187 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Josco Energy Corp. Docket No. IN24-7-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued June 28, 2024)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Josco Energy Corp. (Josco). This Order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2023). The Investigation addressed whether Josco violated Section 26.2.1.3 of the New York Independent System Operator's (NYISO) Market Administration and Control Area Services Tariff (Tariff) and the Commission's Market Behavior Rule, 18 C.F.R. § 35.41(b) (2023), by failing to timely inform NYISO of the existence of ongoing investigations by the New York Public Service Commission (NYPSC) that could have a material impact on its financial condition.

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

I. Facts

3. Josco is a privately owned competitive energy services provider, which started operating as a load serving entity in the NYISO energy and capacity markets in 2017. Josco's primary business is the retail marketing of gas and electric supply to residential and non-residential customers in the District of Columbia, Maryland, New York, New Jersey, and Ohio. From October 2020 to May 2021 (Relevant Period), Josco operated as an Energy Services Company (ESCO) in New York.

4. During the Relevant Period, Josco was the subject of an investigative proceeding before the New York Public Service Commission (NYPSC). The proceeding addressed Josco's marketing and enrollment practices based on customer complaints regarding questionable marketing and enrollment practices (Marketing Proceeding).

5. On October 20, 2020, NYPSC issued an order to show cause asking why it should not revoke Josco's then-current eligibility to operate as an ESCO (Revocation OSC).

6. On November 17, 2020, Josco submitted an eligibility application as required by NYPSC to continue to operate as an ESCO, which subjected Josco to a second investigative proceeding to determine whether it could remain eligible to enroll new customers and/or renew existing contracts as an ESCO (Eligibility Proceeding).

7. NYISO requires customers to complete an annual credit questionnaire form (CQF) that includes a request for information regarding any ongoing investigations. In its April 7, 2021 response to the CQF, Josco did not disclose that it was under investigation by the NYPSC in multiple proceedings and responded "N/A" to a question that required Josco to list "any ongoing investigation of which Applicant/Customer is aware by [ ] any state or provincial entity responsible for regulating activity in energy markets [ ] that could foreseeably have a material financial impact on Applicant/Customer."

8. On May 18, 2021, NYPSC issued an order revoking Josco's eligibility to serve customers in New York (Revocation Order).

9. On May 18, 2021, NYPSC also issued an order to show cause requiring Josco to show cause why its eligibility application to continue to enroll new customers and/or renew existing contracts should not be denied on grounds that its eligibility application contained false or misleading information (Denial OSC).

10. On May 24, 2021, NYISO issued a formal notice of default to Josco for failure to disclose the Marketing and Eligibility proceedings in its CQF. Josco cured the CQF on May 25, 2021, which included disclosure of the Revocation OSC, Revocation Order, and Denial OSC.

11. Josco fully cooperated with Enforcement during the Investigation.

II. <u>Violations</u>

12. Enforcement determined that Josco violated Section 26.2.1.3 of the credit reporting provisions of NYISO's Tariff and the Commission's duty of candor rule, 18 C.F.R. § 35.41(b).

13. NYISO Tariff section 26.2.1.3 provides that, "[u]nless prohibited by law, a Customer shall inform the ISO of the existence of any ongoing investigations of which the Customer is aware by the Securities and Exchange Commission, the Department of Justice, the Federal Energy Regulatory Commission, or the New York Public Service Commission which could have a material impact on the Customer's financial condition." Enforcement determined that Josco failed to timely disclose in its April 7, 2021 CQF submission that it was under investigations by the NYPSC in multiple proceedings that could have a material impact on its financial condition. The issuance of the Revocation

OSC, Revocation Order, and Denial OSC by the NYPSC make it clear that the financial impact could be material and therefore should have been disclosed.

14. Section 35.41 (b) of the Commission's regulations requires that a Seller, "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." Enforcement determined that Josco is a "Seller"[1] subject to Section 35.41(b) and that Josco's failure to disclose that it was under NYPSC investigations that could have a material impact on its financial condition violated that section.

III. Stipulation and Consent Agreement

15. Enforcement and Josco have resolved the Investigation by means of the attached Agreement.

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

17. Josco agrees to pay $5,000 in a civil penalty to the United States Treasury, by wire transfer, within ten days after the Effective Date of the Agreement.

IV. Determination of Appropriate Sanctions and Remedies

18. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,[2] including the fact that Josco 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 Josco's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.[3]

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[1] Josco has a Commission-approved Market-Based Rate Tariff and is subject to the Commission's regulatory authority. *See Market Based Rate Authorization,* Docket No. ER14-2290-001, Letter Order (August 20, 2014).

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

[3] *Id.*

21. The Commission directs Josco to pay the civil penalty as required by the Agreement within ten days of the Effective Date of the Agreement.

