

170 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Exelon Generation Company, LLC

Docket No. IN20-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 10, 2020)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Exelon Generation Company, LLC (Exelon). 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 (2019), into whether Exelon failed to correct erroneous data transmitted to ISO New England Inc. (ISO-NE) regarding the type and quantity of fuel used to start up the company's Mystic 7 generating unit.
2. Exelon agrees to pay a civil penalty of \$32,500 and to pay disgorgement of \$101,156, plus interest totaling \$15,324.45. Exelon stipulates to the facts set forth in Section II of the Agreement and admits the alleged violations.

I. Facts

3. Exelon is the owner and operator of the Mystic 7 generating unit, a dual fuel steam turbine located outside of Boston, Massachusetts. Exelon is a "Seller" under 18 C.F.R. § 35.41 because it has authority from the Commission to sell electricity at market-based rates. Mystic 7 is capable of operating on either natural gas or No. 6 fuel oil, and requires a blend of both to start up.
4. Beginning in July 2016, Exelon registered the plant's primary fuel as oil with ISO- NE because of Exelon's inability to reliably source natural gas for Mystic 7. When Mystic 7 was offered into the market with oil as its primary fuel source, the plant was uneconomic during much of the year. As a result, when Mystic 7 was dispatched by ISO- NE, it was often for reliability purposes.
5. Because Mystic 7 is a capacity resource, the ISO-NE tariff requires Exelon to submit a supply offer on Mystic 7's behalf into the ISO-NE market every day. Included in the information submitted as a part of that offer is a representation regarding the type and quantity of fuel needed to start up the plant. Beginning in December 2014,

Mystic 7's supply offers indicated that the generator exclusively used No. 6 fuel oil to start up. This information, which was incorrect since the plant also required natural gas to start, was the result of an error in an internal spreadsheet. This inaccuracy caused Exelon to be overcompensated by ISO-NE in select circumstances—namely, when Mystic 7 had not been dispatched economically, but then was called upon by ISO-NE to operate for reliability purposes. In these circumstances, ISO-NE compensated Exelon based in part on Mystic 7's stated operating costs, including the erroneous cost of start-up fuel.

6. This error went unnoticed until August 2016, when the ISO-NE Internal Market Monitor (IMM) began an investigation of Mystic 7's fuel use. Enforcement subsequently opened an investigation upon receiving a referral from the IMM, gathered evidence via data requests, and took testimony that confirmed Exelon had misreported both the type and quantity of Mystic 7's start-up fuel. Beginning with the IMM's inquiry in August 2016, Exelon took steps to correct its start-up data and ultimately fully corrected the information to ISO-NE's satisfaction on May 17, 2019.

7. Exelon cooperated fully with Enforcement during the investigation. Additionally, Exelon voluntarily adopted substantial new internal controls and compliance measures to ensure the problem does not reoccur at Mystic 7 or any of the other generators in the company's fleet.

II. Violations

8. Enforcement determined that Exelon violated 18 C.F.R. §§ 35.41(a) and (b) and ISO-NE Tariff Market Rule 1 § III.1.7.20(b) and Tariff § III.13.6.1.1.2.

9. Section 35.41(a) provides, in relevant part, that “[w]here a Seller participates in a Commission-approved organized market, Seller must operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable market.”

10. Two provisions of the ISO-NE tariff governed Exelon's above-described conduct. First, Market Rule 1 § III.1.7.20(b) requires that “Market Participants selling from Resources within the New England Control Area shall . . . continuously maintain all Offer Data concurrent with on-line operating information.” Second, Tariff § III.13.6.1.1.2 requires that “Day-Ahead Energy Market and Real-Time Energy Market offers . . . must reflect the then-known unit-specific operating characteristics” of a resource. However, Exelon failed to maintain Mystic 7's Offer Data with the generator's known operating information and characteristics in violation of these two provisions, and, thus, also in violation of Section 35.41(a).

