

145 FERC ¶ 61,062
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Constellation Energy Commodities
Group, Inc.

Docket No. IN13-17-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 18, 2013)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Exelon Corporation (Exelon). 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 (2013), into Constellation Energy Commodities Group's (CECG's) conduct in the markets of the California Independent System Operator Corporation (CAISO).¹ The investigation examined possible violations of the Commission's regulation prohibiting the submission of inaccurate information, 18 C.F.R. § 35.41(b), and of a similar provision of the CAISO tariff.² Exelon admitted the violations and agreed to pay a civil penalty of \$500,000, pay disgorgement of \$145,928, plus interest, and undertake compliance reporting.

¹ As part of an internal corporate restructuring since the conduct under investigation, CECG was merged into an Exelon subsidiary, Exelon Generation, and no longer exists as a legal entity.

² CAISO Fourth Replacement Tariff, Conformed Fourth Replacement CAISO Tariff (Tariff), § 37.5.1 (accuracy) and § 37.7 (manipulation).

I. BACKGROUND AND INVESTIGATION

2. As described in the Agreement, Exelon merged with Constellation, including CECG, in 2012.³ CECG had market-based rate authority⁴ and purchased and sold energy in the western markets and the CAISO markets.

3. Following a referral by the CAISO Department of Market Monitoring (DMM), Enforcement opened a non-public, preliminary investigation of CECG to determine whether it violated the Commission's regulations and the CAISO Tariff by submitting bids and engaging in transactions incorrectly designated as Wheeling Through from January 22, 2010 through March 24, 2010 (Relevant Period).

II. STIPULATION AND CONSENT AGREEMENT

A. Wheeling Through Transactions

4. As admitted by Exelon and described in the Agreement, during the Relevant Period, CECG submitted transactions designated as Wheeling Through transactions. The use of the Wheeling Through designation indicates to CAISO that the Scheduling Coordinator, here CECG, 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.⁵ CECG, however, was not wheeling power and lacked a resource or a Load outside CAISO for these Wheeling Through transactions.

5. Exelon admits that CECG's designation of Wheeling Through transactions violated 18 C.F.R. § 35.41(b) of the Commission's regulations.⁶ This regulation requires

³ *Exelon Corporation, Constellation Energy Group, Inc.*, 138 FERC ¶ 61,167, at P 14 (2012).

⁴ Constellation Power Source became Constellation Energy Commodities Group (CECG) and received its market based rate authority effective November 24, 2004. *Constellation Energy Commodities Group, Inc.*, Docket No. ER05-261-000 (Jan. 6, 2005) (unpublished delegated letter order). CECG's market based rate authority was then cancelled on March 1, 2013. *Constellation Energy Commodities Group, Inc.*, Docket No. ER13-993-000 (April 5, 2013) (unpublished delegated letter order).

⁵ CAISO FERC Electric Tariff Fourth Replacement Volume No. II, Original Sheet No. 966 (Effective March 31, 2008).

⁶ Exelon also admits that it violated the similar provision of § 37.5 of the CAISO Tariff.

a market-based rate seller, such as CECG, 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 CAISO. CECG violated these provisions by submitting Wheeling Through transactions that did not meet the Tariff's requirements.

B. Exelon's Assertions Regarding CAISO

6. In addition, during the investigation, as described in paragraph 9 of the Agreement, Exelon twice incorrectly asserted to staff that CAISO supported closing the investigation without penalty. In light of these facts, we remind all subjects under investigation of the importance of candor and accuracy during all stages of Market Monitor inquiries and Commission investigations. Because Exelon failed to ensure that these assertions to Enforcement staff were accurate, Enforcement granted Exelon no cooperation credit in arriving at a penalty.

III. DETERMINATION OF THE APPROPRIATE CIVIL PENALTY

7. Exelon agrees to pay a civil penalty of \$500,000, to disgorge \$145,928 in unjust profits, plus interest, and to submit compliance reports to Enforcement.

8. 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.⁷ Enforcement considered that CECG's conduct undermined the proper functioning of the CAISO markets and that no cooperation credit was granted. However, Enforcement also considered that Exelon accepted responsibility for CECG's violations and avoided a trial-type hearing.

9. The Commission concludes that the civil penalty, disgorgement, 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 CECG's conduct. The Commission also concludes that the civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.⁸

10. The Commission directs CAISO to allocate the disgorged funds and interest for the benefit of electric ratepayers. CAISO may allocate such funds in its discretion.

