

**The Energy Bar Association's Demand-Side Resources and Smart Grid Committee
along with the Compliance and Enforcement Committee**

**Announces a joint brown bag regarding compliance and enforcement issues
associated with demand response resources.**

**January 19, 2012
12:00 p.m. – 1:30 p.m. (Eastern Time)
Brown Bag Meeting/Teleconference
(CLE is not secured for this meeting)**

**Location: Offices of Paul Hastings, LLP, at McPherson Square
875 15th Street, N.W., Washington, DC 20005**

The joint brown bag will include a panel that will discuss some of the competing concerns relating to demand response compliance issues, with a focus on FERC enforcement activities, the role of demand response providers in managing their customers' portfolios and performance risk, and ISO/RTO concerns regarding registration, performance, measurement and verification, and reliability. The program will allow time for questions from participants.

Panelists:

Geof Hobday, Office of Enforcement, Federal Energy Regulatory Commission

Jacquelynn Hugee, Esq., Assistant General Counsel – Markets, PJM Interconnection

Stephen Angle, Partner, Vinson & Elkins, LLP

Moderator:

Robert Fleishman, Of Counsel, Covington & Burling LLP

133 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

North America Power Partners

Docket No. IN09-6-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 28, 2010)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and North America Power Partners (NAPP). This order is in the public interest because it resolves the investigation into NAPP's compliance with various provisions of the PJM Interconnection, LLC (PJM) Open Access Transmission Tariff (OATT) and 18 C.F.R. § 1c.2 (2010). NAPP has agreed to pay a civil penalty of \$500,000, disgorge \$2,258,127, plus interest, in unjust profits and undertake compliance monitoring.

Background

2. NAPP is a limited liability company formed in July 2006 to participate in various organized energy markets' Demand Response programs. NAPP is a member of PJM and acts as a Curtailment Service Provider (CSP). CSPs act as agents for individual resources who wish to participate in PJM's markets. CSPs are responsible for registering resources into the various Demand Response programs and offering them as available during appropriate periods. In some programs, CSPs must also notify resources when PJM has ordered a demand reduction, and then must measure that reduction and submit related data.

3. PJM referred to Enforcement certain issues related to NAPP's participation in PJM's Demand Response programs. After reviewing the referral, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010). The investigation focused on NAPP's activities in PJM's Synchronized Reserve Market, Interruptible Load for Reliability (ILR) Program, and the Interchange Energy Market in 2007 and 2008.

Violations

A. Synchronized Reserve Market

4. PJM's Synchronized Reserve Market is an hourly ancillary services market that complements PJM's Interchange Energy Market by allowing PJM to respond to sudden changes and serve load immediately in the event of a system contingency. Demand Response resources must be able to reduce demand and respond to sudden deviations in system load and anticipated generation at the request of PJM within 10 minutes.
5. As a CSP participating in PJM's Synchronized Reserve Market during 2007 and 2008, NAPP submitted to PJM offers for its registered resources to reduce their demand in a given hour. In this market, if NAPP's offers were accepted, and PJM called a Synchronized Reserve Event, NAPP was required to notify the resource that it was required to reduce its demand.
6. From 2007 to July 2008, NAPP offered several resources into the market at times when the resources had reported to NAPP they were unavailable to respond to a Synchronized Reserve Event. In addition, between March 2007 and March 2008, PJM called nine separate Synchronized Reserve Events lasting more than 10 minutes, in which NAPP's resources were offered and had cleared in the market. However, NAPP failed to notify NAPP's resources of any of the nine events. Therefore, all of NAPP's resources failed to respond. After each event, NAPP failed to submit meter data for each resource to PJM demonstrating the resource's reduction in demand and therefore compliance with the event.
7. Enforcement determined that NAPP violated section 1.7.4(d) of Attachment K of PJM's OATT by repeatedly submitting offers on behalf of resources at times when NAPP knew such resources were unavailable to respond to Synchronized Reserve Events. Enforcement also determined that by failing to facilitate its resources' response to Synchronized Reserve Events, NAPP violated sections 1.7.4(a) and section 1.8.2 of Attachment K of PJM's OATT. Enforcement further determined that NAPP violated section 1.7.4(d) of Attachment K of PJM's OATT by failing to submit meter data. In addition, Enforcement determined that NAPP's foregoing conduct in connection with the Synchronized Reserve Market constitutes a fraudulent scheme or artifice committed with scienter in connection with a jurisdictional transaction in violation of 18 C.F.R. § 1c.2 (2010).
8. Enforcement determined that NAPP received unjust profits of \$334,116 related to NAPP's participation in the Synchronized Reserve Market.

B. ILR Program

9. ILR is a Demand Response capacity product that is offered on an annual basis and used by PJM in emergency circumstances during times of peak demand to maintain reliability. CSPs, such as NAPP, register resources once per year to participate for that ILR planning season. As part of the registration process, CSPs must submit Peak Load Contribution (PLC) data to PJM, which they obtain from the end-users or the electric distribution companies (EDC). PJM forwards the PLC data submitted for each resource to the relevant EDC for verification and, when necessary, adjusts the PLC data to ensure accuracy. PJM uses PLC data to represent the peak demand of participating resources and to allocate payment to participating ILR resources based upon the reduction from such peak demand for the guaranteed-load-drop-based resources.

10. As part of the registration process for the 2007/2008 ILR planning season, NAPP submitted 52 inaccurate PLC values, which in the aggregate, overstated the PLC values of NAPP's registered resources by 39.5 MW. Enforcement determined that NAPP's submission of inaccurate PLC data for the 2007/2008 ILR program violated Attachment DD-1(I) of PJM's OATT.

11. After the deadline for the 2008/2009 ILR planning season, NAPP disclosed to Enforcement that it may have improperly registered several resources for the 2008/2009 ILR planning season. Following a review of NAPP's documents, Enforcement determined that NAPP registered 101 resources before obtaining their authorization or verification of their willingness and ability to participate in that year's program prior to the registration deadline.

12. Enforcement determined that the registration of 101 resources in the 2008/2009 ILR program without authorizations violated sections A(2), (3) and (7) of Attachment DD-1 of PJM's OATT. Enforcement also determined that such conduct constitutes a fraudulent scheme or artifice committed with scienter in connection with a jurisdictional transaction in violation of 18 C.F.R. § 1c.2 (2010).

13. Enforcement determined that NAPP received unjust profits of \$1,924,011 related to its unauthorized registrations of ILR resources.

