141 FERC ¶ 61,136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gila River Power, LLC Docket No. IN12-8-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued November 19, 2012)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Gila River Power, LLC (Gila River). This order is in the public interest because it resolves Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012), into Gila River's conduct in the markets of the California Independent System Operator Corporation (CAISO). The investigation examined possible violations of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2; of the Commission's regulation prohibiting the submission of inaccurate information, 18 C.F.R. § 35.41(b); and of the similar provisions of the CAISO tariff.[1] Gila River admitted the violations and agreed to pay a civil penalty of $2,500,000, pay disgorgement of $911,553, plus interest, and undertake improved compliance training and procedures.

I. Background

2. As described in the Agreement, Gila River is an indirect, wholly-owned subsidiary of Entegra Power Group LLC. Gila River has market-based rate authority[2] and purchases and sells energy in the western markets and the CAISO markets. During the relevant

[1] CAISO Fourth Replacement Tariff, Conformed Fourth Replacement CAISO Tariff (Tariff), § 37.5.1 (accuracy) and § 37.7 (manipulation).

[2] Letter Order, *Gila River Power LLC*, Docket Nos. ER11-4315-000, *et al.* (Sep. 30, 2011); Letter Order, *Gila River Power, L.P., et al.*, Docket Nos. ER10-3111-000, *et al.* (Dec. 10, 2010); Letter Order, *Gila River Power, L.P.*, Docket Nos. ER05-1178-000, *et al.* (Oct. 28, 2005); Letter Order, *Panda Gila River, L.P.*, Docket Nos. ER01-931-000, *et al.* (Mar. 14, 2001).

time period, Gila River owned and operated the entire 2,200 MW Gila River plant located southwest of Phoenix, Arizona, which consists of four 550 MW power blocks. For the period investigated, July 2009 through October 2010 (Relevant Period), three of those four blocks, or approximately 1,300-1,600 MW, were available for trading and reserve-sharing commitments.

3. Gila River sold power generated from its Gila River plant into the CAISO markets. Gila River often could obtain a better price for its power in the CAISO markets than in the rest of the western markets. When selling power into the CAISO markets, Gila River preferred to sell the power at the Palo Verde intertie because the cost of transmission from its plant to Palo Verde was less than the cost of transmission to other interties. But, Palo Verde was often congested in the import direction, which limited the amount of power that Gila River could import at Palo Verde and lowered the price for imports there. During the Relevant Period, Gila River imported approximately 350 to 3,000 MWhs per day into the CAISO at the Palo Verde intertie.

II. Investigation

4. Following a referral by the CAISO Department of Market Monitoring, Enforcement opened a non-public, preliminary investigation of Gila River to determine whether it violated the Commission's regulations and the CAISO Tariff.

III. Stipulation and Consent Agreement

5. As admitted by Gila River and described in the Agreement, during the Relevant Period, Gila River engaged in two strategies in the CAISO markets, the "Standalone Wheel" strategy and the "Adjustment Wheel" strategy. To further each strategy, Gila River submitted transactions designated as Wheeling-Through transactions. The use of the Wheeling-Through designation indicates to the CAISO that the Scheduling Coordinator is wheeling power through California from the linked import point to the linked export point. The Tariff required a Wheeling-Through transaction to have a resource outside of CAISO and a Load outside of CAISO.[3] Gila River, however, was not wheeling power and lacked a resource or a Load outside the CAISO with respect to these Wheeling-Through transactions.

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[3] Tariff, § 30.5.4 (incorporating definition of Wheeling-Through); Tariff Appendix A, Master Definitions Supplement (defining Wheeling-Through); *see also* Tariff, § 1.2 ("Capitalized terms used in this CAISO Tariff shall have the meanings set forth in the Master Definitions Supplement.").

A. The Standalone Wheel Strategy

6. In the Standalone Wheel strategy, Gila River scheduled its Wheeling-Through transaction inside the CAISO from an uncongested node as an import (sale) to a node congested in the import direction as an export (purchase), usually Palo Verde. Outside the CAISO, Gila River scheduled energy and transmission from the export point to the import point, forming a circular schedule. Gila River did not use a resource outside the CAISO to supply its imports nor did it have Load outside the CAISO as a destination for its exports. As a result of these transactions, on a net basis, no additional power flowed into or out of the CAISO.