<u>The Commission orders</u>:

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

By the Commission. Commissioner Rosner is not participating.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Josco Energy Corp. Docket No. IN24-7-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Josco Energy Corp. (Josco) 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 Josco violated Section 26.2.1.3 of the New York Independent System Operator's (NYISO) Market Administration and Control Area Services Tariff (Tariff) and the Commission's Market Behavior Rule, 18 C.F.R. § 35.41(b), for failing to timely inform NYISO of the existence of ongoing investigations by the New York Public Service Commission (NYPSC) that could have a material impact on its financial condition.

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

II. STIPULATIONS

3. Enforcement and Josco hereby stipulate and agree to the following facts.

4. Josco is a privately owned competitive energy services provider, which started operating as a load serving entity in the NYISO energy and capacity markets in 2017. Josco's primary business is the retail marketing of gas and electric supply to residential and non-residential customers in the District of Columbia, Maryland, New York, New Jersey, and Ohio. From October 2020 to May 2021 (Relevant Period) Josco operated as an Energy Services Company (ESCO) in New York.

5. During the Relevant Period Josco was the subject of an investigative proceeding before the New York Public Services Commission (NYPSC). The proceeding addressed Josco's marketing and enrollment practices based on customer complaints regarding questionable marketing and enrollment practices (Marketing Proceeding).

6. On October 20, 2020, NYPSC issued an order to show cause (OSC) asking why it should not revoke (Revocation OSC) Josco's then-current eligibility to operate as an ESCO.

7. On November 17, 2020, Josco submitted an eligibility application as required by NYPSC to continue to operate as an ESCO, which subjected Josco to a second investigative proceeding to determine whether it could remain eligible to enroll new customers and/or renew existing contracts as an ESCO (Eligibility Proceeding).

8. NYISO requires customers to complete an annual credit questionnaire form (CQF) that includes a request for information regarding any ongoing investigations. In its April 7, 2021 response to the CQF, Josco did not disclose that it was under NYPSC investigations and responded "N/A," to a question, which required Josco to list "any ongoing investigation of which Applicant/Customer is aware by [ ] any state or provincial entity responsible for regulating activity in energy markets [ ] that could foreseeably have a material financial impact on Applicant/Customer."

9. On May 18, 2021, NYPSC issued an order revoking Josco's eligibility to serve customers in New York (Revocation Order).

10. On May 18, 2021, NYPSC also issued an OSC requiring Josco to show cause why its eligibility application to continue to enroll new customers and/or renew existing contracts should not be denied on grounds that its eligibility application contained false or misleading information (Denial OSC).

11. On May 24, 2021, NYISO issued a formal notice of default to Josco for failure to disclose the Marketing and Eligibility proceedings in its CQF. Josco cured the CQF on May 25, 2021, which included disclosure of the Revocation OSC, Revocation Order, and Denial OSC.

12. Josco cooperated with Enforcement during the Investigation.

III. VIOLATIONS

13. Enforcement determined that Josco violated Section 26.2.1.3 of the credit reporting provisions of NYISO's Tariff and the Commission's regulation 18 C.F.R. section 35.41(b).

14. NYISO Tariff section 26.2.1.3 provides that, [u]nless prohibited by law, a Customer shall inform the ISO of the existence of any ongoing investigations of which the Customer is aware by the Securities and Exchange Commission, the Department of Justice, the Federal Energy Regulatory Commission, or the New York Public Service Commission which could have a material impact on the Customer's financial condition."

Enforcement determined that Josco failed to timely disclose in its April 7, 2021 CQF submission that it was under investigations by the NYPSC that could have a material impact on its financial condition. The issuance of the OSCs and Revocation Order by the NYPSC make it clear that the financial impact could be material and therefore should have been disclosed.

15. 18. C.F.R. section 35.41 (b) of the Commission's regulations requires that a Seller, "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." Enforcement determined that Josco is a "Seller"[1] subject to Section 35.41(b) and that Josco's failure to disclose that it was under NYPSC investigations that could have a material impact on its financial condition violated that section.

IV. REMEDIES AND SANCTIONS

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

17. Josco 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

18. 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 Josco and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

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

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[1] Josco has a Federal Energy Regulatory Commission ("Commission") Market-Based Rate Tariff and is subject to the Commission's regulatory authority. *See Market Based Rate Authorization,* Docket No. ER14-2290-001, Letter Order (August 20, 2014).

20. Failure by Josco 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.

21. If Josco 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.

22. This Agreement binds Josco 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.

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

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

25. In connection with the civil penalty provided for herein, Josco 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). Josco 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.

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

27. 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.

28. The undersigned representative of Josco 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.

29. 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: 2024.06.06 15:51:03 -04'00'	
Janel Burdick	Marc Reichmann
Director, Office of Enforcement	VP of Operations
Federal Energy Regulatory Commission	Josco Energy Corp
Date: 6/6/2024	Date: 6/4/2024

Document Content(s)