C. Other Violations

14. Enforcement also determined that NAPP engaged in two minor tariff violations connected with its activities as a CSP. Enforcement determined that in early 2007, NAPP offered a resource with a real-time Locational Marginal Pricing rate into PJM's day-ahead energy market in violation of section 3.3A.5(c) of Attachment K of PJM's OATT. Enforcement also determined that from early

2007 until early 2008, when NAPP upgraded its operations facility, NAPP transacted during some hours in the day-ahead Interchange Energy Market without having such transactions controlled by a sufficiently staffed and communications enabled market operations center in violation of section 1.7.20(a) of Attachment K of PJM's OATT.

Stipulation and Consent

15. Enforcement staff and NAPP resolved Enforcement staff's investigation by means of the attached Agreement. NAPP neither admits nor denies the violations.

16. The agreement requires NAPP to pay a civil penalty of \$500,000 to the United States Treasury and disgorge \$2,258,127, plus interest to PJM for pro-rata distribution to the Load Serving Entities that were assigned the costs for the respective demand response programs during the applicable periods. These amount shall be paid according to the payment schedule outlined in the Agreement.

17. NAPP shall also develop and maintain a compliance program and make semi-annual reports to Enforcement for two years.

Determination of the Appropriate Civil Penalty

18. In determining the appropriate remedy, Enforcement considered the factors described in the *Revised Policy Statement on Enforcement*.¹ Specifically, staff considered the seriousness of NAPP's violations and that its behavior violated both PJM's OATT and amounted to fraudulent conduct in violation of 18 C.F.R. §1c.2 (2010). Staff also considered the following factors: NAPP's most serious violations were committed willfully and intentionally through the participation or oversight of NAPP's former Senior Vice President of Operations (whom NAPP has since terminated); NAPP has strengthened its commitment to compliance; NAPP's violations had the potential to cause harm, even though its actions in this particular matter did not affect market prices or cause actual harm to system reliability; NAPP's failure to fully cooperate during the initial stages of the investigation; and NAPP's improved cooperation during later stages of the investigation.

¹ 123 FERC ¶ 61,156 (2008). Enforcement did not consider the *Revised Policy Statement on Penalty Guidelines* because staff had initiated settlement negotiations prior to its issuance. See 132 FERC ¶ 61,216 at n.2 (2010).

19. Enforcement also considered the risk that a high penalty or an immediate large payment could jeopardize NAPP's continued financial viability and thereby hinder the Commission's ability to disgorge NAPP's unjust profits and obtain a civil penalty. Absent consideration of NAPP's financial viability, Enforcement would have sought a significantly higher civil penalty and would likely seek a higher penalty for similar conduct by a more financially viable entity in the future.

20. We conclude that the penalties and other remedies set forth in the Agreement are a fair and equitable resolution of this matter and are in the public interest, as they reflect the nature and seriousness of NAPP's conduct, and recognize the company-specific considerations as stated above and in the attached Agreement. We also conclude that the payment schedule outlined in the Agreement is appropriate given NAPP's ability to pay.

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

North America Power Partners)

Docket No. IN09-6-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and North America Power Partners, LLP (NAPP) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010). Enforcement determined that NAPP committed violations of various provisions of the PJM Interconnection, LLC (PJM) Open Access Transmission Tariff (OATT) and 18 C.F.R. § 1c.2 (2010). NAPP has agreed to pay a civil penalty of \$500,000 and disgorge \$2,258,127, plus interest, in unjust profits.

II. STIPULATIONS

Enforcement and NAPP hereby stipulate to the following:

A. Background

2. NAPP is a limited liability company formed under the laws of the State of Delaware in July 2006 to participate in various organized energy markets' Demand Response programs. NAPP is a member of PJM and acts as a Curtailment Service Provider (CSP). CSPs act as agents for individual resources who wish to participate in PJM's markets. CSPs are responsible for registering resources into the various Demand Response programs and offering them as available during appropriate periods. In some programs, CSPs must also notify resources when PJM has ordered a demand reduction, and then must measure that reduction and submit related data.

3. Initially, when NAPP was formed, it employed three individuals, including the two founding partners (managing members), and one contractor. One partner served as the President, while the other served as the Senior Vice President of Operations. The President, who had significant experience with energy services, including energy efficiency, was primarily responsible for sales and marketing activities. The Senior Vice President of Operations, who also had significant energy experience and had been involved in the development of PJM's Demand Response programs while previously employed by PJM, was primarily responsible

for NAPP's operations and participation in PJM's Demand Response programs. In addition to the founding partners (managing members), other members have also invested in NAPP. In 2007 and early 2008, NAPP's scope of operations significantly increased and it opened a second larger office with a control center and hired additional employees. The Senior Vice President of Operations remained primarily responsible for NAPP's participation in PJM's Demand Response programs.

4. In March 2008, PJM referred to Enforcement certain issues related to NAPP's participation in PJM's Demand Response programs. After reviewing the referral, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010). The investigation focused on NAPP's activities in PJM's Synchronized Reserve Market, Interruptible Load for Reliability (ILR) Program, and the Interchange Energy Market in 2007 and 2008.

5. In September 2008, litigation arose between NAPP and its members when NAPP's President attempted to suspend the Senior Vice President of Operations and he subsequently interfered with the business' orderly operations. As a result of the ongoing litigation, a stalemate between the two managing members developed. With the support of the members, the state court subsequently appointed an Interim CEO, to address the stalemate. In December 2008, the Interim CEO terminated the employment of the Senior Vice President of Operations, which was confirmed by the court.

B. Violations

1. Synchronized Reserve Market

6. PJM's Synchronized Reserve Market is an hourly ancillary services market that complements PJM's Interchange Energy Market by allowing PJM to respond to sudden changes and serve load immediately in the event of a system contingency. Demand Response resources must be able to reduce demand and respond to sudden deviations in system load and anticipated generation at the request of PJM within 10 minutes.

7. As a CSP participating PJM's Synchronized Reserve Market during 2007 and 2008, NAPP submitted to PJM offers for its registered resources to reduce their demand in a given hour. In this market, if NAPP's offers were accepted, and PJM called a Synchronized Reserve Event, NAPP was required to notify the resource that it was required to reduce its demand. Resources that cleared in the market were paid for their availability whether or not an event was called. PJM provided additional compensation if a resource responded to a Synchronized Reserve Event or imposed a limited penalty on resources that failed to comply.