⁷ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

⁸ *Id.*

The Commission orders:

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

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Constellation Energy)
Commodities Group, Inc.

Docket No. IN13-17-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Exelon Corporation (Exelon) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation of Constellation Energy Commodities Group, Inc. (CECG), which was acquired by Exelon in March of 2012, conducted under Part 1b of the Commission’s regulations, 18 C.F.R. Part 1b (2013).¹ Enforcement examined CECG’s potential violations of the Commission’s regulation prohibiting the submission of inaccurate information, 18 C.F.R. § 35.41(b), and a parallel provision of the California Independent System Operator’s (CAISO’s) tariff then in effect.²

II. STIPULATIONS

2. Enforcement and Exelon hereby stipulate and agree to the following facts:
3. CECG purchased and sold energy in the western and CAISO markets with market-based rate authority. From January 22, 2010 through March 24, 2010 (Relevant Period), CECG submitted bids to CAISO that it designated as Wheeling Through transactions that did not include either a generation resource or load outside the CAISO. Enforcement opened the investigation of CECG following an October 6, 2010 referral from CAISO’s

¹ As part of an internal corporate restructuring, CECG was merged into an Exelon subsidiary, Exelon Generation, and no longer exists as a legal entity.

² CAISO Fourth Replacement Tariff, Conformed Fourth Replacement CAISO Tariff (Tariff), § 37.5.1 (accuracy). Capitalized terms herein have the meaning set forth in the Tariff.

Department of Market Monitoring (DMM) related to CECG's scheduling and trading practices in the CAISO markets.

4. During the Relevant Period, CECG's trading team looked for CAISO inertia balancing authority areas where price spreads were large enough to cover the transmission costs and attendant charges and fees. CECG designated its bids as Wheeling Through so that if CAISO awarded CECG's bid, it would award both inertia bids—at the import point and the export point—and CECG would then capture the price spread between them.

5. CECG bid its Wheeling Through transactions linked by transmission inside the CAISO from an import point (sale) to an export point (purchase). If CAISO awarded CECG's bids, CECG would then schedule transmission outside of CAISO from the CAISO export point back to the import point, forming a circular schedule.

6. CECG profited from the Wheeling Through transactions because it was awarded the bid only when the price at the import point (sale) was greater than the price at the export point (purchase) and because it bid a spread great enough to cover its costs. CECG bid this circular scheduling strategy every day and nearly every hour during the Relevant Period. The CAISO awarded CECG's bids on nineteen days during the Relevant Period. After the DMM notified CECG that its bidding was not consistent with the tariff, CECG ceased the bidding at issue.

7. Appendix A of the Tariff, as well as the Definitions and Acronyms Section of the CAISO Business Practices Manual (BPM), define 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]."³

8. The Tariff requires a Wheeling Through transaction to have a resource outside of CAISO and a Load outside of CAISO. Because CECG scheduled transmission from the CAISO export point back to the import point, CECG did not have a resource outside the

³ CAISO FERC Electric Tariff Fourth Replacement Volume No. II, Original Sheet No. 966 (Effective March 31, 2008); CAISO Business Practice Manual for Definitions and Acronyms (3rd Version, January 1, 2010). Prior to submitting its bids, CECG consulted section 2.5.2.2 of the BPM, which at the time described a Wheeling Through transaction as "an export bid and a corresponding import bid." CAISO Business Practice Manual for Market Operations (4th Version, December 31, 2009). CECG failed to consult the CAISO Tariff or the definition for Wheeling Through in the BPM.

CAISO nor did it have Load outside the CAISO for the transactions it designated as Wheeling Through.

9. In addition, Exelon proposed to the CAISO CEO in July 2012 to return profits to CAISO from the Wheeling Through schedules. After its discussion with CAISO, Exelon asserted orally and then in writing to staff that CAISO supported closing the investigation without penalty. After the oral assertion, Exelon asked the CAISO CEO about Exelon's draft response to staff's findings, which draft response stated that CAISO supported closing the investigation on the basis of Exelon's proposal. The CAISO CEO replied, "I have consulted with our internal folks and I don't think we will be able to support the letter. Nonetheless, I am comfortable with you noting that you did offer to settle the matter with the ISO. Unfortunately, we don't have the authority to do that once a referral is made and FERC may or may not recognize any settlements with us in their proceedings." However, the next day Exelon responded to staff's findings, writing: "CAISO now supports closing this investigation." Exelon stated that its oral assertion was made in good faith and that the language in its written response to staff was left in by mistake.