11. Section 35.41(b) provides a “Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences.” Staff did not conclude that Exelon purposefully submitted false data to ISO-NE and accepted the company’s representation that the errors were inadvertent. However, Exelon did not have sufficient internal controls to prevent the transmission of incorrect start-up data

III. Stipulation and Consent Agreement

12. Enforcement and Exelon have resolved Enforcement’s investigation by means of the attached Agreement.

13. Exelon stipulates to the facts set forth in Section II of the Agreement and admits the alleged violations set forth in Section III of the Agreement.

14. Exelon agrees to pay a civil penalty of \$32,500 to the United States Treasury. Exelon agrees to pay disgorgement within ten days of the Effective Date of this Agreement to ISO-NE in the amount of \$101,756, plus \$15,324.45 in interest, calculated pursuant to section 35.19a of the Commission’s regulations, 18 C.F.R. § 35.19a (2019).

15. Exelon agrees to submit an annual compliance monitoring report, in accordance with the terms of the Agreement, with the requirement of a third annual report at Enforcement’s option.

IV. Determination of the Appropriate Sanctions and Remedies

16. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines, including the fact that Exelon cooperated with Enforcement during the investigation and voluntarily adopted new internal controls and compliance measures.¹

17. 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 recognized the specific considerations stated above and in the Agreement.

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

18. The Commission also concludes that Exelon's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.²

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

20. The Commission directs ISO-NE to allocate the disgorged funds in its discretion for the benefit of ISO-NE customers and upon approval by Enforcement of ISO-NE's plan for doing so.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

² *Id.*

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Exelon Generation Company, LLC

Docket No. IN20-3-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Exelon Generation Company, LLC (Exelon) 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 (2019), into whether Exelon submitted erroneous data to ISO New England Inc. (ISO-NE) regarding the type and quantity of fuel used to start up the company's Mystic 7 generating unit.
2. Exelon stipulates to the facts in Section II and admits the alleged violations in Section III. Exelon agrees to: (a) pay a civil penalty of \$32,500 to the United States Treasury; (b) disgorge \$101,756, plus \$15,324.45 in interest, to ISO New England Inc. (ISO-NE); and (c) submit to a two year annual compliance reporting requirement.

II. STIPULATIONS

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

3. Exelon is the owner and operator of the Mystic 7 generating unit, a dual fuel steam turbine located outside of Boston, Massachusetts. Exelon is a "Seller" under 18 C.F.R. § 35.41 because it has authority from the Commission to sell electricity at market-based rates. Mystic 7 is capable of operating on either natural gas or No. 6 fuel oil, and requires a blend of both to start up.
4. Beginning in July 2016, Exelon registered the plant's primary fuel as oil with ISO-NE because of Exelon's inability to reliably source natural gas for Mystic 7. When Mystic 7 was offered into the market with oil as its primary fuel source, the plant was uneconomic during much of the year. As a result, when Mystic 7 was dispatched by ISO-NE, it was often for reliability purposes.

5. Because Mystic 7 is a capacity resource, the ISO-NE tariff requires Exelon to submit a supply offer on Mystic 7's behalf into the ISO-NE market every day. Included in the information submitted as a part of that offer is a representation regarding the type and quantity of fuel needed to start up the plant. Beginning in December 2014, Mystic 7's supply offers indicated that the generator exclusively used No. 6 fuel oil to

start up. This information, which was incorrect since the plant also required natural gas to start, was the result of an error in an internal spreadsheet. This inaccuracy caused Exelon to be overcompensated by ISO-NE in select circumstances—namely, when Mystic 7 had not been dispatched economically, but then was called upon by ISO-NE to operate for reliability purposes. In these circumstances, ISO-NE compensated Exelon based in part on Mystic 7’s stated operating costs, including the erroneous cost of start-up fuel.

