148 FERC ¶ 61,114
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Direct Energy Services, LLC Docket No. IN14-22-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued August 11, 2014)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Direct Energy LLC (Direct Energy). This order is in the public interest because it resolves the investigation into whether Direct Energy violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1 (2014), by manipulating natural gas prices during May 2012 at Algonquin and Transco Zone 6 New York (Transco Zone 6) in order to benefit its related financial positions. Direct Energy neither admits nor denies the allegations and has agreed to a civil penalty of $20,000 and disgorgement of $31,935. In addition, Direct Energy will continue to operate in accordance with compliance measures designed to ensure that it complies with all applicable Commission regulations and jurisdictional tariffs.

I. Facts

2. Direct Energy is a company that, among other things, trades physical natural gas as well as financial products that settle based on the price of physical natural gas.

3. In May 2012, counsel for Direct Energy contacted Enforcement to initiate a self-report that two traders had engaged in what Direct Energy described as "atypical" trading behavior. Counsel indicated that Direct Energy and counsel would conduct an internal investigation and later submit a written self-report. Counsel periodically updated Division of Investigations (DOI) staff, and, on August 20, 2012, met with DOI to describe the results of its investigation and submit a written self-report, which included a copy of its consultant's analysis and report regarding the trading behavior.

4. In the written self-report, Direct Energy explained that immediately following its May 9, 2012 training on the Commission's *Constellation*[1] settlement, one of its traders notified his supervisor and subsequently the Compliance Office that he had noticed one of the Houston traders engaging in unusual trading at Transco Zone 6 by engaging in transactions in which he bought next-day gas at Index and sold next-day gas at a fixed price.

5. On May 11, 2012, Direct Energy's back office also independently flagged the trades because they included an unusually large volume of transaction confirmations for May 11 delivery. Direct Energy's actions demonstrate that it had an effective compliance program in place.

6. Direct Energy promptly began an internal investigation, and determined that two natural gas traders (Terminated Traders) had engaged in questionable trades during April and May 2012. Direct Energy interviewed and quickly addressed the behavior by promptly suspending the traders mid-afternoon on May 11, 2012 and terminating the traders' employment on May 18, 2012. Direct Energy's consultant, Black & Veatch also conducted an analysis.

7. The Terminated Traders traded physical gas at Algonquin on May 1, 2, 7, 8, and 9 and at Transco Zone 6 on May 11, 2012 (Trade Days). The total physical and financial volumes traded by the Terminated Traders on these days involved 2,123,000 MMBtus, of which the physical fixed price sales accounted for approximately 23% of the fixed-price volume transacted on ICE on those days.

8. Most of the trading conducted by the Terminated Traders on the Trade Days was very early in the day when there were very few market participants and sold at prices lower than prices others bought at later in the day.

9. The trades the Terminated Traders made on the Trade Days had the effect of moving down prices at Algonquin and Transco Zone 6. In making these trades, Direct Energy bought next-day physical index gas and sold comparable volumes of fixed-price gas. Direct Energy lost money on these transactions and, in the process, lowered the Gas Daily index. Simultaneously, Direct Energy held financial positions that benefited from this lowered Gas Daily index. Enforcement calculated the harm to the market caused by Direct Energy's trades as $69,019.

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[1] *Constellation Energy Commodities Group, Inc.*, 138 FERC ¶ 61,168 (2012).

10. During the preliminary investigation, which included data requests, depositions, and an analysis of ICE data, Enforcement concluded that some of the days Direct Energy initially identified as "atypical" trading were manipulative, but that others were not.

11. Throughout the investigation, Direct Energy fully and comprehensively cooperated. Among other things, Direct Energy promptly responded to every data request and made its staff and Black & Veatch available for informal interviews and depositions without dispute or delay.

12. As part of the investigation, Enforcement reviewed Direct Energy's current compliance program and found that Direct Energy satisfies the criteria for an effective compliance program under the Commission's Penalty Guidelines. Enforcement's conclusion in this regard was reinforced by the fact that Direct Energy not only self-reported the trades at issue but caught the trades through two different types of compliance – education and daily data analysis.

II. Violations

13. Enforcement determined that the trades the Terminated Traders made on the Trade Days violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1.

14. 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 Direct Energy violated the Commission's Anti-Manipulation Rule.

15. 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 Gas Daily index so as to benefit the Terminated Traders' related financial positions. Finally, the physical gas trades are within the Commission's jurisdiction.

III. Stipulation and Consent Agreement

16. Enforcement and Direct Energy have resolved Direct Energy's investigation by means of the Agreement. Direct 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. Direct Energy agrees to disgorge $31,935, as well as pay a $20,000 civil penalty.

