

183 FERC ¶ 61,137
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Leapfrog Power, Inc.

Docket No. IN23-7-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued May 22, 2023)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Leapfrog Power, Inc. (Leap). This order is in the public interest because the Agreement resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2022), into whether Leap violated section 37.3.1.1 of California Independent System Operator's (CAISO) Tariff, which requires resources to make bids that they reasonably expect to be able to fulfill.

2. Leap agrees to (a) pay a civil penalty of \$73,880 to the United States Treasury; (b) disgorge \$46,120 to CAISO; and (c) be subject to compliance monitoring as detailed in the Agreement. Leap stipulates to the facts set forth in Section II of the Agreement but neither admits nor denies the alleged violations.

I. Facts

3. Leap is a demand response provider participating in the CAISO market. Demand response providers do not generate electricity themselves but instead contract with individual customers to reduce the amount of electricity they would otherwise use. In California, demand response providers then aggregate this demand response under the California Public Utilities Commission's (CPUC) Demand Response Auction Mechanism (DRAM) pilot program.

4. Under the DRAM pilot program, demand response providers contract with Load-Serving Entities (LSEs) to provide a given amount of demand response. Each month, demand response providers tell the LSEs how much demand response they would provide ninety days later, and those load reductions become part of the LSEs' supply plans. The LSEs, in turn, submit their supply plans (including demand response) to CAISO to substantiate the Resource Adequacy capacity contracted by the LSE.

5. Under this program, Leap, a California demand response provider, bid the same amounts of demand response each day as it had contracted with the LSEs into CAISO's day ahead (DA) energy market. A substantial majority of the bids Leap made into the DA market in February through August 2019 exceeded the registered metered load of the individual customers whose potential demand response was aggregated into Leap's bids. Consequently, between February and August 2019, Leap submitted bids into the DA market that it could not fulfill with registered load.

6. In February through August 2019, Leap received Resource Adequacy Availability Incentive Mechanism (RAAIM) payments that it would not have received if it had made accurate bids. These payments totaled \$46,120.

7. Leap fully cooperated with Enforcement's investigation.

II. Violations

8. Enforcement determined that Leap violated Section 37.3.1.1 of CAISO's Tariff.

9. Section 37.3.1.1 of CAISO's Tariff requires that:

Market Participants . . . submit Bids for Energy . . . from resources that are reasonably expected to be available and capable of performing at the levels specified in the Bid, and to remain available and capable of so performing based on all information that is known to the Market Participant or should have been known to the Market Participant at the time of the submission.

Enforcement determined that between February and August 2019, a substantial majority of the bids Leap made were bids that it could not reasonably expect to fulfill in violation of this section of the Tariff because Leap's bids exceeded the registered metered load of all its customers.

III. Stipulation and Consent Agreement

10. Enforcement and Leap have resolved Enforcement's investigation by means of the attached Agreement.

11. Leap 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.

12. Leap agrees to: (a) pay a civil penalty of \$73,880 to the United States Treasury; (b) disgorge \$46,120 to CAISO; and (c) submit to compliance monitoring as detailed in the Agreement.

IV. Determination of Appropriate Remedies and Sanctions

13. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,¹ including the fact that Leap cooperated with Enforcement during the investigation.

14. 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.

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

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

17. CAISO is directed to distribute the disgorgement *pro rata* to network load.

18. The Commission directs Leap to comply with the provisions in the Agreement requiring it to submit annual compliance monitoring reports for at least one year.

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.

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

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

Leapfrog Power, Inc.

Docket No. IN23-7-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Leapfrog Power, Inc. (Leap) 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 (2022), into whether Leap violated section 37.3.1.1 of California Independent System Operator's (CAISO) Tariff, which requires resources to make bids that they reasonably expect to be able to fulfill.
2. Leap stipulates to the facts in Section II but neither admits nor denies the violations alleged in Section III. Leap agrees to (a) pay a civil penalty of \$73,880 to the United States Treasury; (b) disgorge \$46,120 to CAISO; and (c) be subject to compliance monitoring as provided more fully below.

II. STIPULATIONS

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

3. Leap is a "virtual aggregator" that connects electric vehicle, battery storage, smart thermostat, and other flexible technologies to grids and electricity markets. Its platform virtually aggregates flexible energy resources to help balance the grid via "demand response." As a demand response provider, Leap does not itself generate electricity but instead contracts with owners of large-scale demand response resources to aggregate and offer them into CAISO to reduce the amount of electricity that the grid would otherwise need to provide. Leap then aggregates these demand response resources, enrolls them in various demand response programs, and offers them into various energy markets. One such demand response program is the California Public Utilities Commission's (CPUC) Demand Response Auction Mechanism (DRAM) pilot program.
4. Under the DRAM pilot program, Demand Response Providers (DRPs) contracted with Load-Serving Entities (LSEs) to provide a given amount of demand response. Leap was such a DRP and, each month, it told the LSEs how much demand response it would provide ninety days later, and those load reductions became part of the LSEs' supply plans. The LSEs, in turn, submitted their supply plans (including Leap's agreed upon

demand response) to CAISO to substantiate the Resource Adequacy (RA) capacity contracted by the LSE. Each day Leap then bid into CAISO's day ahead (DA) energy market the same amounts of demand response as it had contracted with the LSEs.

