187 FERC ¶ 61,224
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Galt Power Inc. Docket No. IN20-5-000

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 Galt Power Inc. (Galt), and as to certain obligations specified below, Customized Energy Solutions Ltd. (Customized). 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 (2024), into whether Galt violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2024), and section 222 of the Federal Power Act (FPA),[1] by repeatedly engaging in prohibited wash trades between the New York Independent System Operator (NYISO) and ISO New England Inc. (ISO-NE) markets between July 8, 2016 and April 23, 2019 (the Relevant Period).

2. Galt stipulates to the facts in Section II of the Agreement, but neither admits nor denies the alleged violations in Section III of the Agreement. Galt agrees to: (a) pay a civil penalty of $1,500,000.00 to the United States Treasury; (b) pay disgorgement and interest totaling $372,297.85 to the Commonwealth of Massachusetts; and (c) be subject to compliance monitoring as provided in the Agreement. For its part, Customized agrees to be bound by Paragraphs 41-47, 51, 57 and 58 of the Agreement.

I. Facts

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

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[1] 16 U.S.C. § 824v (2018).

3. Galt is a privately held Delaware corporation, and a wholesale power marketer with Commission-approved, market-based rate authority.[2] Galt participates in wholesale energy markets governed by ISO-NE, NYISO, PJM Interconnection, LLC, the California Independent System Operator, the Southwest Power Pool, and the Electric Reliability Council of Texas.

4. Galt's owners take no active role in the day-to-day operations of Galt.

5. Customized is a privately held Pennsylvania limited partnership that provides many energy-related services, including energy and attribute management services for renewable resources. Customized does not own any generation or transmission assets, and it does not have market-based rate authority. Galt's minority owner is an employee of Customized.

6. Galt was formed to assist Customized's clients with participating in the wholesale electric markets.

7. Massachusetts has, since before the Relevant Period and continuing through the present, a program designed to incentivize the replacement of traditional generation of energy with renewable sources of energy (a/k/a green energy). This program is called the Massachusetts Renewable and Alternative Energy Portfolio Standard Program (Program).

8. Under the Program, a renewable energy certificate (REC) is created for every 1-megawatt hour of electricity a qualified renewable energy facility generates. There are different types of RECs, depending upon the source of the renewable energy. Wind generation is one of the types of green energy that results in the creation of Massachusetts Class I RECs (Class I RECs).

9. The New England Power Pool Generation Information System (NEPOOL GIS) creates and tracks Class I RECs.

10. APX, Inc. (APX) built the NEPOOL GIS, and currently operates it.

11. NEPOOL GIS is owned and governed by the New England Power Pool, which is a voluntary association of entities that participate in ISO-NE's markets.

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[2] *See Galt Power*, Letter Order, Docket No. ER15-1362-000 (May 15, 2015) (accepting for filing a revised market-based rate tariff); *Galt Power*, Letter Order, Docket No. ER10-3149 (June 8, 2011) (accepting for filing a revised market-based rate tariff).

12. Energy suppliers participating in the Program may be located in either the ISO-NE footprint (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) or in certain adjacent areas, including NYISO (New York).

13. A qualified renewable energy facility in NYISO must do three things for its power to be eligible to generate Class I RECs in the Program: (1) it must generate power; (2) the power must be imported into ISO-NE from NYISO; and (3) two pieces of information must be submitted to the NEPOOL GIS: (a) the resource's meter data and (b) the total energy imported from the resource into ISO-NE.

14. If a qualified renewable energy facility meets these conditions, the NEPOOL GIS awards the resource's owner or operator (or, as here, the entity which owns the rights to register associated RECs) Class I RECs equal in number to the lesser of the energy generated or imported over the applicable measurement period.

15. Owners of Class I RECs may sell them to third parties in a secondary market.

16. Both before and during the Relevant Period, Galt exported energy generated by two wind farms (totaling 37 MW capacity) from NYISO into ISO-NE in order to meet the prerequisites necessary for the creation of Class I RECs. Galt did this via agreements with a client under which Galt agreed to schedule and export energy from wind farms in NYISO into ISO-NE.

17. Prior to the Relevant Period, NEPOOL GIS calculated the quantity of minted Class I RECs for a month based on the lower of: (1) a generator's metered output over the course of the month; and (2) power exported from NYISO into ISO-NE over the course of that month. This practice is referred to as monthly netting. The minted Class I RECs were distributed to the client's NEPOOL GIS account quarterly.

