

184 FERC ¶ 61,016  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

BP America Inc.  
BP Corporation North America, Inc.  
BP America Production Company, and  
BP Energy Company

Docket No. IN13-15-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued July 7, 2023)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and BP America Inc., BP Corporation North America, Inc., BP America Production Company, and BP Energy Company (collectively BP). This order is in the public interest because the Agreement resolves on fair and equitable terms the matter remanded by the United States Court of Appeals for the Fifth Circuit (Fifth Circuit). To be specific, this order resolves the Fifth Circuit's order that the Commission reassess the civil penalty that BP must pay for its violations of the Commission's Anti-Manipulation Rule, in violation of section 1c.1 of the Commission's regulations, 18 C.F.R. § 1c.1 and section 4A of the Natural Gas Act (NGA), 15 U.S.C. § 717c-1.

2. BP agrees to a civil penalty of \$10,750,000 (Civil Penalty) and that it will not seek return of the \$250,295 of disgorgement it already has paid. BP stipulates to the facts set forth in Section II of the Agreement and acknowledges that the Fifth Circuit upheld the Commission's finding of manipulation as to 18 jurisdictional transactions and remanded the case to the Commission for reassessment of the penalty amount in light of its jurisdictional holding.

**I. Factual and Procedural Background**

3. BP America Inc. is incorporated in Delaware, and has its principal place of business in Houston, Texas. BP Corporation North America Inc. is incorporated in Indiana, and has its principal place of business in Houston, Texas. BP America Production Company is incorporated in Delaware, and has its principal place of business in Houston, Texas. BP Energy Company is incorporated in Delaware, and has its principal place of business in Houston, Texas.

4. Enforcement investigated BP's Southeast Gulf Texas Team's physical, next-day fixed price natural gas trading at Houston Ship Channel and related transport of natural gas from Katy, Texas to Houston Ship Channel during the period of September 18 to November 30, 2008. Specifically, Enforcement sought to determine whether BP, in the aftermath of Hurricane Ike, traded physical, next-day fixed price natural gas with the intent to depress the Platts *Gas Daily* index prices at Houston Ship Channel to benefit larger financial spread positions held by BP that settled off the index prices, in violation of the Commission's prohibition of market manipulation under section 4A of the NGA and 18 C.F.R. § 1c.1.
5. Enforcement's investigation culminated in the Commission's issuance of an Order to Show Cause and Notice of Proposed Penalty on August 5, 2013. 144 FERC ¶ 61,100 (2013).
6. On May 15, 2014, the Commission issued an Order Establishing Hearing, 147 FERC ¶ 61,130 (2014), before a FERC Administrative Law Judge (ALJ) to determine whether BP violated section 4A of the NGA and 18 C.F.R. § 1c.1 and to ascertain certain facts relevant for any application of the Commission's Penalty Guidelines, *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010).
7. The ALJ conducted the hearing and issued her Initial Decision on August 13, 2015. 152 FERC ¶ 63,016 (2015).
8. After briefing by the Parties regarding the Initial Decision, the Commission on July 11, 2016 issued an Order on Initial Decision and Rehearing, pursuant to which it assessed a civil penalty against BP in the amount of \$20.16 million, ordered disgorgement of \$207,169, and denied BP's request for rehearing of the Order Establishing Hearing. 156 FERC ¶ 61,031 (2016). BP filed a timely appeal of the Commission's order denying rehearing of the Order Establishing Hearing with the Fifth Circuit. This appeal was held in abeyance pending Commission action on BP's request for rehearing of the Order on Initial Decision and Rehearing.
9. BP sought rehearing of the Commission's order assessing the civil penalty, and the Commission on December 17, 2020 issued an Order Addressing Arguments Raised on Rehearing, denying rehearing. 173 FERC ¶ 61,239 (2020).
10. On December 28, 2020, BP paid under protest the civil penalty, including interest, in the amount of \$24,356,686.
11. As of January 19, 2021, BP paid under protest disgorgement, including interest, in the amount of \$250,295.

