forth in the following paragraphs.

A. Civil Penalty

18. GSEMNA shall pay a civil penalty of \$41,000,000 to the United States Treasury within ten days of the Effective Date of this Agreement.

B. Disgorgement

19. GSEMNA shall disgorge to PJM \$40,800,000 (inclusive of interest) within ten days of the Effective Day of this Agreement, to be allocated by PJM in its discretion for the benefit of PJM customers and upon approval by Enforcement of PJM's plan for doing so.

C. Compliance

20. GSEMNA has instituted additional compliance policies and associated processes relating to potentially manipulative trading and market behavior and will continue to conduct compliance training for its traders, employees involved in offering generating resources in organized markets, supervisors, and managers regarding the Commission's regulations governing energy trading, including specific training concerning market behavior that may violate the Commission's Anti-Manipulation Rule.

21. GSEMNA shall make an annual report to Enforcement no later than thirty days after the first anniversary of the Effective Date.

22. Such compliance monitoring report shall: (1) identify any known violations of Commission regulations that occurred during the reporting period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe in detail all compliance measures and procedures instituted or modified, and all compliance training administered, during the reporting period; and (3) include an affidavit executed by an officer of GSEMNA stating that the compliance monitoring report is true and accurate to the best of his or her knowledge.

23. Upon request by Enforcement, GSEMNA shall provide to Enforcement documentation to support its reports. After the receipt of the first annual report, Enforcement may, at its sole discretion, require GSEMNA to submit a second annual report one year later.

V. TERMS

24. 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 addressed herein as to GSEMNA and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

25. Commission approval of this Agreement without material modification shall release GSEMNA and forever bar the Commission from holding GSEMNA, any affiliated entity, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims, remedies or penalties arising out of the Investigation.

26. Failure by GSEMNA to make timely 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 Federal Power Act (FPA), 16 U.S.C. §792, *et seq.*, and may subject GSEMNA to additional action under the enforcement provisions of the FPA.

27. If GSEMNA fails to make the civil penalty and disgorgement payments described above within the times agreed by the parties, interest shall begin to accrue at the rates specified at 18 C.F.R. § 35.19a(a) (2) (iii) from the date that payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose.

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

29. GSEMNA agrees that it enters into this 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 GSEMNA has been made to induce the signatories or any other party to enter into this Agreement.

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

31. In connection with the payment of the civil penalty and disgorgement provided for herein, GSEMNA agrees 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 Federal Power Act, 16 U.S.C. § 825o-1(b). GSEMNA

waives 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.

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

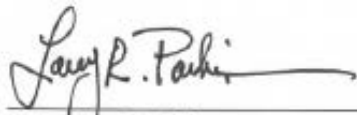
33. The undersigned representative of GSEMNA warrants that he is an authorized representative of GSEMNA, is authorized to bind GSEMNA, and accepts this Agreement on GSEMNA's behalf.

34. The undersigned representative of GSEMNA affirms that he has read this Agreement, that all of the matters set forth in this Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that this Agreement is entered into by Enforcement in express reliance on the representations of those matters.

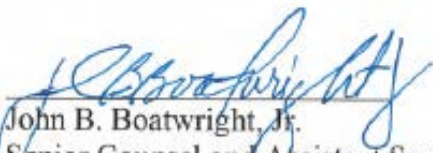
35. This Agreement may be executed in counterparts.

36. This Agreement is executed in duplicate, 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: *Nov. 30, 2016*



Nov John B. Boatwright, Jr.
Senior Counsel and Assistant Secretary
GDF SUEZ Energy Marketing NA, Inc.
Date: November 29, 2016