

187 FERC ¶ 61,084
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ENGIE Energy Marketing NA, Inc.

Docket No. IN24-6-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued May 20, 2024)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and ENGIE Energy Marketing NA, Inc. (EEMNA). 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 EEMNA misrepresented to the ISO New England Inc. (ISO-NE) Internal Market Monitor (IMM) that generator assets it managed were eligible to seek an exemption from energy market mitigation between July 2021 and September 2022 (the Relevant Period).
2. EEMNA stipulates to the facts in Section II of the Agreement, but neither admits nor denies the alleged violations in Section III of the Agreement. EEMNA agrees to: (a) pay a civil penalty of \$48,000 to the United States Treasury; and (b) be subject to compliance monitoring as provided in the Agreement.

I. Facts

Enforcement and EEMNA have stipulated and agreed to the following facts.

3. During the Relevant Period, EEMNA served as the Lead Market Participant and energy manager for unaffiliated generator assets (the FRM Assets) located in ISO-NE that participated in the ISO-NE Forward Reserve Market (FRM).
4. The ISO-NE IMM issued a memorandum on August 27, 2015 (the August 2015 Memorandum) stating that, under six specific conditions set forth therein (the Conditions), it would be appropriate under the ISO-NE Tariff for the IMM to consider not applying energy market mitigation to Forward Reserve Resources where mitigation would otherwise be warranted under section III.A.5 of the Tariff. The August 2015 Memorandum provided that Market Participants with Forward Reserve Resources satisfying all the Conditions could request that the IMM consider not applying energy market mitigation. Market Participants making this request are required to attest, among other things, that all the Conditions were satisfied.

5. During the Relevant Period, EEMNA routinely requested that one or more of the FRM Assets be exempted from energy market mitigation. In connection with these requests, EEMNA attested that all six of the Conditions were satisfied for the relevant assets.
6. Condition 4 of the August 2015 Memorandum provides that a request to be exempted from energy market mitigation is only appropriate where “The Forward Reserve Resource’s cost-based Reference Level is less than the Forward Reserve Threshold Price.” On multiple dates throughout the Relevant Period, while seeking exemption from energy market mitigation for one or more of the FRM Assets, EEMNA attested that Condition 4 had been met when, in fact, the cost-based reference level of the at-issue resource was above the Forward Reserve Threshold Price. On each such date, EEMNA’s attestation as to the satisfaction of Condition 4 was false.
7. Condition 6 of the August 2015 Memorandum provides that a request to be exempted from energy market mitigation is only appropriate where “[n]o offer block price of the Forward Reserve Resource’s Supply Offer exceeds 110% of the Forward Reserve Threshold Price and the resource’s start-up and no-load costs are offered at the cost-based Reference Level.” On numerous dates throughout the Relevant Period, while seeking exemption from energy market mitigation for one or more of the FRM Assets, EEMNA attested that Condition 6 had been met when, in fact, EEMNA submitted offers that either exceeded 110% of the Forward Reserve Threshold Price, incorporated start-up and no-load costs different from the cost-based reference level of the resources, or both. On each such date, EEMNA’s attestation as to the satisfaction of Condition 6 was false.
8. Enforcement identified no evidence indicating that EEMNA’s misrepresentations were made knowingly or with the intent to defraud. Instead, EEMNA failed to properly evaluate whether the Conditions were met prior to the submission of an attestation; and, relatedly, failed to evaluate how changes EEMNA made to the internal model it used to generate offers might impact the accuracy of its attestations.
9. Enforcement identified no instances during the Relevant Period in which the FRM Assets would have been subject to energy market mitigation but for an exemption request submitted by EEMNA.
10. EEMNA fully cooperated with Enforcement during the Investigation.

II. Violations

11. Enforcement made the following determinations.
12. Section 35.41(b) of the Commission’s regulations provides that a “Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-

approved market monitors, [or] Commission-approved regional transmission organizations . . . unless Seller exercises due diligence to prevent such occurrences.”

13. Section 35.36(a)(1) of the Commission’s regulations defines “Seller” as “any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act.” EEMNA possessed market-based rate authorization during the Relevant Period.¹

14. Enforcement determined that during the Relevant Period, EEMNA routinely submitted attestations to the IMM which falsely represented that the FRM Assets satisfied all the Conditions set out in the August 2015 Memorandum.

15. Enforcement concluded that EEMNA, by submitting these false attestations, violated 18 C.F.R. § 35.41(b)’s requirement that Sellers “must . . . not submit false or misleading information . . . in any communication with . . . Commission-approved market monitors[.]”

16. Enforcement concluded that during the Relevant Period EEMNA did not exercise due diligence to prevent the misstatements to the ISO-NE IMM, as it did not take sufficient steps, employ a process to ensure accuracy of the attestations, or exercise reasonable care to ensure the accuracy of its attestations.

III. Stipulation and Consent Agreement

17. Enforcement and EEMNA have resolved the Investigation by means of the attached Agreement.

18. EEMNA 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.

19. EEMNA agrees to pay a civil penalty of \$48,000 to the United States Treasury.

20. EEMNA agrees to submit one annual compliance monitoring report, in accordance with the terms of the Agreement, with the requirement of a second annual compliance monitoring report at Enforcement’s discretion.