12. BP filed a timely appeal of the Commission's Order Addressing Arguments Raised on Rehearing with the Fifth Circuit.

13. The filings in the Orders to Show Cause proceeding made by Enforcement and by BP, as well as the record developed in the hearing, the Initial Decision, and the Commission's orders all are available in Docket No. IN13-15-000 in the Commission's eLibrary system (<https://elibrary.ferc.gov>).

14. On February 5, 2021, BP filed in the Fifth Circuit an appeal of the Commission's 2020 Order, which was consolidated with the appeal of the Hearing Order, which was being held in abeyance. After briefing by both parties, the Fifth Circuit issued its ruling on October 20, 2022. 52 F.4th 204 (5th Cir. 2022).

15. The Fifth Circuit affirmed the Commission in part, reversed the Commission in part, and remanded for the Commission to reassess the civil penalty in accordance with the Fifth Circuit's ruling partially in favor of BP regarding the scope of the Commission's jurisdiction over the challenged conduct. *Id.*

16. Neither BP nor the Commission sought rehearing or rehearing *en banc* of the Fifth Circuit's decision, and neither BP nor the Commission sought a writ of *certiorari* from the Supreme Court of the United States.

## **II. Violations**

17. In its 2016 Order on Initial Decision and Rehearing and 2020 Order Addressing Arguments Raised on Rehearing, the Commission set forth the bases for its findings that BP engaged in market manipulation in violation of NGA section 4A and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1, when it engaged in the trading that is the subject of this case. With the exception of the Commission's jurisdictional rulings (other than as to 18 transactions determined to be jurisdictional), the Commission's calculation of profits and market harm, and the appropriate civil penalty amount, the Fifth Circuit affirmed the Commission's findings, as more fully discussed in the opinion of the Fifth Circuit. *See id.*

18. The Commission today affirms its finding that BP engaged in market manipulation for the reasons set forth in the 2016 Order on Initial Decision and Rehearing and 2020 Order Addressing Arguments Raised on Rehearing.

## **III. Stipulation and Consent Agreement**

19. Enforcement and BP have resolved this matter by means of the attached Agreement.

Docket No. IN13-15-000

- 4 -

20. BP stipulates to the facts set forth in Section II of the Agreement and acknowledges that the Fifth Circuit upheld the Commission's finding of manipulation as to 18 jurisdictional transactions and remanded the case to the Commission for reassessment of the penalty amount in light of its jurisdictional holding.

21. BP agrees to the Civil Penalty of \$10,750,000 (which includes interest) and that it will not seek return of the disgorgement it already has paid.

22. Because BP's prior civil penalty payment was made under protest and exceeds the Civil Penalty to which the parties agree here, BP is not obligated to make any additional payment. Moreover, Enforcement will not object should BP choose to seek to reclaim the excess payment of \$13,606,686 through a suit in the United States Court of Federal Claims or any other forum of competent jurisdiction, if any.

23. BP shall promptly notify Enforcement of any actions it takes to reclaim the excess payments. Such notice shall be by email to the Director of the Office of Enforcement, with a copy filed in the official docket of this proceeding.

#### **IV. Determination of Appropriate Remedies and Sanctions**

24. 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.

#### **The Commission orders:**

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**

BP America Inc.	)	Docket No. IN13-15-000
BP Corporation North America Inc.	)	
BP America Production Company, and	)	
BP Energy Company	)	