7. Gila River engaged in the Standalone Wheel strategy from July 22, 2009 through March 16, 2010 and made approximately $613,801 in profits from the strategy.

B. <u>The Adjustment Wheel Strategy</u>

8. Gila River imported power from its Gila River plant into the CAISO primarily at Palo Verde. Import congestion at Palo Verde or other congested points would lower the price there and thereby reduce the amount of power Gila River could import into the CAISO. In the Adjustment Wheel strategy, Gila River used Wheeling-Through transactions in the Day Ahead market to increase the amount of power it could import into the CAISO and to increase the price paid for its imports.

9. In the Adjustment Wheel strategy, the Wheeling-Through transactions: a) helped Gila River to avoid creating congestion at a point; b) which raised the price at that point relative to what the price would have been had Gila River sought to import more energy at that point; c) which in turn benefitted any remaining concurrent imports from Gila River that were priced at that same point. In the Day-Ahead market, Gila River submitted simultaneously, a Wheeling-Through bid and a bid to import energy from the Gila River plant into the CAISO at the same intertie that served as the export point of the Wheeling-Through bid, usually Palo Verde.

10. After the Day-Ahead market settled, Gila River entered its bids in the Hour Ahead Scheduling Process market: it redirected its imports so that the maximum quantity flowed to its preferred, but otherwise congested, import point, e.g., Palo Verde, without causing congestion and so that any remaining imports flowed to the point designated as the import leg of the Adjustment Wheel. At the same time, Gila River bought back the import and export legs of the Adjustment Wheel, in effect cancelling out the Adjustment Wheel.

11. Gila River engaged in the Adjustment Wheel strategy during the entire Relevant Period, i.e., from July 2009 through October 2010, and made approximately $296,753 in profits from this strategy.

C. Violations

12. Gila River admits that it violated 18 C.F.R. § 35.41(b) of the Commission's regulations.[4] This regulation requires a market-based rate seller, such as Gila River, to provide accurate and factual information and prohibits such sellers from submitting false or misleading information or omitting material information in any communication with, among others, independent system operators, such as the CAISO. Gila River violated these provisions by submitting Wheeling-Through transactions that did not meet the Tariff's requirements for Wheeling-Through transactions. The Tariff required that a Wheeling-Through transaction have both a resource and a Load outside the CAISO.[5] For both the Standalone Wheel strategy and the Adjustment Wheel strategy, Gila River's Wheeling-Through transactions had neither.

13. Gila River admits that it violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 in undertaking the Adjustment Wheel strategy.[6] The Commission's Anti-Manipulation Rule prohibits any entity from: (1) using a fraudulent device, scheme or artifice, or making a material misrepresentation or a material omission as to which there is a duty to speak under a Commission-filed tariff, Commission order, rule or regulation, or engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity; (2) with the requisite scienter; (3) in connection with a transaction subject to the jurisdiction of the Commission.[7] Gila River's conduct constituted fraud in two ways: its submission of inaccurate Wheeling-Through transactions constituted fraud and its submission of these transactions to benefit its concurrent imports from the Gila River plant constituted fraud. Gila River's trader acted with the requisite scienter as established by his admission that he submitted Wheeling-Through transactions to increase the price at Palo Verde and the value of Gila River's imports there. Gila River's Wheeling-Through transactions and its imports were jurisdictional.

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[4] Gila River also admits that it violated the similar provision of § 37.5 of the CAISO Tariff.

[5] Tariff, § 30.5.4 (incorporating definition of Wheeling-Through); Tariff Appendix A, Master Definitions Supplement (defining Wheeling-Through); *see also* Tariff, § 1.2 ("Capitalized terms used in this CAISO Tariff shall have the meanings set forth in the Master Definitions Supplement.").

[6] Gila River also admits that it violated the similar provision of the CAISO Tariff, § 37.7.

[7] 18 C.F.R. § 1c.2(a) (2012).

IV. Determination Of The Appropriate Civil Penalty

14. Gila River agrees to pay a civil penalty of $2,500,000, to disgorge $910,553 in unjust profits, plus interest, and to make a compliance report to Enforcement.