¹ See *ENGIE Energy Marketing NA, Inc.*, Docket No. ER17-1370-000 (May 8, 2017).

IV. Determination of Appropriate Sanctions and Remedies

21. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,² including the fact that EEMNA cooperated with Enforcement during the Investigation. Enforcement also considered that they identified no instances during the Relevant Period in which the FRM Assets would have been subject to energy market mitigation but for an exemption request submitted by EEMNA.

22. 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.

23. The Commission also concludes that EEMNA's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.³

24. The Commission directs EEMNA to make the civil penalty payment as required by the Agreement within ten business days of the Effective Date of the Agreement.

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.

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

³ *Id.*

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

ENGIE Energy Marketing NA, Inc.

Docket No. IN24-6-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and ENGIE Energy Marketing NA, Inc. (EEMNA) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, preliminary investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2023). As described more fully in Section II below, the Investigation concerned whether EEMNA misrepresented to the ISO New England Inc. (ISO-NE) Internal Market Monitor (IMM) that generator assets it managed were eligible to seek an exemption from energy market mitigation between July 2021 and September 2022 (the Relevant Period).

2. EEMNA stipulates to the facts in Section II, but neither admits nor denies the alleged violations in Section III. EEMNA agrees to: (a) pay a civil penalty of \$48,000 to the United States Treasury; and (b) be subject to compliance monitoring as provided more fully below.

II. STIPULATIONS

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

3. During the Relevant Period, EEMNA served as the Lead Market Participant¹ and energy manager for unaffiliated generator assets located in ISO-NE that participated in the ISO-NE Forward Reserve Market (FRM) (together, FRM Assets).

4. Under the ISO-NE Tariff, participants in the FRM must offer their Forward Reserve Resources into the Real-Time Energy Market at or above a Forward Reserve Threshold Price set by ISO-NE or face a penalty.² ISO-NE sets the Forward Reserve Threshold Price at a level intended to ensure these resources have: "(a) a low probability of being dispatched for energy and (b) a high probability of being held for reserve purposes."³

¹ Capitalized terms not otherwise defined herein have the meaning given to them in the ISO New England Inc. Transmission, Markets and Services Tariff (ISO-NE Tariff).

² ISO-NE Tariff at sections III.9.6.4(a); III.9.7.1.

³ *Id.* at section III.9.6.1.

5. Under the ISO-NE Tariff, the ISO-NE IMM is required to undertake “appropriate mitigation measures” when a Market Participant engages in actions that may cause a material effect on prices or other payments in the New England Markets if exercised from a position of market power.⁴ More specifically, the ISO-NE IMM is required to mitigate supply offers that trigger certain conduct, structural, and impact tests set out in the Tariff.⁵ When an offer is determined to have violated these tests, the IMM changes that offer to equal the ISO-NE IMM-determined Reference Levels for those resources.⁶

6. Market Participants submitting offers for Forward Reserve Resources are required to bid their resources at or above the Forward Reserve Threshold Price—a deliberately elevated price—or face a penalty. Simultaneously, the ISO-NE IMM is required to mitigate certain elevated supply offers, and such mitigation, if resulting in an offer below the Forward Reserve Threshold Price, could subject the Market Participant to a penalty.

7. Specifically noting these risks, on July 28, 2015, and August 27, 2015, the ISO-NE IMM issued a pair of memoranda concerning the potential impact that energy market mitigation may have on FRM participation.

8. The August 27, 2015, memorandum (the August 2015 Memorandum) stated that, under six specific conditions set forth therein (the Conditions), it would be appropriate under the ISO-NE Tariff for the ISO-NE IMM to consider not applying energy market mitigation to Forward Reserve Resources if mitigation is otherwise warranted under section III.A.5 of the Tariff.⁷ The August 2015 Memorandum provided that Market Participants with Forward Reserve Resources satisfying all the Conditions could request the ISO-NE IMM consider not applying energy market mitigation. Market Participants making this request are required to attest, among other things, that all the Conditions were satisfied.

9. During the Relevant Period, EEMNA routinely requested that one or more of the FRM Assets be exempted from energy market mitigation. In connection with these requests, EEMNA attested that all six of the Conditions were satisfied for the relevant assets.

10. Condition 4 of the August 2015 Memorandum provides that a request to be exempted from energy market mitigation is only appropriate where “The Forward Reserve Resource’s cost-based Reference Level is less than the Forward Reserve Threshold Price.”

⁴ *Id.* at section III.A.2.3(j) (defining economic withholding as “submitting a Supply Offer . . . that is unjustifiably high . . . so that (i) the Resource is not or will not be dispatched or scheduled, or (ii) the bid or offer will set an unjustifiably high market clearing price”).

⁵ *See id.* at section III.A.5.

⁶ *See id.* at sections III.A.5.5; III.A.7.

