186 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Allison Clements and Mark C. Christie.

Smart One Energy, LLC Docket No. IN23-13-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued March 12, 2024)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Smart One Energy, LLC (Smart One). This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation (Investigation) under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2023), into whether Smart One violated Section 26.2.1.4 of the New York Independent System Operator's (NYISO) Market Administration and Control Area Services Tariff (Tariff) for failing to timely inform NYISO of sanctions imposed by two state public service utility commissions.

2. Smart One agrees to pay a civil penalty of $5,000 to the United States Treasury. Smart One stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations in Section III of the Agreement.

I. <u>Facts</u>

3. Enforcement and Smart One have stipulated and agreed to the following facts:

4. Smart One is a competitive energy services provider which commenced service in 2009, operating in New York as a retail marketer of electricity and natural gas, with retail gas supply comprising its core operations and the largest component of its business. During calendar years 2020 and 2021, Smart One greatly reduced its retail clientele in New York and subsequently exited New York's electricity markets in August 2021.

5. Beginning in 2019, NYISO required its Customers/Applicants to submit a credit eligibility application, which Smart One submitted in April 2020 and April 2021. In each of its annual credit eligibility applications, Smart One responded "N/A," when asked to list:

> "*any sanctions* involving the Applicant/Customer, guarantor (if applicable), Principals, or traders of Applicant/Customer *imposed by* the SEC, FERC, CFTC*, any state or provincial*

> *entity responsible for regulating activity in energy markets,* or any other governing, regulatory, or standards body where such sanctions were either imposed in the past seven years or, if imposed prior to that period, are still in effect that could foreseeably have a material financial impact on Applicant/Customer." (emphasis added)

6. On May 21, 2021, NYISO's Corporate Credit division was made aware that Smart One had been the subject of two separate investigations in Maryland and Virginia that culminated in sanctions imposed against Smart One.

7. A Maryland Public Service Commission (MPSC) order, issued on August 2, 2019, ordered the suspension of Smart One's retail license to supply natural gas, that Smart One pay a civil penalty of $561,000 and issue refunds to certain customers, and that Smart One's customers be returned to the utilities' supply default service.

8. A Virginia State Corporation Council (VSCC) order, issued on January 16, 2020, approved a settlement under which Smart One terminated service to its customers in Virginia and surrendered its competitive retail service provider license.

9. NYISO alleged that, based on its analysis of Smart One's financial statements during the relevant period, there was a substantial net decline in revenue as a result of the sanctions imposed by the MPSC and VSCC. Accordingly, NYISO alleged that the sanctions imposed by these state commissions materially impacted Smart One's financial condition and that Smart One's failure to comply with the credit reporting requirements of the Tariff prevented NYISO from timely exercising additional due diligence to ensure its other customers and its markets are adequately protected from a default by Smart One.

10. At NYISO's request, Smart One subsequently submitted a revised credit questionnaire addressing the adverse rulings in Maryland and Virginia.

11. Smart One cooperated with Enforcement during the Investigation.

II. <u>Violations</u>

12. Enforcement determined that Smart One violated Section 26.2.1.4 of the credit reporting provisions of NYISO's Tariff (Material Change in Financial Status).

13. Section 26.2.1.4 provides:

> A Customer shall inform the ISO of any material change in its financial status within five (5) business days, including but not limited to: (a) a downgrade of a long- or short-term debt rating by any ISO-approved rating agency; (b) placement on a negative credit watch by any ISO approved rating agency; (c) a bankruptcy filing, insolvency, or a default under any financing agreement; (d) resignation or

termination of a key officer; (e) initiation of a lawsuit that could materially and adversely impact current or future financial performance; or (f) restatement of prior financial statements.

14. Enforcement determined that Smart One's financial statements indicate that after losing its retail natural gas customers in Maryland and Virginia, Smart One's net sales decreased approximately 60%, assets decreased approximately 27%, and cash decreased by approximately 80% from 2019 to 2020. Smart One's net income also declined by 80% between 2019 and 2020. Thus, Enforcement concluded that Smart One violated Section 26.2.1.4 by failing to timely report this material change in its financial condition as evidenced by the significant decline in its net revenue following the sanctions imposed by MPSC and VSCC.

III. Stipulation and Consent Agreement

15. Smart One and Enforcement have resolved the investigation by means of the attached Agreement.

16. Smart One stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations set forth in Section III of the Agreement.

17. Smart One agrees to pay a civil penalty of $5,000 to the United States Treasury.

IV. Determination of Appropriate Sanctions and Remedies

18. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,[1] including the fact that Smart One cooperated with Enforcement during the Investigation.

19. 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.

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

21. The Commission directs Smart One to make the civil penalty payment as required by the Agreement within ten days of the Effective Date of the Agreement.

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

[2] *Id.*

The Commission orders:

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

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Smart One Energy, LLC | Docket No. IN23-13-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Smart One Energy, LLC (Smart One) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic investigation (Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2023). The Investigation addressed whether Smart One violated Section 26.2.1.4 of the New York Independent System Operator's (NYISO) Market Administration and Control Area Services Tariff (Tariff) for failing to timely inform NYISO of sanctions imposed by two state public service utility commissions.