15. In determining the appropriate remedy, Enforcement considered the factors described in section 316A(b) of the Federal Power Act and in the Revised Policy Statement on Penalty Guidelines.[8] Enforcement considered that: Gila River's conduct was serious and was committed intentionally; that its conduct undermined the proper functioning of the CASIO markets; and that its conduct was committed with the knowledge of supervisory personnel.

16. Enforcement also considered that Gila River and its employees provided exemplary cooperation in the investigation and were productive and diligent in assisting staff at all phases of its investigation. Further, Gila River's cooperation made staff's fact-finding efficient and productive and thereby helped conserve Commission resources.

17. The Commission concludes that the civil penalty, disgorgement, compliance measures and the compliance monitoring reports set forth in the Agreement are fair and equitable resolutions of the matters concerned and are in the public interest, as they reflect the nature and seriousness of Gila River's conduct. The Commission also concludes that the civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.[9]

18. The Commission directs the CAISO to allocate the disgorged funds and interest for the benefit of electric ratepayers. The CAISO may allocate such funds in its discretion, including directing the funds to those harmed by the conduct at issue or augmenting efforts to monitor market participant behavior and to attempt to prevent future misconduct.

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

[9] *Id*.

<u>The Commission orders:</u>

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

Gila River Power LLC) Docket No. IN12-8-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission and Gila River Power LLC (Gila River) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012). The investigation examined Gila River's conduct in the markets of the California Independent System Operator Corporation (CAISO). Specifically, the investigation examined potential violations of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2; of the Commission's regulation prohibiting the submission of inaccurate information, 18 C.F.R. § 35.41(b); and of similar provisions of the CAISO Tariff.[1]

II. STIPULATIONS

Enforcement and Gila River hereby stipulate and agree to the following facts:

2. Gila River is an indirect, wholly-owned subsidiary of Entegra Power Group LLC. Gila River has market-based rate authority and purchases and sells energy in the western markets and the CAISO markets. During the relevant time period, Gila River owned and operated the entire 2,200 MW Gila River plant located southwest of Phoenix, Arizona, which consists of four 550 MW power blocks.[2] For the period investigated, July 2009 through October 2010 (Relevant Period), three of those four blocks, or approximately 1,300-1,600 MW, were available for trading and reserve-sharing commitments.

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[1] CAISO Fourth Replacement Tariff, Conformed Fourth Replacement CAISO Tariff (Tariff), §§ 37.5.1 (accuracy) and 37.7 (manipulation). Capitalized terms herein have the meaning set forth in the Tariff.

[2] Gila River subsequently sold two of the power blocks to a non-affiliated party.

3. Enforcement opened the investigation of Gila River following an October 6, 2010 referral by the CAISO Department of Market Monitoring (DMM) related to Gila River's scheduling and trading practices in the CAISO markets. Gila River and its employees provided exemplary cooperation and were productive and diligent in assisting Enforcement in all phases of the investigation. Its employees were candid and forthcoming in their testimony and in meetings with Enforcement, and Enforcement found them genuinely contrite. Gila River was transparent regarding its conduct, which made Enforcement's fact-finding efficient and productive and helped conserve staff's resources. Together with its attorneys, Gila River employees worked with Enforcement staff to bring to light salient facts and to develop a sound method to analyze and calculate Gila River's profits from its conduct. In agreeing to a penalty amount, Enforcement favorably considered this conduct of Gila River and its employees.

4. Gila River sold power generated from its Gila River plant into the CAISO markets. Gila River often could obtain a better price for its power in the CAISO markets than in the rest of the western markets. Gila River preferred to sell the power at the Palo Verde intertie because the cost of transmission from its plant to Palo Verde was less than the cost of transmission to other interties. Palo Verde was often congested in the import direction, however, this congestion limited the amount of power that Gila River could import at Palo Verde and lowered the price for imports there. During the Relevant Period, Gila River imported from approximately 350 to 3,000 MWhs per day into the CAISO at the Palo Verde intertie.