18. Under monthly netting, Galt could obtain Class I RECs on behalf of its client based on the total quantity of power exported into ISO-NE, whether or not it exported the power at the same time the wind farms located in NYISO's footprint were producing it. Galt needed only to export over the course of the month an amount of MWh exported that was at least equal to the amount of energy produced at the NYISO wind farms over the relevant month. This allowed Galt to limit its exposure to the risk of paying more for the NYISO wind power than it received for selling the power into ISO-NE.

19. Under monthly netting, Galt limited its exposure by scheduling exports from the NYISO wind farms into ISO-NE on an hourly basis whenever it made the most sense economically to do so, based on the relative prices in NYISO and ISO-NE. Therefore, Galt exported only in hours when the NYISO price was expected to be lower or equal to the ISO-NE price, rather than in hours in which the NYISO price was expected to be higher than the ISO-NE price.

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20. On July 1, 2016, the NEPOOL GIS announced that it would create Class I RECs for resources outside ISO-NE using a new methodology called "hourly netting." Under hourly netting, the NEPOOL GIS calculated the quantity of minted Class I RECs for each hour in the month, based on the lesser of: (1) a generator's metered output over the course of the hour; and (2) the power exported from NYISO into ISO-NE over the course of that hour.

21. Under this new NEPOOL GIS rule, Galt had to show that energy exported from NYISO into ISO-NE was equal to or greater than the NYISO wind farms' generation on an hourly basis in order to obtain all of the generation as Class I RECs.

22. Galt's strategy before the Relevant Period was focused on its ability to hedge against NYISO prices being higher than ISO-NE prices in the hours Galt exported wind power because the Class I RECs it received were based on its monthly metered export total. Consequently, the July 2016 change to hourly netting greatly reduced the volume of Class I RECs that Galt would have received if its strategy remained unchanged.

23. The NEPOOL GIS change to hourly netting thus prompted Galt to pursue a different export scheduling strategy. The windfarms' actual generation for a given hour was only known after the fact, while the NYISO to ISO-NE exports for a given hour had to be scheduled approximately 75 minutes before that hour.

24. In July 2016, Galt devised a plan to begin offsetting energy exports into the Coordinated Transaction Scheduling system (CTS), from ISO-NE to NYISO, in the same quantities and for the same time intervals of the NYISO to ISO-NE exports. To be specific, Galt increased its export bids from negative $25/MWh to negative $40/MWh, indicating that it was willing to pay up to $40/MWh to export energy from NYISO to ISO-NE (*i.e.*, maximizing exports), while at the same time entering bids of $0/MWh for imports of equal amounts of energy from ISO-NE back into NYISO that could offset the export leg of the trade when the export leg was losing money.

25. If the bids cleared, as did all bids underlying the violations Enforcement found, the CTS cleared each of Galt's bids at the same time. In the instances resulting in the violations Enforcement found, this bidding strategy resulted in both legs clearing.

26. Massachusetts Department of Energy Resources (DOER) regulations prohibit importing the output from qualified renewable energy resources into the ISO-NE Control Area for the creation of Class I RECs, and then exporting that energy or a similar quantity of other energy out of the ISO-NE Control Area during the same hour.[3]

[3] 225 Code Mass. Regs. § 14.05(5)(b).

27. Before implementing the offsetting trades, Galt asked its in-house counsel to check the GIS rules to make sure there was no specific prohibition of such trades. Counsel testified that she looked at NEPOOL GIS market rules, spoke with non-lawyer colleagues familiar with ISO-NE and the NYISO tariff regarding the hedging strategy, and found no specific prohibitions in the rules that would prevent Galt from implementing its new trading strategy.

28. During the Relevant Period, Galt repeatedly executed offsetting import-export trades to send the same quantity of energy from NYISO to ISO-NE in order to obtain Class I RECs, and back from ISO-NE to NYISO in the same hour in order to eliminate the price risk of the NYISO to ISO-NE transactions. These trades took place after discussion with counsel regarding FERC regulations. Although counsel had reviewed those regulations, she had not looked at any state statutes relating to renewable energy or otherwise, and although she testified that she is familiar with MA DOER regulations, she also testified she was not aware of the MA DOER regulations prohibiting the importing and exporting of similar quantities of energy in the same hour.