8. From 2007 to July 2008, after registering resources for PJM's Synchronized Reserve Market, the Senior Vice President of Operations (either directly or through employees under his supervision) submitted offers for NAPP's resources into the Synchronized Reserve Market. NAPP offered several resources into the market at times when the resources had reported to NAPP they were unavailable to respond to a Synchronized Reserve Event. For example, one resource notified NAPP it was only available during certain business hours, however NAPP offered it into the Synchronized Reserve Market during evening hours. Additionally, NAPP offered a resource into the Synchronized Reserve Market after it had ended its contractual relationship with NAPP, and therefore was not prepared to respond to a Synchronized Reserve Event.

9. Between March 2007 and March 2008, PJM called nine separate Synchronized Reserve Events lasting more than 10 minutes, in which NAPP's resources were offered and had cleared in the market. NAPP, through the Senior Vice President of Operations, received the Synchronized Reserve Event calls from PJM but failed to notify NAPP's resources of any of the nine events. Therefore, all of NAPP's resources failed to respond to the nine Synchronized Reserve Events. After each event, NAPP failed to submit meter data for each resource to PJM demonstrating the resource's reduction in demand and therefore compliance with the event. PJM notified NAPP operational staff of the noncompliance with Synchronized Reserve Events on three occasions. NAPP failed to implement remedial measures until after the third notification. PJM informed Enforcement that these facts led, in part, to PJM's referral to Enforcement. In July 2008, after the start of the investigation, PJM called a tenth Synchronized Reserve Event. NAPP initiated calls to its resources with cleared offers, but its resources did not fully respond.

10. Enforcement determined that NAPP violated section 1.7.4(d) of Attachment K of PJM's OATT by repeatedly submitting offers on behalf of resources at times when NAPP knew such resources were unavailable to respond to Synchronized Reserve Events. Enforcement also determined that by failing to facilitate its resources' response to Synchronized Reserve Events, NAPP violated sections 1.7.4(a) and section 1.8.2 of Attachment K of PJM's OATT. Enforcement further determined that NAPP violated section 1.7.4(d) of Attachment K of PJM's OATT by failing to submit meter data. In addition, Enforcement determined that NAPP's foregoing conduct in connection with the Synchronized Reserve Market violated 18 C.F.R. § 1c.2 (2010).

11. Enforcement determined that NAPP received unjust profits of \$334,116 related to NAPP's participation in the Synchronized Reserve Market.

2. ILR Program

12. ILR is a Demand Response capacity product that is offered on an annual basis and used by PJM in emergency circumstances during times of peak demand to maintain reliability. ILR provides PJM operators with the ability to request load reduction from CSPs during times of generation capacity emergencies and other events. CSPs, such as NAPP, register resources once per year to participate for that ILR planning season. As part of the registration process, CSPs must submit Peak Load Contribution (PLC) data to PJM, which they obtain from the end-users or the electric distribution companies (EDC). PJM forwards the PLC data submitted for each resource to the relevant EDC for verification and, when necessary, adjusts the PLC data to ensure accuracy. PJM uses PLC data to represent the peak demand of participating resources and to allocate payment to participating ILR resources based upon the reduction from such peak demand for the guaranteed-load-drop-based resources.

13. As part of the registration process for the 2007/2008 ILR planning season, NAPP, under the supervision of the Senior Vice President of Operations, submitted PLC data for its resources. Fifty-two of NAPP's PLC values were inaccurate and, in the aggregate, overstated PLC values by 39.5 MW. NAPP did not benefit from submitting inaccurate PLC data because PJM detected and corrected the erroneous information prior to the start of the ILR season.

14. Enforcement determined that NAPP's submission of inaccurate PLC data for the 2007/2008 ILR program violated Attachment DD-1(I) of PJM's OATT.

15. For the 2008/2009 ILR planning season, NAPP, through the actions of the Senior Vice President of Operations and operational employees under his supervision, registered numerous resources by the March 2008 deadline. After the deadline, NAPP disclosed to Enforcement that it may have improperly registered several resources for the 2008/2009 ILR planning season. PJM's OATT did not allow NAPP to remove these resources from the ILR program, therefore NAPP reserved revenues associated with the identified resources with the objective of returning these payments. Following a review of NAPP's documents, Enforcement determined that NAPP registered 101 resources before obtaining their authorization or verification of their willingness and ability to participate in that year's program prior to the registration deadline. Of these resources, Enforcement determined that all but 27 subsequently agreed to participate in the 2008/2009 ILR planning season. No ILR events were called during the 2008/2009 ILR season, therefore there were no impacts on system reliability.

16. Enforcement determined that the registration of 101 resources in the 2008/2009 ILR program without authorizations violated sections A(2), (3) and (7)

of Attachment DD-1 of PJM's OATT. Enforcement also determined that such conduct violated 18 C.F.R. § 1c.2 (2010).

17. Enforcement determined that NAPP received unjust profits of \$1,924,011 related to its determination of unauthorized 2008/2009 ILR registrations by NAPP.

3. Other OATT Violations

18. Enforcement also determined that NAPP engaged in two minor tariff violations connected with its activities as a CSP. Enforcement determined that in early 2007, NAPP offered a resource with a real-time Locational Marginal Pricing rate into PJM's day-ahead energy market in violation of section 3.3A.5(c) of Attachment K of PJM's OATT. Enforcement also determined that from early 2007 until early 2008, when NAPP upgraded its operations facility, NAPP transacted during some hours in the day-ahead Interchange Energy Market without having such transactions controlled by a sufficiently staffed and communications enabled market operations center in violation of section 1.7.20(a) of Attachment K of PJM's OATT.

C. Additional Factors

19. Since the start of the investigation, NAPP has strengthened its compliance procedures and has provided additional training for its employees. NAPP has also undertaken significant efforts to develop a compliance program and bring itself in compliance with PJM's OATT and the Commission's regulations. Throughout 2009, NAPP has improved compliance with applicable provisions of the PJM OATT.

20. Enforcement determined that NAPP's most serious violations were committed willfully and intentionally through the participation or oversight of NAPP's former Senior Vice President of Operations, a member of NAPP's senior management at the time. As noted above, during the investigation, NAPP, through the authority granted to the interim CEO, terminated this individual's employment.

21. Enforcement finds that, while no actual harm occurred to the market or the reliability of the system, NAPP's violations had the potential to cause harm under different market and system conditions.