17. The Commission directs Direct 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.

18. The Agreement also requires Direct Energy to continue to operate in accordance with measures that ensure compliance with all Commission regulations and jurisdictional tariffs, and provide at least one monitoring report to Enforcement. The Commission directs Direct Energy to comply with these requirements.

19. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines.[2] As noted above, the market harm here was $69,019 and the volume of natural gas at issue involved 2,123,000 MMBtus.

20. Enforcement also considered the variety of factors listed in the Penalty Guidelines in deriving a culpability score, concluding Direct Energy has no prior history of violations, had an effective compliance program at the time of the violation (promptly detecting and investigating the trading at issue and disciplining the traders responsible) , self-reported, and was fully cooperative in the investigation. Having considered the factors set forth by the Penalty Guidelines, we conclude that the $20,000 penalty in this case falls within a range that is consistent with the Penalty Guidelines and is appropriate.

21. 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 Direct Energy's conduct.

<u>The Commission orders:</u>

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

By the Commission. Commissioner Bay is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

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

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Direct Energy Services, LLC Docket No. IN14-22-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Direct Energy LLC (Direct Energy) 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 (2013), stemming from a self-report by Direct Energy. The investigation examined whether Direct Energy violated the Commission's Anti-Market Manipulation Rule, 18 C.F.R. § 1c.1 (2013), by manipulating natural gas prices during May 2012 at Algonquin and Transco Zone 6 in order to benefit its related financial positions.

2. Direct Energy acted promptly when it became aware of the facts discussed below, self-reported to Enforcement, and cooperated with Enforcement's investigation. Direct Energy stipulates and agrees to the facts but neither admits nor denies that it violated 18 C.F.R. § 1c.1 (2013), and agrees to pay a civil penalty of $20,000, which shall be paid to the United States Treasury. Direct Energy also agrees to disgorge $31,935. Direct Energy also commits to continuing existing compliance measures going forward, and compliance monitoring.

II. STIPULATED FACTS

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

1. A. Direct Energy

4. Direct Energy is a company that, among other things, trades physical natural gas as well as financial products that settle based on the price of physical natural gas.

B. Trading At Issue

5. In May 2012, counsel for Direct Energy contacted Enforcement to initiate a self-report that two traders had engaged in what Direct Energy described as

"atypical" trading behavior. Counsel indicated that Direct Energy and counsel would conduct an internal investigation and later submit a written self-report. Counsel periodically updated DOI staff, and, on August 20, 2012, met with DOI to describe the results of its investigation and submit a written self-report, which included a copy of its consultant's analysis and report regarding the trading behavior.

6. In the written self-report, Direct Energy explained that immediately following its May 9, 2012 training on the *Constellation*[3] settlement, one of its traders notified his supervisor and subsequently the Compliance Office that he had noticed one of the Houston traders engaging in unusual trading at Transco Zone 6 by engaging in transactions in which he bought next-day gas at Index and sold next-day gas at a fixed price.

7. On May 11, 2012, Direct Energy's back office also independently flagged the trades because they included an unusually large volume of transaction confirmations for May 11 delivery. Direct Energy's actions demonstrate that it had an effective compliance program in place.

8. Direct Energy promptly began an investigation, and determined that two natural gas traders had engaged in questionable trades (Terminated Traders). Direct Energy interviewed and quickly addressed the behavior by promptly suspending the traders mid-afternoon on May 11, 2012 and terminating the traders' employment on May 18, 2012.

9. Direct Energy concluded that "atypical" trades took place during April and May 2012, and retained Black & Veatch to investigate further. The Black & Veatch report concluded that the "atypical" trades caused no directional trend and resulted in a small gain. Black & Veatch also concluded that it could not determine the intent of the traders. This information was included in Direct Energy's self-report.

10. The Terminated Traders traded physical gas at Algonquin on May 1, 2, 7, 8, and 9 and at Transco Zone 6 on May 11, 2012 (Trade Days). The total physical and financial volumes traded by the Terminated Traders on these days involved 2,123,000 MMBtus, of which the physical fixed price sales accounted for approximately 23% of the fixed-price volume transacted on ICE on those days.

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[3] *Constellation Energy Commodities Group, Inc.*, 138 FERC ¶ 61,168 (2012).

11. Most of the trading conducted by the Terminated Traders on the Trade Days was very early in the day when there were very few market participants and sold at prices lower than prices others bought at later in the day. In other words, data from trades that took place later in the day shows that the Terminated Traders would have sold at higher prices had they waited for others to enter the market.

12. The trades the Terminated Traders made on the Trade Days had the effect of moving down prices at Algonquin and Transco Zone 6. In making these trades, Direct Energy bought next-day physical index gas and sold comparable volumes of fixed-price gas. Direct Energy lost money on these transactions and, in the process, lowered the Gas Daily index. Simultaneously, Direct Energy held financial positions that benefited from this lowered Gas Daily index.