**STIPULATION AND CONSENT AGREEMENT**

**I. INTRODUCTION**

1. The Office of Enforcement (“Enforcement”) of the Federal Energy Regulatory Commission (“Commission”) and BP America Inc., BP Corporation North America Inc., BP America Production Company, and BP Energy Company (collectively “BP”) (Enforcement and BP collectively, the “Parties”) enter into this Stipulation and Consent Agreement (“Agreement”) to resolve the matter that has been remanded by the United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”) to reassess the civil penalty stemming from the Commission’s finding that BP engaged in market manipulation in violation of section 1c.1 of the Commission’s regulations, 18 C.F.R. § 1c.1 and section 4A of the Natural Gas Act (NGA), 15 U.S.C. § 717c-1. *BP America Inc. v. FERC*, 52 F.4th 204 (5th Cir. 2022) (mandate issued December 12, 2022). In order to fully resolve the matter as remanded, BP agrees to a civil penalty amount of \$10,750,000 (“Civil Penalty”) and that it will not seek return of the disgorgement it already has paid.

**II. STIPULATED FACTS**

2. BP America Inc. is incorporated in Delaware, and has its principal place of business in Houston, Texas. BP Corporation North America Inc. is incorporated in Indiana, and has its principal place of business in Houston, Texas. BP America Production Company is incorporated in Delaware, and has its principal place of business in Houston, Texas. BP Energy Company is incorporated in Delaware, and has its principal place of business in Houston, Texas.

3. Enforcement investigated BP’s Southeast Gulf Texas Team’s (“Texas Team”) physical, next-day fixed price natural gas trading at Houston Ship Channel and related transport of natural gas from Katy, Texas to Houston Ship Channel during the period of September 18 to November 30, 2008. Specifically, Enforcement sought to determine whether BP, in the aftermath of Hurricane Ike, traded physical, next-day fixed price natural gas with the intent to depress the Platts *Gas Daily* index prices at Houston Ship Channel to benefit larger financial spread positions held by BP that settled off the index prices, in violation of the Commission’s prohibition of market manipulation under section 4A of the NGA and 18 C.F.R. § 1c.1.

- 2 -

4. Enforcement's investigation culminated in the Commission's issuance of an Order to Show Cause and Notice of Proposed Penalty on August 5, 2013. 144 FERC ¶ 61,100 (2013).
5. On May 15, 2014, the Commission issued an Order Establishing Hearing before a FERC Administrative Law Judge ("ALJ") to determine whether BP violated section 4A of the NGA and 18 C.F.R. § 1c.1 and to ascertain certain facts relevant for any application of the Commission's Penalty Guidelines, *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010). 147 FERC ¶ 61,130 (2014).
6. The ALJ conducted the hearing and issued her Initial Decision on August 13, 2015. 152 FERC ¶ 63,016 (2015).
7. After briefing by the Parties regarding the Initial Decision, the Commission on July 11, 2016 issued an Order on Initial Decision and Rehearing, pursuant to which it assessed a civil penalty against BP in the amount of \$20.16 million, ordered disgorgement of \$207,169, and denied BP's request for rehearing of the Order Establishing Hearing. 156 FERC ¶ 61,031 (2016). BP filed a timely appeal of the Commission's order denying rehearing of the Order Establishing Hearing with the Fifth Circuit. This appeal was held in abeyance pending Commission action on BP's request for rehearing of the Order on Initial Decision and Rehearing.
8. BP sought rehearing, and the Commission on December 17, 2020 issued an Order Addressing Arguments Raised on Rehearing, denying rehearing. 173 FERC ¶ 61,239 (2020).
9. On December 28, 2020, BP paid under protest the civil penalty, including interest, in the amount of \$24,356,686.
10. As of January 19, 2021, BP paid under protest disgorgement, including interest, in the amount of \$250,295.
11. BP filed a timely appeal of the Commission's Order Addressing Arguments Raised on Rehearing with the Fifth Circuit.
12. The filings in the Orders to Show Cause proceedings made by Enforcement and by BP, as well as the record developed in the hearing, the Initial Decision, and the Commission's orders all are available in Docket No. IN13-15-000 in the Commission's eLibrary system (<https://elibrary.ferc.gov>).