5. During the Relevant Period, Gila River engaged in two strategies in the CAISO markets, the "Standalone Wheel" strategy and the "Adjustment Wheel" strategy. To further each strategy, Gila River submitted transactions designated as Wheeling Through transactions. A Wheeling Through transaction consists of an export bid and an import bid that are linked such that both of them will clear in the CAISO market or neither of them will clear. The use of the Wheeling Through designation indicates to the CAISO that the Scheduling Coordinator is wheeling power through California from the linked import point to the linked export point. The Tariff requires a Wheeling Through transaction to have a resource outside of CAISO and a Load outside of CAISO.[3] Gila River, however, lacked a resource or a Load outside the CAISO with respect to these Wheeling Through transactions. Even though it was not wheeling power through

[3] Tariff, § 30.5.4 (incorporating definition of Wheeling Through); Tariff Appendix A, Master Definitions Supplement (defining Wheeling Through); *see also* Tariff, § 1.2 ("Capitalized terms used in this CAISO Tariff shall have the meanings set forth in the Master Definitions Supplement.").

CAISO, Gila River submitted its bids as Wheeling Through bids throughout the Relevant Period as part of one or both of the strategies.

A. The Standalone Wheel Strategy

6. In the Standalone Wheel strategy, Gila River scheduled its Wheeling Through transactions inside the CAISO from an uncongested node as an import (sale) to a node congested in the import direction as an export (purchase), usually Palo Verde. Outside the CAISO, Gila River scheduled energy and transmission from the export point to the import point, forming a circular schedule. Gila River did not use a resource outside the CAISO nor did it have Load outside the CAISO for its Wheeling Through transactions. As a result of these transactions, on a net basis, no additional power flowed into or out of the CAISO.

7. In the Standalone Wheel strategy, Gila River profited from the Wheeling Through transactions because it was awarded the bid only when the price at the import node (sale) was greater than the price at the export node (purchase) and because it bid a spread great enough to cover its costs, such as transmission costs outside the CAISO and CAISO export fees. Gila River engaged the Standalone Wheel strategy from July 22, 2009 through March 16, 2010 and made approximately $613,801 in profits from the strategy.

B. The Adjustment Wheel Strategy

8. Gila River imported power into the CAISO primarily at Palo Verde. Import congestion at Palo Verde or other congested points would lower the price there and thereby reduce Gila River's revenues for imports sourced from the Gila River plant. To prevent import congestion and avoid these effects, Gila River developed the Adjustment Wheel strategy. In the Adjustment Wheel strategy, Gila River used Wheeling Through transactions in the Day Ahead market to increase the amount of power it could import into the CAISO and to increase the price paid for those imports. Through the strategy, Gila River also learned whether some import nodes were less congested than others. Gila River used this information to redirect its imports from its normally preferred import nodes to less congested nodes.

9. In the Adjustment Wheel strategy, the Wheeling Through transactions: (a) helped Gila River to avoid creating congestion at a point; (b) which raised the price at that point relative to what the price would have been had Gila River sought to import more energy at that point; (c) which in turn benefitted any remaining concurrent imports from Gila River that were priced at that same point. Specifically, in the Day-Ahead Market, Gila River submitted a Wheeling Through bid which linked an export at an intertie that was typically congested in the import direction, usually Palo Verde, to an import at another intertie that was typically not congested (Adjustment Wheel). As the trader who

developed the strategy wrote at the time, Gila River was "[u]sing wheels as a way to prop up one LMP that gets congested by linking it to another point that doesn't get congested." The export bid leg of the Adjustment Wheel relieved import congestion at the export point, usually Palo Verde, which increased the price there.

10. Simultaneously, Gila River submitted a bid to import energy from the Gila River plant into the CAISO at the same intertie that served as the export point of the Adjustment Wheel, again usually Palo Verde. The price increase benefitted Gila River's imports at that same point. The trader in charge of the strategy described the benefits this way: "The upside here is that most of these times I'm importing hundreds at PV [Palo Verde] and my wheel has raised the price for PV for all the power I'm importing, [i.e., power sourced from the Gila River plant]."

11. Because the export bid leg of Adjustment Wheel provided counterflow to the import bid from the Gila River plant, the Adjustment Wheel relieved the congestion that Gila River's imports otherwise would have caused at the import point, e.g., Palo Verde.

12. After the Day-Ahead market settled, Gila River entered its bids in the Hour Ahead Scheduling Process market: it redirected its imports so that the maximum quantity flowed to its normally preferred, but otherwise congested point, e.g., Palo Verde, without causing congestion and so that any remaining imports flowed to the point designated as the import leg of the Adjustment Wheel. At the same time, Gila River bought back the import and export legs of the Adjustment Wheel, in effect cancelling out the Adjustment Wheel.