29. Galt did not end its trading strategy until April 23, 2019, after Enforcement had taken testimony from its in-house counsel, at which time Enforcement informed her, and thus Galt, of the Massachusetts regulations prohibiting importing renewable generation into ISO-NE for the creation of Class I RECs, and then exporting that energy or a similar quantity of other energy out of ISO-NE during the same hour.[4]

30. In April 2017, when reconciling Class I RECs, Galt noticed that the client had not been credited for the REC volumes that Galt expected it to have received for the third and fourth quarters of 2016. An employee emailed APX to inquire why it had not minted as many RECs as Galt expected.

31. In an e-mail response, an APX employee, acting on behalf of the NEPOOL GIS, asked Galt about negative numbers, *i.e.*, the MWh associated with certain ISO-NE-to-NYISO transactions that APX observed while matching up eTags and other information required to mint RECs from energy generated outside of the ISO-NE control area.

32. An employee testified that in discussions regarding how to respond to the APX e-mail inquiry, he was told by his management "that GIS shouldn't know about the hedge transactions." In an internal email exchange in response to APX's inquiry, after his discussion with management, the employee stated that Galt was "internally reviewing the

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[4] *Id.* ("The Generation Unit Owner or Operator must provide an attestation in a form to be provided by the Department that it will not itself or through any affiliate or other contracted party, knowingly engage in the process of importing RPS Class I Renewable Generation into the ISO-NE Control Area for the creation of RPS Class I Renewable GIS Certificates, and then exporting that energy or a similar quantity of other energy out of the ISO-NE Control Area during the same hour.").

cause and that the reason may be due to erroneous tagging of schedules (as we do not want to let them know about hedge transactions).” In that same internal e-mail exchange, an APX employee is quoted by a Galt employee as stating “I’ll have to review further with my team, but I expect the export schedules contributed to the Generated MWh displaying a lower number due to allocation calculations.”

33. The employee also suggested contemporaneously to APX that APX “get rid of the other tag, and maybe it should be resolved.” The employee testified regarding eliminating “the hedge transaction . . . [that i]f we can eliminate the data corresponding with the tag, we will be left just one half of the transaction, the one side of the transaction, and those would match with the generated megawatts hours.” Galt subsequently determined that the eTag was erroneously identifying the renewable resources for the ISO-NE-to-NYISO transactions.

II. Violations

34. Enforcement made the following determinations.

35. The Commission’s original Market Behavior Rules identified wash trades as possessing two key elements—that the transactions: (1) are pre-arranged to cancel each other out; and (2) involve no economic risk.[5] The Commission rejected arguments that wash trades “executed without intent . . . should be excused.”[6] Thus, wash trades “constitute a *per se* violation of Market Behavior Rule 2.”[7] Order No. 670 later incorporated Market Behavior Rule 2 into the Commission’s Anti-Manipulation Rule. Pursuant to Order No. 670, the Commission stated explicitly that the prohibitions included in that Market Behavior Rule—including prohibitions against wash trades—would continue to be prohibited activities under the Anti-Manipulation Rule.[8]

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[5] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218, at P 53 (2003) (Market Behavior Rules Order).

[6] *Id.* at P 58.

[7] *Id.*

[8] *Prohibition of Energy Market Manipulation*, Order No. 670, 114 FERC ⁋ 61,047, at P 59 (2006) (Order No. 670), *reh’g denied*, 114 FERC ¶ 61,300 (2006).

Consequently, wash trading is a *per se* violation of the Commission's Anti-Manipulation Rule, as the Commission has found in orders issued after Order No. 670.[9]

36. Galt repeatedly executed between ISO-NE and NYISO "prearranged offsetting trades of the same product among the same parties, which involved no economic risk and no net change in beneficial ownership."[10] Enforcement found that Galt violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2024), and section 222 of the FPA, 16 U.S.C. § 824v (2018), because these trades constitute expressly prohibited wash trades.

37. Galt repeatedly prearranged its two schedules between ISO-NE and NYISO for the same volumes during the same time intervals, a hallmark of wash trades. Moreover, Galt's wash trades were designed to cancel each other out, not just physically, but also financially.