22. In the early stages of the investigation, NAPP failed to cooperate fully with Enforcement's investigation, at times providing incomplete and misleading information. Some or all of the initial cooperation issues were the result of actions taken by the Senior Vice President of Operations. NAPP's cooperation improved in late 2008 and continued through the end of the investigation.

23. Significant in Enforcement's determination of the appropriate remedies and sanctions to settle this matter was consideration of the risk that a high penalty could jeopardize NAPP's continued financial viability. Enforcement reviewed NAPP's prior and projected income statements and determined that the monetary penalties agreed to under this Agreement will allow NAPP to continue its operations, yet also imposes a substantial penalty on NAPP. Enforcement might seek a significantly higher penalty for similar conduct by an organization in different financial circumstances.

III. REMEDIES AND SANCTIONS

24. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, NAPP agrees with the facts as stipulated but neither admits nor denies Enforcement's determinations that NAPP violated sections 1.7.4(a) and (d), 1.7.20(a), 1.8.2, and 3.3A.5(c) of Attachment K of PJM's OATT, sections A(2), (3) and (7) and provision I of Attachment DD-1 of PJM's OATT and 18 C.F.R. § 1c.2 (2009). Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving the dispute between Enforcement and NAPP without further proceedings, NAPP agrees to undertake the obligations set forth in this Agreement.

A. Civil Penalty and Disgorgement

25. Without admitting or denying liability, NAPP shall pay a civil penalty of \$500,000 to the United States Treasury.

26. NAPP shall also disgorge \$2,258,127, plus interest, which represents Enforcement's determination of unjust profits related to NAPP's violations. The disgorgement will be distributed to PJM for pro-rata distribution to the Load Serving Entities that were assigned the costs for the respective demand response programs during the applicable periods.

27. Taking into account NAPP's size and ability to pay, the disgorgement and civil penalty payments shall be made as follows:

1. \$1,150,000, plus interest in disgorgement to PJM within 30 days of the Effective Date;
2. \$804,063.50, plus interest in disgorgement to PJM by December 31, 2011;

3. \$304,063.50, plus interest in disgorgement to PJM by December 31, 2012; and
4. \$500,000 civil penalty to the United States Treasury by December 31, 2012.

Within 10 days of the date of each payment to PJM, NAPP will certify to Enforcement that it has satisfied the payment obligation.

B. Compliance Monitoring

28. NAPP agrees to develop and maintain a compliance program focusing on compliance with PJM's OATT requirements, the OATT requirements of any other regions in which NAPP participates, and applicable Commission regulations. NAPP shall make semi-annual reports to Enforcement for two years following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The remainder of the reports shall be submitted in six month increments thereafter. Each report shall: (1) detail NAPP's activities and compliance in PJM's Demand Response markets; (2) describe any updates of compliance measures instituted and training administered during the preceding period; (3) advise Enforcement if any additional violations have occurred; and (4) include an affidavit executed by an officer of NAPP that the compliance reports are true and accurate. Upon request by staff, NAPP shall provide to staff all documentation supporting its reports. NAPP also agrees that one year after the Effective Date of this Agreement it will hire an independent auditor, to be approved by Enforcement, to conduct a comprehensive audit of NAPP's compliance with PJM's OATT and the Commission's requirements.

IV. TERMS

29. 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 as to NAPP, any affiliated entity, and any successor in interest to NAPP.

30. Commission approval of this Agreement without material modification shall release NAPP and forever bar the Commission from holding NAPP, any affiliated entity, and any successor in interest to NAPP liable for any and all administrative or civil claims arising out of, related to, or connected with Enforcement's determination of violations addressed in this Agreement.

31. Failure to make timely civil penalty payments or disgorgement payments or to comply with the compliance program improvements and monitoring 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 NAPP to additional action under the enforcement and penalty provisions of the FPA.

32. If NAPP does not make the civil penalty payment described above at the times agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

33. The Agreement binds NAPP and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on NAPP, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement. This agreement does not bind NAPP's former Vice President of Operations in his individual capacity, nor does NAPP represent his individual interests.

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

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

36. In connection with the payment of the civil penalty provided for herein, NAPP 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), as amended. NAPP 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.

37. NAPP consents to the use of Enforcement's determinations for the purpose of assessing the factors in any further matter, including the factor of determining

the company's history of violations, that are set forth in the *Revised Policy Statement on Enforcement, Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008), or that may be set forth in any successor policy statement or order. Such use may be in any other proceeding before the Commission or to which the Commission is a party; provided, however, that NAPP does not consent to the use of specific acts set forth in this Agreement as the sole basis for any other proceeding brought by the Commission, nor does NAPP consent to the use of this Agreement by any other party in any other proceeding. This Agreement shall have no precedential effect except as set forth in the first sentence of this paragraph.


38. 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.

39. The undersigned representatives of NAPP affirm 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.

40. The Agreement may be signed in counterparts.


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

Agreed to and accepted:



Norman C. Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

10/5/10
Date



Forouh Afsarjani
Interim Chief Executive Officer
North America Power Partners

10/04/10
Date

Document Content(s)

IN09-6-000.DOC.....1-14

138 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

In re Joseph Polidoro

Docket No. IN09-6-001

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 11, 2012)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Joseph Polidoro. This Order is in the public interest because it resolves Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2011), into whether Mr. Polidoro violated 18 C.F.R. § 1c.2 (2011) through his actions related to the participation of North America Power Partners (NAPP) in PJM Interconnection L.L.C.'s (PJM's) Demand Response markets. Mr. Polidoro has agreed to a two-year ban from participation in PJM's Demand Response markets and to pay a civil penalty of \$50,000.

Background

2. Mr. Polidoro was one of the two founding partners of NAPP, a limited liability company formed under the laws of the State of Delaware in July 2006 to participate in various organized energy markets' Demand Response programs. Mr. Polidoro served as the Senior Vice President of NAPP from 2006 through the fall of 2008. As the Senior Vice President of NAPP, Mr. Polidoro was responsible for multiple operational aspects of NAPP's business and he was responsible (either directly or as a supervisor) for administering and ensuring NAPP's compliance in PJM's Demand Response programs until late 2008. Mr. Polidoro was also responsible for soliciting customers and customizing on-site demand response strategies and meter installation.

3. Mr. Polidoro had significant energy experience and had been involved in the development of PJM's Demand Response programs while previously employed by PJM. At NAPP, Mr. Polidoro was primarily responsible for NAPP's operations and participation as a Curtailment Service Provider (CSP) in PJM's Demand Response programs. The CSP acts as an agent for individual resources by registering the resources into the various Demand Response programs, and offering the resources as available during appropriate periods. In some programs, CSPs must also notify resources when

PJM has ordered a demand reduction, and then must measure that reduction and submit related data to PJM.