13. Gila River engaged in the Adjustment Wheel strategy during the entire Relevant Period, i.e., from July 2009 through October 2010, and made approximately $296,753 in profits from this strategy.

III. VIOLATIONS

A. Gila River Violated Accuracy Provisions

14. Gila River violated the accuracy requirements of Commission regulations, 18 C.F.R. § 35.41(b), and of the similar CAISO Tariff § 37.5. Section 35.41(b) of the Commission's regulations applies to Gila River as a market-based rate seller. This section requires Gila River to:

> provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with … Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence

to prevent such occurrences.

Section 37.5 of the CAISO Tariff is similar.

15. During the Relevant Period, Gila River submitted schedules to the CAISO that included Wheeling Through transactions as part of both its Standalone Wheel strategy and its Adjustment Wheel strategy. Appendix A of the Tariff defines a "Wheeling Through Transaction" as "the use of the CAISO Controlled Grid for the transmission of Energy from a resource located outside the CAISO Controlled Grid to serve a Load located outside the transmission and Distribution System of a Participating [Transmission Operator]." Although Gila River's employees claimed that they were uncertain about whether its Wheeling Through bids complied with the Tariff, Gila River's employees, the trader and his supervisors, chose to proceed with these transactions without conducting a sufficient review of the Tariff or seeking guidance from Gila River's legal or compliance staff.

16. Gila River admits that it did not meet the Tariff's requirements for Wheeling Through transactions because it was not wheeling power through CAISO and its transactions lacked both a resource and a Load outside the CAISO, and admits that it violated the Commission's regulation requiring the submission of accurate schedules, 18 C.F.R. § 35.41(b), and the similar provision of the Tariff, § 37.5.

B. Gila River Engaged in Market Manipulation

17. During the Relevant Period, Gila River's use of the Adjustment Wheel strategy violated the Commission's Anti-Manipulation Rule by improperly using Wheeling Through transactions to trade in one instrument, energy exports (purchases) at a point congested in the import direction, with the intent to benefit a second instrument, its imports sourced from the Gila River plant and imported (sold) at the same point. The Commission's Anti-Manipulation Rule prohibits any entity from: (1) using a fraudulent device, scheme or artifice, or making a material misrepresentation or a material omission as to which there is a duty to speak under a Commission-filed tariff, Commission order, rule or regulation, or engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity; (2) with the requisite scienter; (3) in connection with a transaction subject to the jurisdiction of the Commission.[4]

18. The foregoing facts establish that Gila River violated the Commission's Anti-Manipulation Rule. Gila River's designation of its trades as Wheeling Through

[4] 18 C.F.R. § 1c.2(a)(3).

transactions to facilitate its Adjustment Wheel strategy operated as a fraud or deceit because the transactions were falsely designated, as discussed above.

19. Further, in its Adjustment Wheel strategy, Gila River moved the price at the congested node, primarily Palo Verde, compared to what it would have been had Gila River tried to import energy at the congested node. Gila River's Wheeling Through transactions done in conjunction with its Adjustment Wheel strategy were undertaken with the intent to increase the revenues for its imports sourced from the Gila River plant and were not based on market fundamentals. Gila River also injected false and deceptive information into the marketplace through its designation of its import and export bids as Wheeling Through transactions. These actions undermined the proper functioning of the CAISO markets and operated as a fraud or deceit under the Commission's Anti-Manipulation Rule.

20. In the Adjustment Wheel strategy, Gila River's trader admitted that he submitted the Wheeling Through transactions in order to increase the price at Palo Verde when there was congestion there to increase revenues paid for Gila River's imports sourced from the Gila River plant. Contemporaneous documents confirmed this intent.

21. Gila River's Wheeling Through transactions as well as its imports sourced from the Gila River plant were jurisdictional transactions.

22. Gila River admits that, for the reasons stated above, it violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 and the similar provision of the Tariff, § 37.7.

IV. REMEDIES AND SANCTIONS

23. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, Gila River agrees with the facts as stipulated in Section II of this Agreement and admits to the violation of the Commission's Accuracy requirements and of the identical violation of the CAISO Tariff set forth in Section III.A of this Agreement and of the Commission's Anti-Manipulation Rule and the identical provision of the CAISO Tariff, described in Section III.B of this Agreement. Gila River agrees to take the following actions.