38. By bidding $0/MWh from ISO-NE to NYISO, Galt ensured that energy would flow from ISO-NE to NYISO only when the energy transaction from NYISO to ISO-NE (necessary to obtain the Class I RECs) was projected to lose money. Galt willingly lost money on the NYISO to ISO-NE transactions in order to obtain Class I RECs but did not absorb those losses or flow the power on net. Instead, it scheduled the ISO-NE-to-NYISO transaction to mitigate or eliminate any losses. The Commission has held that the market risk associated with a wash trade need not be zero; it only need be small enough so that the risk has no practical or expected impact on the transaction.[11] Galt's wash trading meets this test.

39. Enforcement concludes that Galt also violated the Anti-Manipulation Rule by making untrue statements of material fact to APX during the Relevant Period in connection with the jurisdictional wash trades.

40. The Anti-Manipulation Rule prohibits entities from making "any untrue statement of a material fact or . . . omit[ting] to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading" in connection with the purchase or sale of energy subject to the

[9] *See City Power Marketing, LLC,* 152 FERC 61,012, at P 121 (2015) (order assessing civil penalties).

[10] Market Behavior Rules Order, 105 FERC ¶ 61,218 at PP 46, 52 and Appendix A.

[11] *Houlian Chen*, 151 FERC ¶ 61,179, at P 104 (2015); *see also City Power Marketing, LLC*, 152 FERC ¶ 61,012 at P 122.

Commission's jurisdiction.[12] The Commission has held that when an entity voluntarily provides information in connection with the purchase or sale of energy subject to the Commission's jurisdiction and the entity misrepresents or omits a material fact rendering the information materially misleading, there can be a violation of the Anti-Manipulation Rule. *See* Order No. 670, 114 FERC ¶ 61,047 at P 41.

41. Enforcement found that Galt's response to APX included untrue statements, which concealed from APX the relationship between the eTags because Galt did not want APX to know about the prohibited wash trades.

III. <u>Stipulation and Consent Agreement</u>

42. Enforcement, Galt, and Customized have resolved the Investigation by means of the attached Agreement.

43. Galt 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.

44. Galt agrees to pay a civil penalty of $1,500,000 by wire transfer to the United States Treasury. Customized agrees to guarantee fully this penalty payment in the event Galt does not pay a portion or the entirety of the penalty within ten days after the Effective Date of the Agreement.

45. Galt agrees to pay to the Commonwealth of Massachusetts within ten days of the Effective Date of the Agreement disgorgement and interest in the total amount of $372,297.85. Customized agrees to guarantee fully this disgorgement payment (plus interest) in the event Galt does not pay a portion or the entirety of the disgorgement (plus interest) within ten days after the Effective Date of the Agreement.

46. Galt and Customized agree to submit two annual compliance monitoring reports, in accordance with the terms of the Agreement, with a third annual compliance monitoring report at Enforcement's discretion.

IV. <u>Determination of Appropriate Sanctions and Remedies</u>

47. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,[13] including the fact that Galt cooperated with Enforcement during the Investigation.

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[12] 18 C.F.R. § 1c.2(a)(2) (2024).

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

48. 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.

49. The Commission also concludes that Galt's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.[14]

50. The Commission directs Galt to make the civil penalty and disgorgement payments as required by the Agreement within ten business days of the Effective Date of the Agreement.

51. The Commission directs Galt and Customized to comply with the provisions in the Agreement requiring them to submit compliance monitoring reports for two years with a third year at Enforcement's discretion.

The Commission orders:

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.

[14] *Id.*

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Galt Power Inc. Docket No. IN20-5-00

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Galt Power Inc. (Galt) and, as to certain obligations specified below, Customized Energy Solutions Ltd. (Customized) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2024), into whether Galt violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2024) and section 222 of the Federal Power Act (FPA),[1] by repeatedly engaging in prohibited wash trades between the New York Independent System Operator (NYISO) and ISO New England Inc. (ISO-NE) markets between July 8, 2016 and April 23, 2019 (the Relevant Period).

2. Galt stipulates to the facts in Section II, but neither admits nor denies the alleged violations in Section III. Galt agrees to: (a) pay a civil penalty of $1,500,000.00 to the United States Treasury; (b) pay disgorgement and interest totaling $372,297.85 to the Commonwealth of Massachusetts; and (c) be subject to compliance monitoring as provided more fully below. For its part, Customized agrees to be bound by Paragraphs 41-47, 51, 57 and 58 below.