III. VIOLATIONS

10. Staff determined that CECG's Wheeling Through transactions during the Relevant Period violated the Commission's accuracy requirements, 18 C.F.R. § 35.41(b), as well as the similar CAISO Tariff requirements at § 37.5. Section 35.41(b) of the Commission's regulations applies to Constellation as a market-based rate Seller. This section requires CECG to:

provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with . . . 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.⁴

11. During the Relevant Period, CECG submitted schedules to CAISO that included Wheeling Through transactions. Staff determined that by submitting Wheeling Through transactions that did not wheel power through CAISO because they lacked both a

⁴ CAISO Fourth Replacement Tariff, Conformed Fourth Replacement CAISO Tariff (Tariff), § 37.5.1 (accuracy).

resource and a Load outside CAISO, CECG violated the Commission's regulations requiring submission of accurate schedules, 18 C.F.R. § 35.41(b), and the CAISO Tariff at § 37.5.

IV. REMEDIES AND SANCTIONS

12. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, Exelon agrees with the facts as stipulated in Section II of this Agreement and admits, as set forth in Section III, that it violated 18 C.F.R. § 35.41(b) and the CAISO Tariff at § 37.5 by submitting Wheeling Through transactions that did not meet the Tariff's requirements because its transactions lacked both a resource and a Load outside CAISO. Exelon further agrees to take the following actions.

A. Civil Penalty

13. Exelon shall pay a civil penalty of \$500,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

B. Disgorgement

14. Within ten days of the Effective date of this Agreement as defined below, Exelon shall disgorge unjust profits of \$145,928, plus interest (accrued consistent with 18 C.F.R. § 35.19a(a)(2)), to CAISO to use or distribute in its discretion.

C. Compliance Monitoring

15. CECG is already obligated to make semi-annual compliance monitoring reports to Enforcement through April 10, 2014 under the terms of a prior settlement involving CECG. *Order Approving Stipulation and Consent Agreement*, 138 FERC ¶ 61,168 (2012), *Stipulation and Consent Agreement* at P 39. To avoid duplication, CECG will file its compliance reports for this settlement as part of the October 10, 2013, and April 10, 2014 reports in the earlier settlement. This agreement also extends such reporting until April 10, 2015 with an option for staff in this matter to require an additional year of reporting to April 10, 2016. Each compliance report shall: (1) advise Enforcement whether violations of Commission regulations have occurred during the applicable period; (2) provide a detailed update of all compliance training administered and compliance measures instituted in the applicable period, including a description of the training provided to all relevant personnel concerning CECG's compliance with Commission regulations, and a list of the personnel that have received such training and when the training took place; and (3) include an affidavit executed by an officer of Exelon that the compliance reports are true and accurate. Upon request by Enforcement, CECG shall provide to Enforcement documentation to support its reports.

V. TERMS

16. 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 Exelon and any affiliated entity, and their agents, officers, directors and employees, both past and present.

17. Commission approval of this Agreement in its entirety and without material modification shall release Exelon and forever bar the Commission from holding Exelon, 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.

18. Exelon's failure to: (a) make a timely civil penalty payment; (b) comply with the compliance monitoring requirements specified herein; or (c) 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), and may subject Exelon to additional action under the enforcement and penalty provisions of the FPA.

19. If Exelon does not timely make the civil penalty payment, 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) (2013) from the date those payments are due, in addition to any other enforcement action and penalty that the Commission may take or impose.

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

21. 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 Exelon has been made to induce the signatories or any other party to enter into the Agreement.

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


23. In connection with the payment of the civil penalty provided for herein, Exelon

agrees that the Commission's order approving the Agreement without modification shall be a final and unappealable order assessing a civil penalty under section 316(a) of the FPA, 16 U.S.C. § 825o(a). Exelon 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 modification.

24. 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.

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

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



Norman Bay

Director, Office of Enforcement,
Federal Energy Regulatory Commission

Date: 9-24-13



Paul Bonney

Senior Vice President and Deputy General
Counsel, Exelon Corporation

Date: 9-25-13