4. PJM referred to Enforcement certain issues related to NAPP's participation in PJM Demand Response programs. After reviewing the referral, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2011). The investigation focused on Mr. Polidoro's and NAPP's activities in PJM's Synchronized Reserve Market, Interruptible Load for Reliability (ILR) Program, and the Interchange Energy Market in 2007-2009.

5. Enforcement concluded that NAPP violated sections 1.7.4(a) and (d), 1.7.20(a), 1.8.2, and 3.3A.5(c) of Attachment K of PJM's OATT, sections A(2), (3) and (7) and provision I of Attachment DD-1 of PJM's OATT and 18 C.F.R. § 1c.2 (2009). On October 28, 2010, in an *Order Approving Stipulation and Consent Agreement*, 133 FERC ¶ 61,089 (2010 NAPP Settlement), the Commission resolved the investigation into NAPP's Demand Response activities in PJM. Under the 2010 NAPP Settlement, NAPP agreed to pay a civil penalty of \$500,000, disgorge \$2,258,127, plus interest, in unjust profits and undertake compliance monitoring.

Violations

A. Synchronized Reserve Market

6. PJM's Synchronized Reserve Market is an hourly ancillary services market that complements PJM's Interchange Energy Market by allowing PJM to respond to sudden changes and serve load immediately in the event of a system contingency. Demand Response resources must be able to reduce demand and respond to sudden deviations in system load and anticipated generation at the request of PJM within ten minutes.

7. As a CSP participating in PJM's Synchronized Reserve Market during 2007 and 2008, Mr. Polidoro, on behalf of NAPP, submitted to PJM offers for its registered resources to reduce their demand in a given hour. In this market, if the offers were accepted, and PJM called a Synchronized Reserve Event, the CSP was required to notify the resource that it was required to reduce its demand.

8. From 2007 to July 2008, Mr. Polidoro, on behalf of NAPP, registered resources for PJM's Synchronized Reserve Market and (either directly or through employees under his supervision) submitted offers for NAPP's resources into the Synchronized Reserve Market at times when the resources had reported to NAPP they were unavailable to respond to a Synchronized Reserve Event. Additionally, Mr. Polidoro offered a resource into the Synchronized Reserve Market after he knew the resource had ended its contractual relationship with NAPP, and therefore was not prepared to respond to a Synchronized Reserve Event.

9. Between March 2007 and March 2008, PJM called nine separate Synchronized Reserve Events lasting more than ten minutes, in which NAPP's resources were offered and had cleared in the market. Mr. Polidoro personally received messages from PJM regarding the Synchronized Reserve Events, but failed to notify NAPP's resources of any of the nine events. Therefore, all of NAPP's resources failed to respond. After each event, Mr. Polidoro, on behalf of NAPP, failed to submit meter data for each resource to PJM demonstrating the resource's reduction in demand and therefore compliance with the event.

10. Enforcement determined that Mr. Polidoro was responsible for NAPP's violations of section 1.7.4(d) of Attachment K of PJM's OATT, because he personally submitted and, in some cases, directed the submission of offers on behalf of resources at times when he knew such resources were unavailable to respond to Synchronized Reserve Events. Enforcement also determined that Mr. Polidoro was responsible for NAPP's failure to facilitate its resources' response to Synchronized Reserve Events, in violation of sections 1.7.4(a) and section 1.8.2 of Attachment K of PJM's OATT. Enforcement further determined that Mr. Polidoro was responsible for NAPP's failure to submit meter data to PJM within 24 hours after a Synchronized Reserve Event, in violation of section 1.7.4(d) of Attachment K of PJM's OATT. In sum, Enforcement determined that Mr. Polidoro's actions and failure to act on behalf of NAPP in connection with the Synchronized Reserve Market constitute a fraudulent scheme or artifice committed with scienter in connection with a jurisdictional transaction in violation of 18 C.F.R. § 1c.2 (2011).

11. Enforcement determined that NAPP received unjust profits of \$334,116 related to Mr. Polidoro's actions and failure to act on behalf of NAPP in connection with the Synchronized Reserve Market. NAPP has begun disgorging these profits per the schedule in the 2010 NAPP Settlement with Enforcement.

B. ILR Program

12. ILR is a Demand Response capacity product that is offered on an annual basis and used by PJM in emergency circumstances during times of peak demand to maintain reliability. CSPs, such as NAPP, register resources once per year to participate for that ILR planning season. As part of the registration process, CSPs must submit Peak Load Contribution (PLC) data to PJM, which they obtain from the end-users or the electric distribution companies (EDCs). PJM forwards the PLC data submitted for each resource to the relevant EDC for verification and, when necessary, adjusts the PLC data to ensure accuracy. PJM uses PLC data to represent the peak demand of participating resources and to allocate payment to participating ILR resources based upon the reduction from such peak demand for the guaranteed-load-drop-based resources.

13. Enforcement determined that for the 2008/2009 ILR planning season, NAPP, through the actions of Mr. Polidoro as the Senior Vice President of NAPP and operational employees under his supervision, incorrectly registered numerous resources

for the 2008/2009 ILR planning season. Enforcement determined that NAPP employees under the supervision of Mr. Polidoro registered 101 resources before obtaining their authorization or verification of their willingness and ability to participate in that year's program prior to the ILR registration deadline.

14. Enforcement determined that the registration of 101 resources in the 2008/2009 ILR program without authorizations violated sections A(2), (3) and (7) of Attachment DD-1 of PJM's OATT. Enforcement also determined that Mr. Polidoro's instructions to NAPP employees to register resources he knew had not provided authorization, or his knowledge of the wrongful registrations and failure to correct them was reckless in violation of 18 C.F.R. § 1c.2 (2011), because it was an extreme departure from the standards of ordinary care not to engage in appropriate oversight or supervision of the ILR registration process.

15. Enforcement determined that NAPP received unjust profits of \$1,924,011 related to its unauthorized registrations of ILR resources. NAPP has begun disgorging these profits per the schedule in the 2010 NAPP Settlement with Enforcement.

Stipulation and Consent

16. Enforcement staff and Mr. Polidoro resolved Enforcement's investigation by means of the attached Agreement. Mr. Polidoro stipulates to the facts, but neither admits nor denies the violations.