II. STIPULATIONS

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

Relevant Entities

3. Galt is a privately held Delaware corporation, and a wholesale power marketer

[1] 16 U.S.C. § 824v (2018).

with Commission-approved, market-based rate authority.[2] Galt participates in wholesale energy markets governed by ISO-NE, NYISO, PJM Interconnection, LLC, the California Independent System Operator, the Southwest Power Pool, and the Electric Reliability Council of Texas.

4. Galt's owners take no active role in the day-to-day operations of Galt.

5. Customized is a privately held Pennsylvania limited partnership that provides many energy-related services, including energy and attribute management services for renewable resources. Customized does not own any generation or transmission assets, and it does not have market-based rate authority. Galt's minority owner is an employee of Customized.

6. Galt was formed to assist Customized's clients with participating in the wholesale electric markets.

Basic Structure of the Massachusetts Renewable and Alternative Energy Portfolio Standard Program

7. Massachusetts has, since before the Relevant Period and continuing through the present, a program designed to incentivize the replacement of traditional generation of energy with renewable sources of energy (a/k/a green energy). This program is called the Massachusetts Renewable and Alternative Energy Portfolio Standard Program (Program).

8. Under the Program, a renewable energy certificate (REC) is created for every 1-megawatt hour of electricity a qualified renewable energy facility generates. There are different types of RECs, depending upon the source of the renewable energy. Wind generation is one of the types of green energy that results in the creation of Massachusetts Class I RECs (Class I RECs).

9. The New England Power Pool Generation Information System (NEPOOL GIS) creates and tracks Class I RECs.

10. APX, Inc. (APX) built the NEPOOL GIS, and currently operates it.

11. NEPOOL GIS is owned and governed by the New England Power Pool, which is a voluntary association of entities that participate in ISO-NE's markets.

12. Energy suppliers participating in the Program may be located in either the ISO-NE

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[2] *See Galt Power*, Letter Order, Docket No. ER15-1362-000 (May 15, 2015) (accepting for filing a revised market-based rate tariff); *Galt Power*, Letter Order, Docket No. ER10-3149 (June 8, 2011) (accepting for filing a revised market-based rate tariff).

footprint (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) or in certain adjacent areas, including NYISO (New York).

13. A qualified renewable energy facility in NYISO must do three things for its power to be eligible to generate Class I RECs in the Program: (1) it must generate power; (2) the power must be imported into ISO-NE from NYISO; and (3) two pieces of information must be submitted to the NEPOOL GIS: (a) the resource's meter data and (b) the total energy imported from the resource into ISO-NE.

14. If a qualified renewable energy facility meets these conditions, the NEPOOL GIS awards the resource's owner or operator (or, as here, the entity which owns the rights to register associated RECs) Class I RECs equal in number to the lesser of the energy generated or imported over the applicable measurement period.

15. Owners of Class I RECs may sell them to third parties in a secondary market.

Galt's Participation in the Program Before the Relevant Period

16. Both before and during the Relevant period, Galt exported energy generated by two wind farms (totaling 37 MW capacity) from NYISO into ISO-NE in order to meet the prerequisites necessary for the creation of Class I RECs. Galt did this via agreements with a client under which Galt agreed to schedule and export energy from wind farms in NYISO into ISO-NE.

17. Prior to the Relevant Period, NEPOOL GIS calculated the quantity of minted Class I RECs for a month based on the lower of: (1) a generator's metered output over the course of the month; and (2) power exported from NYISO into ISO-NE over the course of that month. This practice is referred to as monthly netting. The minted Class I RECs were distributed to the client's NEPOOL GIS account quarterly.

18. Under monthly netting, Galt could obtain Class I RECs on behalf of its client based on the total quantity of power exported into ISO-NE, whether or not it exported the power at the same time the wind farms located in NYISO's footprint were producing it. Galt needed only to export over the course of the month an amount of MWh exported that was at least equal to the amount of energy produced at the NYISO wind farms over the relevant month. This allowed Galt to limit its exposure to the risk of paying more for the NYISO wind power than it received for selling the power into ISO-NE.

19. Under monthly netting, Galt limited its exposure by scheduling exports from the NYISO wind farms into ISO-NE on an hourly basis whenever it made the most sense economically to do so, based on the relative prices in NYISO and ISO-NE. Therefore, Galt exported only in hours when the NYISO price was expected to be lower or equal to the ISO-NE price, rather than in hours in which the NYISO price was expected to be higher than the ISO-NE price.