2. Smart One stipulates to the facts in Section II, but it neither admits nor denies the violations described in Section III of this Agreement. Smart One agrees to pay a civil penalty of $5,000 to the United States Treasury.

II. STIPULATIONS

Enforcement and Smart One hereby stipulate and agree to the following facts.

3. Smart One is a competitive energy services provider which commenced service in 2009, operating in New York as a privately owned retail marketer of electricity and natural gas, with retail gas supply comprising its core operations and the largest component of its business. During calendar years 2020 and 2021, Smart One greatly reduced its retail clientele in New York and subsequently exited New York's electricity markets in August 2021.

4. Beginning in 2019, NYISO required its Customers/Applicants to submit a credit eligibility application, which Smart One submitted in April 2020 and April 2021. In each of its annual credit eligibility applications, Smart One responded "N/A," when asked to list:

> "*any sanctions* involving the Applicant/Customer, guarantor (if applicable), Principals, or traders of Applicant/Customer

> *imposed by* the SEC, FERC, CFTC, *any state or provincial entity responsible for regulating activity in energy markets,* or any other governing, regulatory, or standards body where such sanctions were either imposed in the past seven years or, if imposed prior to that period, are still in effect that could foreseeably have a material financial impact on Applicant/Customer." (emphasis added)

5. On May 21, 2021, NYISO's Corporate Credit division was made aware that Smart One had been the subject of two separate investigations in Maryland and Virginia that culminated in sanctions imposed against Smart One.

6. The Maryland Public Service Commission (MPSC) order, issued on August 2, 2019, ordered the suspension of Smart One's retail license to supply natural gas, that Smart One pay a civil penalty of $561,000 and issue refunds to certain customers, and that Smart One's customers be returned to the utilities' supply default service.

7. The Virginia State Corporation Council (VSCC) order, issued on January 16, 2020, approved a settlement under which Smart One terminated service to its customers in Virginia and surrendered its competitive retail service provider license.

8. NYISO alleged that, based on its analysis of Smart One's financial statements during the Relevant Period, there was a substantial net decline in revenue as a result of the sanctions imposed by the MPSC and VSCC. Accordingly, NYISO alleged that the sanctions imposed by these state commissions materially impacted Smart One's financial condition and that Smart One's failure to comply with the credit reporting requirements of the Tariff prevented NYISO from timely exercising additional due diligence to ensure its other Customers and its markets are adequately protected from a default by Smart One.

9. At NYISO's request, Smart One subsequently submitted a revised credit questionnaire addressing the adverse rulings in Maryland and Virginia.

10. Smart One cooperated with Enforcement during the Investigation.

III. VIOLATIONS

11. Enforcement determined that Smart One violated Section 26.2.1.4 of the credit reporting provisions of NYISO's Tariff (Material Change in Financial Status).

12. Section 26.2.1.4 provides:

> A Customer shall inform the ISO of any material change in its financial status within five (5) business days, including but not limited to: (a) a downgrade of a

long- or short-term debt rating by any ISO-approved rating agency; (b) placement on a negative credit watch by any ISO approved rating agency; (c) a bankruptcy filing, insolvency, or a default under any financing agreement; (d) resignation or termination of a key officer; (e) initiation of a lawsuit that could materially and adversely impact current or future financial performance; or (f) restatement of prior financial statements.

13. Enforcement determined that Smart One's financial statements indicate that after losing its retail natural gas customers in Maryland and Virginia, Smart One's net sales decreased approximately 60%, assets decreased approximately 27%, and cash decreased by approximately 80% from 2019 to 2020. Smart One's net income also declined by 80% between 2019 and 2020. Thus, Enforcement concluded that Smart One violated Section 26.2.1.4 by failing to timely report this material change in its financial condition as evidenced by the significant decline in its net revenue following the sanctions imposed by MPSC and VSCC.

IV. REMEDIES AND SANCTIONS

14. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to Smart One's conduct evaluated in Enforcement's Investigation, Smart One agrees with the facts as stipulated in Section II of this Agreement, but it neither admits nor denies the violations described in Section III of this Agreement. Smart One further agrees to undertake obligations set forth in the following paragraph.

15. Smart One agrees to pay a civil penalty of $5,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

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. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to Smart One and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

17. Commission approval of this Agreement without material modification shall release Smart One and forever bar the Commission from holding Smart One, any affiliated entity, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

18. Failure by Smart One to make the civil penalty payment or to 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 Smart One to additional action under the enforcement provisions of the FPA.

19. If Smart One does not make the required civil penalty payment described above within the time agreed by the parties, interest will be calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii)(A), (B) 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.

20. This Agreement binds Smart One and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on Smart One, 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 Smart One 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 Smart One shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Smart One.

23. In connection with the civil penalty provided for herein, Smart One 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 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). Smart One 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.

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

25. 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.

26. The undersigned representative of Smart One 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.

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

Agreed to and Accepted:

JANEL BURDICK
Digitally signed by JANEL BURDICK
Date: 2023.12.14 13:00:07 -05'00'

Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: 12/14/2023

Morris Klein
President
Smart One Energy, LLC

Date: 12/8/2023

Document Content(s)