⁷ This approach flows from the ISO-NE Tariff requirement that the ISO-NE IMM consult with Market Participants submitting offers for Forward Reserve Resources prior to their mitigation and is further required to consider the impact of mitigation on the meeting of any Forward Reserve Obligations. *See id.* at section III.A.13.4.

On multiple dates throughout the Relevant Period, while seeking exemption from energy market mitigation for one or more of the FRM Assets, EEMNA attested that Condition 4 had been met when, in fact, the cost-based reference level of the at-issue resource was above the Forward Reserve Threshold Price. On such dates, EEMNA's attestation as to the satisfaction of Condition 4 was false.

11. Condition 6 of the August 2015 Memorandum provides that a request to be exempted from energy market mitigation is only appropriate where "No offer block price of the Forward Reserve Resource's Supply Offer exceeds 110% of the Forward Reserve Threshold Price and the resource's start-up and no-load costs are offered at the cost-based Reference Level." On numerous dates throughout the Relevant Period, while seeking exemption from energy market mitigation for one or more of the FRM Assets, EEMNA attested that Condition 6 had been met when, in fact, EEMNA submitted offers that either exceeded 110% of the Forward Reserve Threshold Price, incorporated start-up and no-load costs different from the cost-based reference level of the resources, or both. On such dates, EEMNA's attestation as to the satisfaction of Condition 6 was false.

12. Enforcement identified no evidence indicating that EEMNA's misrepresentations were made knowingly or with the intent to defraud. Instead, EEMNA failed to properly evaluate whether the Conditions were met prior to the submission of an attestation; and, relatedly, failed to evaluate how changes EEMNA made to the internal model it used to generate offers might impact the accuracy of its attestations.

13. Enforcement identified no instances during the Relevant Period in which the FRM Assets would have been subject to energy market mitigation but for an exemption request submitted by EEMNA.

14. EEMNA fully cooperated with Enforcement during the Investigation.

III. VIOLATIONS

15. Enforcement made the following determinations.

16. Section 35.41(b) of the Commission's regulations provides that a "Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, [or] Commission-approved regional transmission organizations . . . unless Seller exercises due diligence to prevent such occurrences."

17. Section 35.36(a)(1) of the Commission's regulations defines "Seller" as "any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act." EEMNA possessed market-based rate authorization during the Relevant Period.⁸

⁸ See *ENGIE Energy Marketing NA, Inc.*, Docket No. ER17-1370-000 (May 8, 2017).

18. Enforcement determined that during the Relevant Period, EEMNA routinely submitted attestations to the ISO-NE IMM which falsely represented that the FRM Assets satisfied all the Conditions set out in the August 2015 Memorandum.

19. Enforcement concludes that EEMNA, by submitting these false attestations, violated 18 C.F.R. § 35.41(b)'s requirement that Sellers "must . . . not submit false or misleading information . . . in any communication with . . . Commission-approved market monitors[.]"

20. Enforcement concludes that during the Relevant Period EEMNA did not exercise due diligence to prevent the misstatements to the ISO-NE IMM, as it did not take sufficient steps, employ a process to ensure accuracy of the attestations, or exercise reasonable care to ensure the accuracy of its attestations.

IV. REMEDIES AND SANCTIONS

21. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to EEMNA's conduct evaluated in Enforcement's Investigation, EEMNA 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. EEMNA further agrees to undertake obligations set forth in the following paragraphs.

A. Civil Penalty

22. EEMNA agrees to pay a civil penalty of \$48,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

B. Compliance

23. EEMNA shall make an annual compliance monitoring report to Enforcement one year after the Effective Date of the Agreement. After the receipt of the first annual report, Enforcement may, at its sole discretion, require EEMNA to submit a report for one additional year.

24. Each compliance monitoring report shall: (1) identify any known violations of Commission regulations that occurred during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures EEMNA instituted or modified during the reporting period related to compliance with Commission regulations, including but not limited to new or updated compliance measures and procedures related to the facts and circumstances described in Section II; and (3) describe all Commission-related compliance training that EEMNA administered during the reporting period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

25. Each compliance monitoring report shall also include an affidavit executed by an officer of EEMNA stating that it is true and accurate to the best of his/her knowledge.

26. Upon request by Enforcement, EEMNA shall provide to Enforcement documentation supporting the contents of its reports.

V. TERMS

27. The “Effective Date” of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification.

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

29. Commission approval of this Agreement without material modification shall release EEMNA and forever bar the Commission from holding EEMNA, 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.

30. Failure by EEMNA to make the civil penalty payment, or to 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 Federal Power Act (FPA), 16 U.S.C. §792, *et seq.*, and may subject EEMNA to additional action under the enforcement provisions of the FPA.

31. If EEMNA does not make the required civil penalty payment described above within the times 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.

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

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

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

35. In connection with the civil penalty provided for herein, EEMNA 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). EEMNA 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.

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

37. 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.

38. The undersigned representative of EEMNA 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.

39. 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: 2024.04.19 11:37:02
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Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: _____



Adam Roth
Vice President & General Counsel
ENGIE Energy Marketing NA, Inc.

Date: April 5, 2024

Document Content(s)

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