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Galt's Participation in the Program During the Relevant Period

20. On July 1, 2016, the NEPOOL GIS announced that it would create Class I RECs for resources outside ISO-NE using a new methodology called "hourly netting." Under hourly netting, the NEPOOL GIS calculated the quantity of minted Class I RECs for each hour in the month, based on the lesser of: (1) a generator's metered output over the course of the hour; and (2) the power exported from NYISO into ISO-NE over the course of that hour.

21. Under this new NEPOOL GIS rule, Galt had to show that energy exported from NYISO into ISO-NE was equal to or greater than the NYISO wind farms' generation on an hourly basis in order to obtain all of the generation as Class I RECs.

22. Galt's strategy before the Relevant Period was focused on its ability to hedge against NYISO prices being higher than ISO-NE prices in the hours Galt exported wind power because the Class I RECs it received were based on its monthly metered export total. Consequently, the July 2016 change to hourly netting greatly reduced the volume of Class I RECs that Galt would have received if its strategy remained unchanged.

23. The NEPOOL GIS change to hourly netting thus prompted Galt to pursue a different export scheduling strategy. The windfarms' actual generation for a given hour was only known after the fact, while the NYISO to ISO-NE exports for a given hour had to be scheduled approximately 75 minutes before that hour.

24. In July 2016, Galt devised a plan to begin offsetting energy exports into the Coordinated Transaction Scheduling system (CTS), from ISO-NE to NYISO, in the same quantities and for the same time intervals of the NYISO to ISO-NE exports. To be specific, Galt increased its export bids from negative $25/MWh to negative $40/MWh, indicating that it was willing to pay up to $40/MWh to export energy from NYISO to ISO-NE (*i.e.*, maximizing exports), while at the same time entering bids of $0/MWh for imports of equal amounts of energy from ISO-NE back into NYISO that could offset the export leg of the trade when the export leg was losing money.

25. If the bids cleared, as did all bids underlying the violations Enforcement found, the CTS cleared each of Galt's bids at the same time. In the instances resulting in the violations Enforcement found, this bidding strategy resulted in both legs clearing.

26. Massachusetts Department of Energy Resources (DOER) regulations prohibit importing the output from qualified renewable energy resources into the ISO-NE Control Area for the creation of Class I RECs, and then exporting that energy or a similar quantity of other energy out of the ISO-NE Control Area during the same hour.[3]

[3] 225 Code Mass. Regs. § 14.05(5)(b).

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27. Before implementing the offsetting trades, Galt asked its in-house counsel to check the GIS rules to make sure there was no specific prohibition of such trades. Counsel testified that she looked at NEPOOL GIS market rules, spoke with non-lawyer colleagues familiar with ISO-NE and the NYISO tariff regarding the hedging strategy, and found no specific prohibitions in the rules that would prevent Galt from implementing its new trading strategy.

28. During the Relevant Period, Galt repeatedly executed offsetting import-export trades to send the same quantity of energy from NYISO to ISO-NE in order to obtain Class I RECs, and back from ISO-NE to NYISO in the same hour in order to eliminate the price risk of the NYISO to ISO-NE transactions. These trades took place after discussion with counsel regarding FERC regulations. Although counsel had reviewed those regulations, she had not looked at any state statutes relating to renewable energy or otherwise, and although she testified that she is familiar with MA DOER regulations, she also testified she was not aware of the MA DOER regulations prohibiting the importing and exporting of similar quantities of energy in the same hour.

29. Galt did not end its trading strategy until April 23, 2019, after Enforcement had taken testimony from its in-house counsel, at which time Enforcement informed her, and thus Galt, of the Massachusetts regulations prohibiting importing renewable generation into ISO-NE for the creation of Class I RECs, and then exporting that energy or a similar quantity of other energy out of ISO-NE during the same hour.[4]

Galt's Interactions with APX

30. In April 2017, when reconciling Class I RECs, Galt noticed that the client had not been credited for the REC volumes that Galt expected it to have received for the third and fourth quarters of 2016. An employee emailed APX to inquire why it had not minted as many RECs as Galt expected.