17. The Agreement requires Mr. Polidoro to pay a civil penalty of \$50,000 to the United States Treasury. The amount shall be paid according to the payment schedule outlined in the Agreement.

18. Per the Agreement made effective upon issuance of this order, for a period of two years after the date of this order, neither Mr. Polidoro nor any person or entity acting on his behalf, nor any entity, partnership, company, or affiliate in which he has a financial interest, shall participate in any PJM Demand Response activities. In addition, for a period of two years after the date of this order, Mr. Polidoro will not manage, operate, or provide consulting services related to any PJM Demand Response activities to any entity, partnership, company or its affiliates, agents, representatives, attorneys, officers, directors and employees.

Determination of the Appropriate Sanctions and Remedies

19. In determining the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Enforcement.¹ Specifically, staff considered the seriousness of Mr. Polidoro's actions and failure to act on behalf of NAPP, and that the behavior violated PJM's OATT and amounted to fraudulent conduct in violation of 18 C.F.R. § 1c.2 (2011). Staff also considered the following factors: Mr. Polidoro's violations were serious and were committed without regard for compliance with the Commission's regulations; Mr. Polidoro did not promptly enact remedial measures after being notified by PJM and Enforcement staff of numerous compliance issues identified in the investigation; Mr. Polidoro's actions and failure to act had the potential to cause harm, even though NAPP's violations in this particular matter did not affect market prices or cause actual harm to system reliability; and Mr. Polidoro's less than satisfactory cooperation at the beginning of the investigation.

20. Enforcement also considered Mr. Polidoro's limited financial resources coupled with his agreement to not participate in any PJM Demand Response activities for two years. Absent consideration of Mr. Polidoro's financial circumstances, Enforcement would have sought a significantly higher penalty for similar conduct by an individual.

21. The Commission concludes that the penalties and other remedies set forth in the Agreement are a fair and equitable resolution of this matter and are in the public interest, as they reflect the nature and seriousness of Mr. Polidoro's conduct, and recognize the considerations as stated above and in the attached Agreement. We also conclude that the payment schedule outlined in the Agreement is appropriate given Mr. Polidoro's ability to pay.

¹ 123 FERC ¶ 61,156 (2008). While the Penalty Guidelines do not apply to natural persons, the Commission will look to these Guidelines for guidance in setting penalties. (See § 1A1.1, *Application Note 1* of the Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216 (2010)).

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

Joseph Polidoro

Docket No. IN09-6-001

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Mr. Joseph Polidoro enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2011). Mr. Polidoro violated 18 C.F.R. § 1c.2 (2011) through his actions related to the participation of North America Power Partners (NAPP) in PJM Interconnection L.L.C.'s (PJM's) Demand Response markets. Mr. Polidoro agrees to a two-year ban from participation in PJM's Demand Response markets and to pay a civil penalty of \$50,000.

II. STIPULATIONS

Enforcement and Mr. Polidoro hereby stipulate and agree to the following:

A. Background

2. Mr. Polidoro was one of the two founding partners of NAPP, with a 40% ownership share. NAPP is a limited liability company formed under the laws of the State of Delaware in July 2006 to participate in various organized energy markets' Demand Response programs. Mr. Polidoro served as the Senior Vice President from 2006 through the fall of 2008. In late 2007 and early 2008, NAPP's scope of operations significantly increased and it opened a second larger office with a control center and hired 8 or 9 additional employees. As the Senior Vice President of NAPP, Mr. Polidoro was responsible for multiple operational aspects of NAPP's business and he was responsible (either directly or as a supervisor) for administering and ensuring NAPP's compliance in PJM's Demand Response programs until late 2008. Mr. Polidoro was also responsible for soliciting customers and customizing on-site demand response strategies and meter installation, as well as speaking at conferences.

3. Mr. Polidoro had significant energy experience and had been involved in the development of PJM's Demand Response programs while previously employed by PJM. At NAPP, Mr. Polidoro was primarily responsible for NAPP's operations and participation as a Curtailment Service Provider (CSP) in PJM's Demand Response programs. The CSP acts as an agent for individual resources by registering the resources into the various Demand Response programs, offering the resources as available during

appropriate periods, notifying the resources when PJM has ordered a demand reduction, and then submitting reduction data to PJM.

4. Following a March 2008 referral from PJM, Enforcement conducted an investigation pursuant to Part 1b of the Commission's regulations into the activities of Mr. Polidoro and NAPP in PJM's Synchronized Reserve Market, Interruptible Load for Reliability (ILR) Program, and the Interchange Energy Market in 2007-2009.

5. Shortly after the opening of the investigation in March 2008, NAPP commenced litigation in state court against Mr. Polidoro as the Senior Vice President related to the partners' control of and activities at NAPP alleging that he had violated the partnership agreement. The state court appointed an interim CEO, who instituted a review of NAPP's operations and in December 2008, terminated the employment of Mr. Polidoro, which was confirmed by the court.

6. On October 28, 2010, in an *Order Approving Stipulation and Consent Agreement*, 133 FERC ¶ 61,089, (2010 NAPP Settlement), the Commission resolved the investigation into NAPP's Demand Response activities in PJM.

B. Violations

1. Synchronized Reserve Market

7. PJM's Synchronized Reserve Market is an hourly ancillary services market that complements PJM's Interchange Energy Market by allowing PJM to respond to sudden changes and serve load immediately in the event of a system contingency. Demand Response resources must be able to reduce demand and respond to sudden deviations in system load and anticipated generation at the request of PJM within 10 minutes.

8. As a CSP participating in PJM's Synchronized Reserve Market during 2007 and 2008, Mr. Polidoro, on behalf of NAPP, submitted to PJM offers for its registered resources to reduce their demand in a given hour. In this market, if the offers were accepted, and PJM called a Synchronized Reserve Event, the CSP was required to notify the resource that it was required to reduce its demand. Resources that cleared in the market were paid for their availability whether or not an event was called. PJM provided additional compensation if a resource responded to a Synchronized Reserve Event or imposed a limited penalty on resources that failed to comply.

9. From 2007 to July 2008, Mr. Polidoro, on behalf of NAPP, registered resources for PJM's Synchronized Reserve Market and (either directly or through employees under his supervision) submitted offers for NAPP's resources into the Synchronized Reserve Market at times when the resources had reported to NAPP they were unavailable to respond to a Synchronized Reserve Event. For example, one resource notified NAPP it was only available during certain business hours; however, Mr. Polidoro through NAPP

offered it into the Synchronized Reserve Market during evening hours. Additionally, Mr. Polidoro offered a resource into the Synchronized Reserve Market after he knew the resource had ended its contractual relationship with NAPP, and therefore was not prepared to respond to a Synchronized Reserve Event.