6. This error went unnoticed until August 2016, when the ISO-NE Internal Market Monitor (IMM) began an investigation of Mystic 7’s fuel use. Enforcement subsequently opened an investigation upon receiving a referral from the IMM, gathered evidence via data requests, and took testimony that confirmed Exelon had misreported both the type and quantity of Mystic 7’s start-up fuel. Beginning with the IMM’s inquiry in August 2016, Exelon took steps to correct its start-up data and ultimately fully corrected the information to ISO-NE’s satisfaction on May 17, 2019. Additionally, Exelon voluntarily adopted substantial new internal controls and compliance measures to ensure the problem does not reoccur at Mystic 7 or any of the other generators in the company’s fleet.

7. Exelon cooperated fully with Enforcement during the investigation. Among other things, Exelon worked with staff and the IMM to determine how the corrected values would have affected the company’s compensation from December 2014 through August 2016.

III. VIOLATIONS

8. Enforcement determined that Exelon violated 18 C.F.R. §§ 35.41(a) and (b) and ISO-NE Tariff Market Rule 1 § III.1.7.20(b) and Tariff § III.13.6.1.1.2.

9. Section 35.41(a) provides, in relevant part, that “[w]here a Seller participates in a Commission-approved organized market, Seller must operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable market.”

10. Two provisions of the ISO-NE tariff were implicated by Exelon’s conduct. First, Market Rule 1 § III.1.7.20(b) requires that “Market Participants selling from Resources within the New England Control Area shall . . . continuously maintain all Offer Data concurrent with on-line operating information.” Second, Tariff § III.13.6.1.1.2 requires that “Day-Ahead Energy Market and Real-Time Energy Market offers . . . must reflect the then-known unit-specific operating characteristics” of a resource. However, Exelon failed to maintain Mystic 7’s Offer Data with the generator’s known operating information and characteristics in violation of these two provisions, and, thus, also in violation of Section 35.41(a).

11. Section 35.41(b) provides a “Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences.” Staff did not conclude that Exelon purposefully submitted false data to ISO-NE and accepted the company’s representation that the errors were inadvertent. However, Exelon did not have sufficient internal controls to prevent the transmission of incorrect start-up data.

12. Staff determined that Exelon was overpaid \$101,756 by ISO-NE as a result of receiving uplift payments designed to cover its incorrectly stated operating costs.

IV. REMEDIES AND SANCTIONS

13. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to Exelon’s conduct evaluated in Enforcement’s Investigation, Exelon agrees with the facts as stipulated in Section II of this Agreement and admits the violations described in Section III of this Agreement. Exelon further agrees to undertake obligations set forth in the following paragraphs.

A. Civil Penalty

14. Exelon agrees to pay a civil penalty of \$32,500 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

B. Disgorgement

15. Exelon agrees to pay disgorgement within ten days of the Effective Date of this Agreement to ISO-NE in the amount of \$101,756, plus \$15,324.45 in interest, calculated pursuant to section 35.19a of the Commission’s regulations, 18 C.F.R. § 35.19a (2019).

C. Compliance Monitoring

16. Exelon shall make 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.

17. After the receipt of the second annual report, Enforcement may, at its sole discretion, require Exelon to submit reports for one additional year.

18. Each compliance monitoring report shall: (1) identify any known violations regarding Exelon's transmission of incorrect unit-specific operating characteristic information to ISO-NE or any other FERC jurisdictional market, including a description of the nature of the violation and what steps were taken to rectify the situation; and (2) describe any additional compliance measures and procedures related to the above-described conduct adopted after the Effective Date of this Agreement.

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

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

V. TERMS

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

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

23. Failure by Exelon 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 Exelon to additional action under the enforcement provisions of the FPA.

24. If Exelon 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.

25. This Agreement binds Exelon and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on Exelon, or any

affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

26. 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 Exelon has been made to induce the signatories or any other party to enter into the Agreement.

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

28. In connection with the civil penalty provided for herein, Exelon 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). Exelon 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.

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

30. 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.

31. The undersigned representative of Exelon 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.

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

Agreed to and Accepted:

Larry R. Parkinson
Larry R. Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: Dec. 19, 2019

David O. Dardis
David O. Dardis
Senior Vice President
Exelon Generation Company, LLC

Date: 18 December 2019