31. In an e-mail response, an APX employee, acting on behalf of the NEPOOL GIS, asked Galt about negative numbers, *i.e.*, the MWh associated with certain ISO-NE-to-NYISO transactions that APX observed while matching up eTags and other information required to mint RECs from energy generated outside of the ISO-NE control area.

32. An employee testified that in discussions regarding how to respond to the APX e-mail inquiry, he was told by his management "that GIS shouldn't know about the hedge transactions." In an internal email exchange in response to APX's inquiry, after his

[4] *Id.* ("The Generation Unit Owner or Operator must provide an attestation in a form to be provided by the Department that it will not itself or through any affiliate or other contracted party, knowingly engage in the process of importing RPS Class I Renewable Generation into the ISO-NE Control Area for the creation of RPS Class I Renewable GIS Certificates, and then exporting that energy or a similar quantity of other energy out of the ISO-NE Control Area during the same hour.").

discussion with management, the employee stated that Galt was "internally reviewing the cause and that the reason may be due to erroneous tagging of schedules (as we do not want to let them know about hedge transactions)." In that same internal e-mail exchange, an APX employee is quoted by a Galt employee as stating "I'll have to review further with my team, but I expect the export schedules contributed to the Generated MWh displaying a lower number due to allocation calculations."

33. The employee also suggested contemporaneously to APX that APX "get rid of the other tag, and maybe it should be resolved." The employee testified regarding eliminating "the hedge transaction . . . [that i]f we can eliminate the data corresponding with the tag, we will be left just one half of the transaction, the one side of the transaction, and those would match with the generated megawatts hours." Galt subsequently determined that the eTag was erroneously identifying the renewable resources for the ISO-NE-to-NYISO transactions.

III. VIOLATIONS

34. The Commission's original Market Behavior Rules identified wash trades as possessing two key elements—that the transactions: (1) are pre-arranged to cancel each other out; and (2) involve no economic risk. The Commission rejected arguments that wash trades "executed without intent . . . should be excused." Thus, wash trades "constitute a *per se* violation of Market Behavior Rule 2." Order No. 670 later incorporated Market Behavior Rule 2 into the Commission's Anti-Manipulation Rule. Pursuant to Order No. 670, the Commission stated explicitly that the prohibitions included in that Market Behavior Rule—including prohibitions against wash trades—would continue to be prohibited activities under the Anti-Manipulation Rule. Consequently, wash trading is a *per se* violation of the Commission's Anti-Manipulation Rule, as the Commission has found in orders issued subsequent to Order No. 670.[5]

35. Galt repeatedly executed between ISO-NE and NYISO "prearranged offsetting trades of the same product among the same parties, which involved no economic risk and no net change in beneficial ownership."[6] Enforcement found that Galt violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2024), and section 222 of the Federal Power Act (FPA), 16 U.S.C. § 824v (2018) because these trades constitute expressly prohibited wash trades.

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[5] *See City Power Marketing, LLC,* 152 FERC 61,012, at P 121 (2015) (order assessing civil penalties).

[6] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218, at PP 46, 52 and Appendix A (2003) (Market Behavior Rules Order).

36. Galt repeatedly prearranged its two schedules between ISO-NE and NYISO for the same volumes during the same time intervals, a hallmark of wash trades. Moreover, Galt's wash trades were designed to cancel each other out, not just physically, but also financially.

37. By bidding $0/MWh from ISO-NE to NYISO, Galt ensured that energy would flow from ISO-NE to NYISO only when the energy transaction from NYISO to ISO-NE (necessary to obtain the Class I RECs) was projected to lose money. Galt willingly lost money on the NYISO to ISO-NE transactions to obtain Class I RECs but did not absorb those losses nor flow the power on net. Instead, it scheduled the ISO-NE-to-NYISO transaction to mitigate or eliminate any losses. The Commission has held that the market risk associated with a wash trade need not be zero; it only need be small enough so that the risk has no practical or expected impact on the transaction.[7] Galt's wash trading meets this test.

38. Enforcement concludes that Galt also violated the Anti-Manipulation Rule by making untrue statements of material fact to APX during the Relevant Period in connection with the jurisdictional wash trades.