10. Between March 2007 and March 2008, PJM called nine separate Synchronized Reserve Events lasting more than 10 minutes, in which NAPP's resources were offered and had cleared in the market. Mr. Polidoro personally received messages from PJM regarding the Synchronized Reserve Events, but failed to notify NAPP's resources of any of the nine events. Therefore, all of NAPP's resources failed to respond to the nine Synchronized Reserve Events. After each event, Mr. Polidoro, on behalf of NAPP, failed to submit meter data for each resource to PJM demonstrating the resource's reduction in demand. Although PJM notified NAPP operational staff under the supervision of Mr. Polidoro of the noncompliance with Synchronized Reserve Events on three occasions, NAPP failed to implement remedial measures until after the third notification. PJM informed Enforcement that these facts led, in part, to PJM's referral to Enforcement.

11. Enforcement determined that Mr. Polidoro was responsible for NAPP's violations of section 1.7.4(d) of Attachment K of PJM's OATT because he personally submitted and, in some cases, directed the submission of offers on behalf of resources at times when he knew such resources were unavailable to respond to Synchronized Reserve Events. Mr. Polidoro also was responsible for NAPP's failure to facilitate its resources' response to Synchronized Reserve Events, in violation of sections 1.7.4(a) and section 1.8.2 of Attachment K of PJM's OATT. Mr. Polidoro also was responsible for NAPP's failure to submit meter data to PJM within 24 hours after a Synchronized Reserve Event, in violation of section 1.7.4(d) of Attachment K of PJM's OATT. In sum, Mr. Polidoro's actions and failure to act on behalf of NAPP in connection with the Synchronized Reserve Market violate 18 C.F.R. § 1c.2 (2011).

12. NAPP received unjust profits of \$334,116 related to Mr. Polidoro's violations and NAPP's participation in the Synchronized Reserve Market. NAPP has begun disgorging these profits per the schedule in its 2010 Settlement with Enforcement.

2. ILR Program

13. ILR is a Demand Response capacity product that is offered on an annual basis and used by PJM in emergency circumstances during times of peak demand to maintain reliability. ILR provides PJM operators with the ability to request load reduction from CSPs during times of generation capacity emergencies and other events. CSPs, such as NAPP, register resources once per year to participate for that ILR planning season. As part of the registration process, CSPs must submit Peak Load Contribution (PLC) data to PJM, which they obtain from the end-users or the electric distribution companies (EDCs). PJM forwards the PLC data submitted for each resource to the relevant EDC for verification and, when necessary, adjusts the PLC data to ensure accuracy. PJM uses

PLC data to represent the peak demand of participating resources and to allocate payment to participating ILR resources based upon the reduction from such peak demand for the guaranteed-load-drop-based resources.

14. Enforcement determined that for the 2008/2009 ILR planning season, NAPP, through the actions of Mr. Polidoro as its Senior Vice President and operational employees under his supervision, incorrectly registered numerous resources by the March 2008 deadline. After the deadline, NAPP disclosed to Enforcement that it may have improperly registered several resources for the 2008/2009 ILR planning season. Following a review of NAPP's documents, Enforcement determined that NAPP employees under the supervision of Mr. Polidoro registered 101 resources before obtaining their authorization or verification of their willingness and ability to participate in that year's program prior to the registration deadline. Of these resources, Enforcement determined that all but 27 subsequently agreed to participate in the 2008/2009 ILR planning season. No ILR events were called during the 2008/2009 ILR season, therefore there were no impacts on system reliability.

15. Enforcement determined that the registration of 101 resources in the 2008/2009 ILR program without authorizations violated sections A(2), (3) and (7) of Attachment DD-1 of PJM's OATT. Mr. Polidoro either instructed NAPP employees to register resources he knew had not provided authorization, or knew of the wrongful registrations and failed to correct them. Such conduct was reckless because it was an extreme departure from the standards of ordinary care not to engage in significant oversight or supervision of the ILR registration process given the importance of the program. Moreover, Mr. Polidoro understood that the ILR program had historically provided NAPP a significantly large percentage of its earnings and as the Vice President, he had an obligation to verify that the information submitted to PJM regarding the 2008/2009 ILR registration was correct. In sum, Mr. Polidoro's actions and failure to act on behalf of NAPP in connection with the ILR Program violate 18 C.F.R. § 1c.2 (2011).

16. NAPP received unjust profits of \$1,924,011 related to its improper 2008/2009 ILR registrations. NAPP has begun disgorging these profits per the schedule in its 2010 Settlement with Enforcement.

C. Additional Factors

17. Enforcement determined that Mr. Polidoro's violations were serious and were committed without regard for compliance with the Commission's regulations. Mr. Polidoro did not promptly enact remedial measures after being notified by PJM and staff of numerous compliance issues identified in the investigation.

18. Enforcement finds that while no actual harm occurred to PJM's Demand Response market or the reliability of the system, Mr. Polidoro's actions and failure to act could have compromised the reliability of the PJM electric grid and had the potential to

artificially lower Synchronized Reserve Market prices such that those prices would not accurately reflect the cost of availability of actual responses. In addition, Mr. Polidoro's actions led to unjust profits earned by NAPP.

19. In the early stages of the investigation, Mr. Polidoro's cooperation with Enforcement's investigation was less than satisfactory. Mr. Polidoro's cooperation improved as the investigation progressed.

20. Significant in Enforcement's determination of the appropriate remedies and sanctions to settle this matter was consideration of Mr. Polidoro's limited financial resources coupled with his agreement to not participate in any PJM Demand Response activities for two years. Enforcement believes the penalty and ban represent the seriousness of Mr. Polidoro's violations and demonstrate that the Commission will take appropriate actions. Enforcement might seek a significantly higher penalty for similar conduct by an individual in different financial circumstances.

III. REMEDIES AND SANCTIONS

21. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, Mr. Polidoro agrees with the facts as stipulated, but neither admits nor denies Enforcement's determinations that: (1) his actions and failure to act in the Synchronized Reserve Market; and (2) his actions relating to the improper registration of 101 resources for the 2008/2009 ILR program violate 18 C.F.R. § 1c.2 (2011). Nonetheless, in the interest of resolving this matter, Mr. Polidoro agrees to undertake the obligations set forth in the following paragraphs.