III. INQUIRY AND INVESTIGATION

13. Staff commenced a preliminary investigation and issued data requests to Direct Energy and obtained trade data from ICE. Staff also deposed four individuals: the Terminated Traders, Direct Energy's Senior Vice-President of Supply and Trading, and Direct Energy's Director of North American Market Risk. After a detailed analysis of the ICE and Direct Energy data, Enforcement concluded that some of the days Direct Energy initially identified as "atypical" trading were manipulative, but that others were not.

14. Throughout the investigation, Direct Energy was extremely cooperative – it promptly responded to every data request and made its staff available for informal interviews and depositions without dispute or delay. Likewise, Direct Energy also coordinated a conference call with Black & Veatch so that staff could inquire and better understand the methodology Black & Veatch used in its analysis. In sum, Direct Energy fully and comprehensively cooperated with Enforcement during the investigation.

15. On January 30, 2014, staff described its preliminary findings to Direct Energy.

16. As part of the investigation, Enforcement reviewed Direct Energy's current compliance program and found that Direct Energy satisfies the criteria for an effective compliance program under the Commission's Penalty Guidelines. Enforcement's conclusion in this regard was reinforced by the fact that Direct Energy not only self-reported the trades at issue but caught the trades through two different types of compliance – education and daily data analysis.

IV. VIOLATIONS

17. Enforcement determined that the trades the Terminated Traders made on

the Trade Days violated the Commission's Anti-Market Manipulation Rule, 18 C.F.R. § 1c.1.

V. REMEDIES AND SANCTIONS

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

A. Civil Penalty and Disgorgement

19. Direct Energy agrees to a total civil penalty in the amount of $20,000, which it will pay to the United States Treasury within 10 days of the Effective Date.

20. Direct Energy agrees to total disgorgement of $31,935, which it will pay to the entities listed on Exhibit A of this Agreement in the amounts listed in that exhibit. All such payments shall be made within 10 days of the Effective Date.

C. Compliance and Compliance Monitoring

21. Direct Energy shall continue to operate for at least two years under either (a) the compliance practices and procedures in effect on the Effective Date (which are an improved version of the practices and procedures that were in effect at the time of the events giving rise to this Agreement) or (b) any superior or improved practices and procedures Direct Energy may implement.

22. Direct Energy shall make an annual report to Enforcement no later than thirty days after the first anniversary of the Effective Date. The report shall detail the following: (1) any actions taken as of the date of the report to satisfy the terms of this agreement; (2) actions taken to improve compliance, including investments in new measures and training activities during the reporting period; and (3) any additional violations of any Commission regulation(s). The report must include an affidavit executed by an officer of Direct Energy that the compliance reports are true and accurate and also include corroborative documentation or other satisfactory evidence demonstrating or otherwise supporting the content of these reports. Enforcement may require an additional annual report if circumstances indicate the need for further monitoring.

VI. TERMS

23. 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, and that arose on or before the Effective Date, as to Direct Energy or any affiliated entity.

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

25. Failure by Direct Energy to make the civil penalty payment or refund payment or 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 Natural Gas Act (NGA), 15 U.S.C. §717, *et seq.*, and may subject Direct Energy to additional action under the enforcement provisions of the NGA.

26. If Direct Energy does not make the civil penalty payment or the disgorgement 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. § 154.501(d) (2013) 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.

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

28. 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 Direct Energy has been made to induce the signatories or any other party to enter into the Agreement.

29. 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 Direct Energy shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Direct Energy.

30. Direct 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. Direct 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.

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

32. 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.

33. The undersigned representative of Direct Energy 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.

34. The Agreement may be signed in counterparts.

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

Agreed to and accepted:

Norman C. Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: 7.10.14

Bray Dohrwardt
Vice President and Corporate Secretary
Direct Energy LLC

Date: 7-10-14

EXHIBIT A

Counterparty	**Disgorgement Share**
BG Energy Merchants, LLC	$535
BNP Paribas	$12,905
Boston Gas Company	$421
BP Energy Company	$4,383
ConocoPhillips Company	$632
Constellation Energy Commodities	$1,580
DB Energy Trading LLC	$632
DTE Energy	$303
Emera Energy Services, Inc.	$2,318
Gavilon, LLC	$843
Gazprom Marketing & Trading USA	$1,131
IPR-GDF SUEZ Energy Marketing NA	$1,054
J.P.Morgan Ventures Energy Corp	$42
Macquarie Energy LLC	$1,370
Merrill Lynch Commodities, Inc.	$632
Sequent Energy	$2,212
Shell Energy North America (US)	$866
Sprague Energy Resources LLC	$76
Total	**$31,935**