- 3 -

13. On February 5, 2021, BP filed an appeal in the Fifth Circuit, which was consolidated with the appeal being held in abeyance. After briefing by both parties, the Fifth Circuit issued its ruling on October 20, 2022. 52 F.4th 204 (5th Cir. 2022).

14. The Fifth Circuit affirmed the Commission in part, reversed the Commission in part, and remanded for the Commission to reassess the civil penalty in accordance with the Fifth Circuit's ruling partially in favor of BP regarding the scope of the Commission's jurisdiction over the challenged conduct. *Id.*

15. Neither BP nor the Commission sought rehearing or rehearing *en banc* of the Fifth Circuit's decision.

### III. COMMISSION DETERMINATION OF VIOLATIONS

16. In its 2016 Order on Initial Decision and Rehearing and 2020 Order Addressing Arguments Raised on Rehearing, the Commission set forth the bases for its findings that BP engaged in market manipulation in violation of NGA section 4A and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1, when it engaged in the trading that is the subject of this case. With the exception of the Commission's jurisdictional rulings (other than as to 18 transactions determined to be jurisdictional), the Commission's calculation of profits and market harm, and the appropriate civil penalty amount, the Fifth Circuit affirmed the Commission's findings, as more fully discussed in the opinion of the Fifth Circuit.

### IV. REMEDIES AND SANCTIONS

17. For the purposes of this Agreement, BP stipulates to the facts set forth in Section II of this Agreement, and acknowledges that the Fifth Circuit upheld the Commission's finding of manipulation as to 18 jurisdictional transactions and remanded the case to the Commission for reassessment of the penalty amount in light of its jurisdictional holding.

18. For purposes of settling any and all disputes, allegations, and claims remaining after the Fifth Circuit's remand, BP agrees to the Civil Penalty of \$10,750,000 (which includes interest) and that it will not seek return of the disgorgement it already has paid.

19. Because BP's prior civil penalty payment was made under protest and exceeds the Civil Penalty to which the parties agree here, BP is not obligated to make any additional payment. Moreover, Enforcement will not object should BP choose to seek to reclaim the excess payment of \$13,606,686 through a suit in the United States Court of Federal Claims or any other forum of competent jurisdiction, if any.

- 4 -

20. BP shall promptly notify Enforcement of actions it takes to reclaim the excess payments. Such notice shall be by email to the Director of the Office of Enforcement, with a copy filed in the official docket of this proceeding.

#### V. TERMS

21. The Effective Date of this Agreement (“Effective Date”) shall be the earliest date on which the Commission issues an order approving this Agreement without material modification or conditions. When effective, this Agreement shall resolve the matters specifically addressed herein as to BP and any affiliated entity, and their respective agents, officers, directors, and employees, both past and present.

22. Commission approval of the Agreement without material modification shall release BP, and forever bar the Commission from holding BP, any affiliated entity, any successor in interest, and their respective agents, officers, directors, and employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct addressed in the Commission’s Order on Initial Decision and Rehearing and Order Addressing Arguments Raised on Rehearing, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement’s Effective Date.

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

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

25. 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 BP shall be bound by any provision or term of this Agreement, unless otherwise agreed to in writing by BP and Enforcement.

26. In connection with the civil penalty provided for herein, BP agrees that the Commission’s order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22 of the NGA, 15 U.S.C. § 717t-1 (2018). BP waives 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.



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

28. Each of the undersigned warrants that they are an authorized representative of the entity designated, is authorized to bind such entity, and accepts this Agreement on the entity's behalf.

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

30. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

Agreed to and Accepted:

JANEL BURDICK Digitally signed by JANEL BURDICK  
Date: 2023.05.24 16:49:39 -04'00'

Janel Burdick  
Director, Office of Enforcement  
Federal Energy Regulatory Commission



Mark R. Haskell  
Partner, Blank Rome LLP  
As Attorney for and Authorized  
Representative of BP

Dated: May 24, 2023

Dated: May 24, 2023

Document Content(s)

IN13-15-000.docx.....1