A. Civil Penalty

22. Mr. Polidoro shall pay a civil penalty of \$50,000 to the United States Treasury.

23. Taking into account Mr. Polidoro's financial situation and ability to pay, the civil penalty payments shall be made as follows:

- a. \$20,000 civil penalty to FERC for the U.S. Treasury within ten days of the issuance of an order approving this settlement (herein, the Effective Date);
- b. \$15,000 to the U.S. Treasury one year after the Effective Date; and
- c. \$15,000 to the U.S. Treasury two years after the Effective Date.

Within ten days of the date of each payment to the U.S. Treasury, Mr. Polidoro will certify to Enforcement that he has satisfied the payment obligation.

B. Ban from Participation in PJM's Demand Response Market

24. For a period of two years after the date of an order approving this Agreement, neither Mr. Polidoro nor any person or entity acting on his behalf, nor any entity, partnership, company, or affiliate in which he has a financial interest, shall participate in any PJM Demand Response activities. Nor will Mr. Polidoro manage, operate, or provide consulting services related to any PJM Demand Response activities to any entity, partnership, company or its affiliates, agents, representatives, attorneys, officers, directors and employees.

IV. TERMS

25. 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 as to Mr. Polidoro, any affiliated entity, and any successor in interest to NAPP.

26. Commission approval of this Agreement without material modification shall release Mr. Polidoro and forever bar the Commission from holding Mr. Polidoro, any affiliated entity, and any successor in interest to NAPP liable for any and all administrative or civil claims arising out of, related to, or connected with the violations addressed in this Agreement.

27. Failure to make timely civil penalty payments or to comply with the two-year ban from participation in PJM's Demand Response market, 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 Mr. Polidoro to additional action under the enforcement and penalty provisions of the FPA.

28. If Mr. Polidoro does not make the civil penalty payments described above at the times agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

29. This Agreement binds Mr. Polidoro and his agents, successors, and assignees. This Agreement does not create any additional or independent obligations on Mr. Polidoro, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

30. The signatories to this Agreement agree that they enter into this 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 Mr. Polidoro has been made to induce the signatories or any other party to enter into this Agreement.

31. Unless the Commission issues an order approving this Agreement in its entirety and without material modification, this Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Mr. Polidoro shall be bound by any provision or term of this Agreement, unless otherwise agreed to in writing by Enforcement and Mr. Polidoro.

32. In connection with the payment of the civil penalty provided for herein, Mr. Polidoro agrees that the Commission's order approving this 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), as amended. Mr. Polidoro waives findings of fact and conclusions of law, 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.

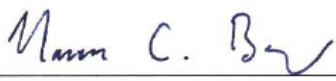
33. Each of the undersigned warrants that he or she is an authorized representative of the entity or individual designated, is authorized to bind such entity or individual and accepts this Agreement on the entity's or individual's behalf.

34. Mr. Polidoro affirms that he has read this Agreement, that all of 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.

35. This Agreement may be signed in counterparts.

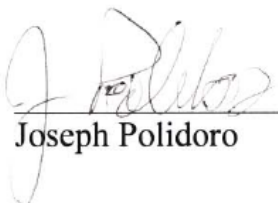
36. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



Norman C. Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

12.20.11
Date



Joseph Polidoro

12-6-2011
Date

Bio
Stephen Angle

Stephen Angle is a partner in the Washington office of Vinson & Elkins LLP. His practice is focused on regulatory issues for electric utilities, electric power marketers, and transmission providers. In conjunction with this work, he periodically assists clients with Enforcement investigations and counsels on compliance plans. Mr. Angle's thirty-seven years of legal practice include a 14-year stint as Assistant General Counsel for Hydroelectric and Electric Litigation at the FERC.

Robert S. (Bob) Fleishman

Bob Fleishman, Of Counsel at Covington & Burling LLP in Washington DC, focuses on energy, white collar defense, and ADR matters for a range of clients. Before joining Covington in 2003, he served as General Counsel and Vice-President of Corporate Affairs and Legislative and Regulatory Policy for Constellation Energy Group. From 1979-1985, Bob worked at FERC in various capacities, including in the Division of Enforcement where he investigated and litigated various matters.

Bob is Chairman of the Committee on Compliance and Enforcement for the Energy Bar Association (EBA.) He represents and advises clients in connection with FERC and CFTC non-public enforcement investigations and FERC Enforcement Audits, and regularly advises on energy compliance and training matters.

Bob is Editor-in-Chief of the Energy Law Journal and was President of the EBA in 1999-2000. He graduated from Boston University School of Law in 1978 and received his undergraduate degree, *cum laude*, from Georgetown University in 1974.

Geof Hobday

Geof Hobday is an attorney-advisor in FERC's Office of Enforcement-Division of Investigations. Prior to joining FERC in 2009, Geof worked for fifteen years in private practice as an energy regulatory lawyer at Hogan & Hartson and Long Aldridge & Norman. While in private practice, Geof concentrated on state and federal regulation of electric utilities with an emphasis on transmission and market-power issues.

Geof is a 1989 magna cum laude graduate of Dartmouth College with a double major in History and Government, and a 1994 graduate of Georgetown University Law Center where he was a member of The Georgetown Law Journal.

Jacquelyn Broughton Huges, Esquire

Jacqui is the Assistant General Counsel - Markets with PJM Interconnection, L.L.C., where her responsibilities include serving as the lead attorney responsible for regulatory matters relating to the PJM energy markets and as the Assistant Secretary to the PJM Board of Managers. Prior to joining PJM, Jacqui served as the Associate Corporate Counsel for New Jersey-American Water. Jacqui began her career in private practice as an Associate with the law firms of Clark, Ladner, Fortenbaugh & Young and Schnader Harrison Segal & Lewis; she was also a Member at Cozen O'Connor. She also served as a Law Clerk to the Honorable David A. Scholl, Chief Judge for the U.S. Bankruptcy Court for the Eastern District of Pennsylvania.

Jacqui is a graduate of Wellesley College, earning her Bachelor of Arts degree as a double major in Political Science and Black Studies, with honors. She received her Juris Doctorate from the Duke University School of Law.

Jacqui is a member of the National Bar Association, Energy Bar Association, Corporate Counsel Women of Color, and formerly served as the Treasurer of the Barristers' Association of Philadelphia, Inc. and on the Young Lawyers Executive Committee of the Philadelphia Bar Association.