5. Leap was a start-up founded in July 2017. In February 2018, Leap participated in its first DRAM auction – the auction for the 2019 delivery year. Leap received DRAM awards in the auction and entered into contracts with LSEs in April 2018. The CPUC did not approve the contracts until September 2018.

6. Leap continued to acquire new customers throughout 2018 and 2019 but was not able to register all of them as resources with CAISO before it began bidding into the CAISO DA Market. Leap's registered metered load grew throughout the 2019 delivery year, as Leap entered into contracts with customers and registered their load.

7. A substantial majority of the bids Leap made into the CAISO DA market from February through August 2019 exceeded the registered metered load of the individual customers whose potential demand response was aggregated into Leap's bids. Consequently, between February and August 2019, Leap submitted bids into the DA market that it could not fulfill with registered load.

8. In February through August 2019, Leap received Resource Adequacy Availability Incentive Mechanism (RAAIM) payments from CAISO that it would not have received if it had made accurate bids. These payments totaled \$46,120.

9. Leap fully cooperated with Enforcement's investigation.

III. VIOLATIONS

10. Enforcement determined that Leap violated Section 37.3.1.1 of CAISO's Tariff.

11. Section 37.3.1.1 of CAISO's Tariff requires that:

Market Participants . . . submit Bids for Energy . . . from resources that are reasonably expected to be available and capable of performing at the levels specified in the Bid, and to remain available and capable of so performing based on all information that is known to the Market Participant or should have been known to the Market Participant at the time of the submission.

Enforcement determined that between February and August 2019, a substantial majority of the bids Leap made were bids that it could not reasonably expect to fulfill in violation of Section 37.3.1.1 of the CAISO Tariff, with shortfalls ranging from 54 to 98 percent of its average DA bid.

12. Leap was unable to fulfill a substantial majority of its bids because the bids exceeded the registered metered load of the individual customers whose potential demand response was aggregated into Leap's bids.

IV. REMEDIES AND SANCTIONS

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

A. Civil Penalty

14. Leap agrees to pay a civil penalty of \$73,880 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

B. Disgorgement

15. Leap agrees to pay disgorgement (inclusive of interest) within ten days of the Effective Date of this Agreement to CAISO in the amount of \$46,120.

C. Compliance

16. Leap shall submit an annual compliance monitoring report to Enforcement for one year with a second or third year at Enforcement's sole discretion. The first report shall be submitted no later than thirty days after the first anniversary of the Effective Date. If a second report is required, it shall be submitted no later than thirty days after the second anniversary of the Effective Date. If a third report is required, it shall be submitted no later than thirty days after the third anniversary of the Effective Date.

17. Each compliance monitoring report shall: (1) identify any known violations of CAISO's Tariff or Commission regulations 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 related to compliance with CAISO's Tariff and Commission regulations that Leap instituted or modified during the applicable period; and (3) describe all Commission-related compliance training that Leap administered during the applicable period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

18. Each compliance monitoring report shall also include an affidavit executed by an officer of Leap stating that it is true and accurate to the best of their knowledge.

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

V. TERMS

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

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

22. Failure by Leap to make the disgorgement, interest, or civil penalty payments, 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 Leap to additional action under the enforcement provisions of the FPA.

23. If Leap does not make the required civil penalty and disgorgement payments described above within the times agreed by the parties, interest will begin to accrue at the rates specified at 18 C.F.R. § 35.19a(a)(2)(iii) 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.

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

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

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

27. In connection with the civil penalty provided for herein, Leap 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). Leap 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.

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

29. Each of the undersigned warrants that they are an authorized representative of the entity designated, are authorized to bind such entity, and accept the Agreement on the entity’s behalf.

30. The undersigned representative of Leap affirms that they have read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of their knowledge, information, and belief, and that they understand that the Agreement is entered into by Enforcement in express reliance on those representations.

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

Agreed to and Accepted:

Janel
Burdick Digitally signed by Janel Burdick
Date: 2023.04.10 10:45:05 -0400

Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission



Andrew Hoffman
Chief Development Officer
Leapfrog Power, Inc.

Date: 4/10/2023

Date: 04 / 07 / 2023

Document Content(s)

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