A. Civil Penalty

24. Gila River shall pay a civil penalty of $2.5 million to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

B. Disgorgement

25. Within ten days after the Effective Date of this Agreement as defined below, Gila River shall disgorge unjust profits of $910,553, plus interest (accrued consistent with 18 C.F.R. § 35.19a(a)(2)), to the CAISO to use or distribute in its discretion for the benefit of electric ratepayers.

C. Compliance

26. Gila River shall adopt compliance measures and procedures related to its trading of jurisdictional products. These measures shall include improved training for its traders, supervisors, and managers regarding the Commission's regulations governing energy trading, including the adherence to the tariffs in the organized markets in which Gila River participates. Gila River shall make an initial compliance monitoring report and thereafter shall make semi-annual compliance monitoring reports to Enforcement for one year following the Effective Date of this Agreement. The initial compliance monitoring report shall be submitted no later than 60 days after the Effective Date of this Agreement. The period covered by the initial compliance monitoring report shall be October 12, 2010, through the Effective Date of this Agreement. The first semi-annual compliance monitoring report shall be submitted no later than ten days after the end of the second calendar quarter of 2013 and shall cover the period from the Effective Date until the end of the second calendar quarter of 2013. The second semi-annual compliance monitoring report shall be submitted six months thereafter for the third and fourth calendar quarters of 2013.

27. Each compliance monitoring report shall: (a) advise Enforcement whether violations of Commission regulations or Tariff requirements have occurred during the applicable period; (b) provide a detailed update of all compliance measures and procedures instituted, and compliance training administered, by Gila River in the applicable period, including a description of the compliance measures and procedures instituted, the compliance training provided to all relevant personnel concerning the Tariff, and a statement of the personnel or other evidence demonstrating that the personnel have received such training and when the training took place; and (c) include an affidavit executed by an officer of Gila River that the compliance monitoring reports are true and accurate. Upon request by Enforcement, Gila River shall provide to Enforcement documentation to support its reports. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require Gila River to submit semi-annual reports for one additional year.

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 and that order becomes no longer subject to appeal. When effective, this Agreement shall resolve the matters specifically addressed herein as to Gila River and any affiliated entity, and their agents, officers, directors and employees, both past and present, and any successor in interest to Gila River.

29. Commission approval of this Agreement in its entirety and without material modification shall release Gila River and forever bar the Commission from holding Gila River, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the investigation addressed in this Agreement.

30. Gila River's failure to: (a) make a timely civil penalty payment; (b) make a timely disgorgement payment to CAISO; (c) comply with the compliance monitoring requirement specified herein; or (d) 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, 16 U.S.C. § 792, *et seq.*, and may subject Gila River to additional action under the enforcement and penalty provisions of the Federal Power Act.

31. If Gila River fails to make the civil penalty and disgorgement payments described above at the times agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19a(a)(2)(iii)(A) from the date the payments are due, in addition to any other enforcement action and penalty that the Commission may take or impose.

32. This Agreement binds Gila River and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on Gila River, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement. Enforcement and Gila River do not intend for this Agreement to entitle any other party to any claim or right of any kind, it being the intent of the Enforcement and Gila River that this Agreement shall not be construed as a third-party beneficiary contract.

33. 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 Gila River has been made to induce the signatories or any other party to enter into the Agreement.

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

35. In connection with the payment of the civil penalty provided for herein, Gila River agrees that the Commission's order approving this Agreement without material modification shall be a final and unappealable order assessing a civil penalty under § 316A(b) of the Federal Power Act, 16 U.S.C. § 825o-1(b). Gila River 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.

36. 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 this Agreement on the entity's behalf.

37. The undersigned representative of Gila River affirms that he or she has read this Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, that he understands that this Agreement is entered into by Enforcement in express reliance on those representations, and that he or she has had the opportunity to consult with counsel.

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

39. Agreed to and Accepted:

Norman Bay Director, Office of Enforcement Federal Energy Regulatory Commission	Jerry Coffey General Counsel Gila River Power LLC
Date: 11·13·12	Date: 11/12/12