39. The Anti-Manipulation Rule prohibits entities from making "any untrue statement of a material fact or . . . omit[ting] to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading" in connection with the purchase or sale of energy subject to the Commission's jurisdiction.[8] The Commission has held that when an entity voluntarily provides information in connection with the purchase or sale of energy subject to the Commission's jurisdiction and the entity misrepresents or omits a material fact rendering the information materially misleading, there can be a violation of the Anti-Manipulation Rule. *See Prohibition of Energy Market Manipulation*, Order No. 670, 114 FERC J 61,047 at P 41 (2006) (Order No. 670), *reh'g denied*, 114 FERC ¶ 61,300 (2006).

40. Enforcement found that Galt's response to APX included untrue statements, which concealed from APX the relationship between the eTags because Galt did not want APX to know about the prohibited wash trades.

IV. REMEDIES AND SANCTIONS

41. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to Galt's conduct evaluated in Enforcement's Investigation, Galt agrees with the facts as stipulated in Section II of this Agreement, but

[7] *Houlian Chen*, 151 FERC ¶ 61,179, at P 104 (2015); *see also City Power Marketing, LLC*, 152 FERC ¶ 61,012 at P 122.

[8] 18 C.F.R. § 1c.2(a)(2) (2024).

it neither admits nor denies the violations described in Section III of this Agreement. Galt and Customized further agree to undertake the obligations as specified in the following paragraphs.

A. Civil Penalty

42. Galt agrees to pay a civil penalty of $1,500,000 by wire transfer to the United States Treasury within ten days after the Effective Date of this Agreement, as defined herein. Customized agrees to guarantee fully this penalty payment in the event Galt does not pay a portion or the entirety of this penalty within ten days after the Effective Date of this Agreement.

B. Disgorgement

43. Galt agrees to pay to the Commonwealth of Massachusetts within ten days of the Effective Date of this Agreement disgorgement and interest (calculated pursuant to section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2024)) in the total amount of $372,297.85. Customized agrees to guarantee fully this disgorgement payment (plus interest) in the event Galt does not pay a portion or the entirety of this disgorgement (plus interest) within ten days after the Effective Date of this Agreement.

C. Compliance

44. Galt and Customized shall submit annual compliance monitoring reports to Enforcement for two years following the Effective Date of this Agreement. The first annual compliance monitoring report shall be submitted one year after the Effective Date of the Agreement. The second annual compliance monitoring report shall be submitted one year from the date of the first report. After the receipt of the second annual report, Enforcement may, at its sole discretion, require Galt and Customized to submit reports for one additional year.

45. 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 Galt and Customized instituted or modified during the reporting period related to compliance with Commission regulations; and (3) describe all Commission-related compliance training that Galt and Customized administered during the reporting period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended. Galt and Customized shall mandate that all employees who engage in any action governed by the Commission's governing statutes or regulations will attend such training.

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

47. Upon request by Enforcement, Galt and Customized shall provide to Enforcement documentation supporting the contents of its reports.

V. TERMS

48. 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 Galt, and its respective agents, officers, directors, or employees, both past and present.

49. Commission approval of this Agreement without material modification shall release Galt and forever bar the Commission from holding Galt, any affiliated entity, and 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.

50. Failure by Galt to make the disgorgement, interest, or civil penalty payments, or by Galt or Customized to comply with the compliance obligations agreed to herein, or by Galt or Customized to comply with any other provision of this Agreement applicable to either of them, 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 Galt to additional action under the enforcement provisions of the FPA.

51. If Galt does not make the required civil penalty and disgorgement payments 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) (2024) 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. Customized agrees to guarantee fully any such interest payment.

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

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

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

55. In connection with the disgorgement and civil penalty provided for herein, Galt 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). Galt 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.

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

57. 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.

58. Each of the undersigned representatives of Galt and Customized 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.

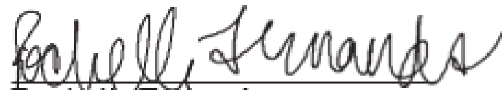
59. This Agreement may be executed in duplicate or triplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:

JANEL BURDICK Digitally signed by JANEL BURDICK Date: 2024.06.11 15:10:55 -04'00'

Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission

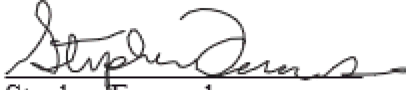
Date: 6/11/24



Rochelle Fernands
President
Galt Power, Inc.

Date: 6/10/24

As to paragraphs 41-47, 51, 57 and 58 only:



Stephen Fernands
President
Customized Energy, Ltd.

Date: 6/10/24

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