

170 FERC ¶ 61,007  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Emera Energy Incorporated

Docket No. IN20-2-000

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 Emera Energy Incorporated (Emera Energy). 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 Emera Energy supported Fuel Price Adjustment Requests (FPA Requests) using fuel costs that did not reflect an arm's length fuel purchase transaction contrary to ISO-NE Tariff Market Rule 1, Appendix A § III.A.3.4(b).

2. Emera Energy agrees to pay a civil penalty of \$5,000 and to pay disgorgement of \$14,120, plus interest totaling \$2,002.19. Emera Energy stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations.

**I. Facts**

3. Emera Energy was, during the time at issue, an affiliate of Rumford Power Inc., the operator of a 265 MW combined cycle natural gas-fired power plant (Rumford) located in Rumford, Maine. Emera ended this affiliation on March 29, 2019. Emera Energy is also an affiliate of Emera Energy Services Subsidiary No. 6 LLC, who served as the lead market participant for Rumford Power Inc. Rumford is interconnected solely with the Portland Natural Gas Transmission System (PNGTS). PNGTS is a lightly-traded trading point and, as a result, there are sometimes no offers to sell natural gas posted to the Intercontinental Exchange (ICE) for that location.

4. The ISO-NE Tariff allows market participants to make a FPA Request "whenever the Market Participant's expected price to procure fuel . . . will be greater than that used by the Internal Market Monitor [(IMM)] in calculating the Reference Levels for the Supply Offer." See ISO-NE Tariff, Market Rule 1, Appendix A § III.A.3.4(a). A market participant submitting a FPA Request must submit documentation or analysis to the IMM substantiating this belief. *Id* at § III.A.3.4(a)(ii). This documentation or analysis may

include one of three forms specifically enumerated in the Tariff: 1) “an invoice or purchase confirmation,” 2) “a quote from a named supplier,” or 3) “a price from a publicly available trading platform.” *Id.* § III.A.3.4(b). The ISO-NE Tariff instructs market participants to consult the IMM when encountering problems with the FPA Request Process. *Id.* § III.A.3.1. Emera Energy relied primarily on the third form of documentation or analysis, screenshots of prices from publicly available trading platforms, namely ICE, to substantiate its Rumford-related FPA Requests.

5. On November 21, 2016, Emera Energy self-reported to Enforcement that it had substantiated sixteen FPA Requests for Rumford during the period August 2015 through November 2016 with an ICE screenshot displaying an offer to sell natural gas posted by Emera Energy. Because of illiquidity at PNGTS, Emera Energy was sometimes unable to provide a price from a publicly available trading platform, namely a screenshot of prices on ICE, supporting the company’s belief that the cost of natural gas for Rumford would be higher than the gas price used by the IMM for its Reference Level. Where no offers were available on ICE at PNGTS, Emera Energy personnel responsible for submitting FPA Requests would request that Emera Energy’s gas desk post to ICE an offer to sell natural gas at PNGTS. The purpose of this posting was to provide the type of documentation and analysis envisioned by Appendix A § III.A.3.4 that Emera Energy could then submit to the IMM as part of a FPA Request.

6. On or about November 9, 2016, following a regular FERC compliance training session for Emera Energy personnel, an Emera Energy employee approached one of Emera Energy’s in-house counsel regarding the submission by Emera Energy of FPA Requests to the IMM for Rumford. The company reviewed its records and the process in question and submitted the November 21, 2016 self-report. Emera Energy ceased the above-described practice contemporaneous with its internal review. Emera Energy also promptly consulted with the IMM regarding the practice.

7. Emera Energy fully cooperated with Enforcement during the investigation.

## **II. Violations**

8. Enforcement determined that Emera Energy violated 18 C.F.R. § 35.41(a) and ISO-NE Tariff Market Rule 1, Appendix A § III.A.3.4(b). That provision of the ISO-NE Tariff requires that evidence supporting a FPA Request must reflect “an arm’s length transaction.” We have consistently held that affiliated entities are not capable of engaging in “arm’s length transactions” because there is insufficient assurance that an agreed upon price will genuinely reflect market forces. Thus, the indirect quote of a price by Emera Energy’s gas desk to Emera Energy’s power desk did not reflect an “arm’s length transaction.”

### **III. Stipulation and Consent Agreement**

9. Enforcement and Emera Energy have resolved Enforcement's investigation by means of the attached Agreement.
10. Emera Energy 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.
11. Emera Energy agrees to pay a civil penalty of \$5,000 to the United States Treasury. Emera Energy agrees to pay disgorgement of \$14,120 and \$2,002.19 interest to ISO-NE.

### **IV. Determination of the Appropriate Sanctions and Remedies**

12. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines, including the fact that Emera Energy self-reported the violation and cooperated with Enforcement during the investigation.<sup>1</sup>
13. 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.
14. The Commission also concludes that Emera Energy's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.<sup>2</sup> In particular, the Commission highlights and credits Emera Energy's self-reporting. As we explained in the Revised Policy Statement on Penalty Guidelines, "[s]elf-reports . . . add significant value to overall industry compliance, and the Commission will continue to place great importance on self-reporting."<sup>3</sup> Here, we have placed significant emphasis on Emera Energy's self-reporting of the violation, and note that the penalty for Emera Energy's conduct could have been significantly higher absent the company's timely reporting and cooperation with Enforcement's investigation.
15. The Commission directs Emera Energy to make the civil penalty and disgorgement payments as required by the Agreement within ten days of the Effective Date of the Agreement.

---

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

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

16. The Commission directs ISO-NE to allocate the disgorged funds in its discretion for the benefit of ISO-NE customers.

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.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Emera Energy Incorporated

Docket No. IN20-2-000

**STIPULATION AND CONSENT AGREEMENT**

**I. INTRODUCTION**

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Emera Energy Incorporated (Emera Energy) 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), following a self-report by Emera Energy, into whether Emera Energy supported Fuel Price Adjustment Requests (FPA Requests) using fuel costs that did not reflect an arm's length fuel purchase transaction contrary to ISO-NE Tariff Market Rule 1, Appendix A § III.A.3.4(b).

2. Emera Energy stipulates to the facts in Section II, but neither admits nor denies the alleged violations in Section III. Emera Energy agrees to: (a) pay a civil penalty of \$5,000 to the United States Treasury; and (b) disgorge \$14,120, plus \$2,002.19 in interest, to ISO New England Inc. (ISO-NE).

**II. STIPULATIONS**

Enforcement and Emera Energy hereby stipulate and agree to the following facts.

3. Emera Energy was, during the time at issue, an affiliate of Rumford Power Inc.,<sup>1</sup> the operator of a 265 MW combined cycle natural gas-fired power plant (Rumford) located in Rumford, Maine.<sup>2</sup> Rumford is interconnected solely with the Portland Natural Gas Transmission System (PNGTS). PNGTS is a lightly-traded trading point and, as a result, there are sometimes no offers to sell natural gas posted to the Intercontinental

---

<sup>1</sup> Emera Energy is an affiliate of Emera Energy Services Subsidiary No. 6 LLC (EESS 6). EESS 6 was the lead market participant for Rumford Power Inc. during the time at issue and is authorized by the Commission to sell power at market based rates. Solely for purposes of this agreement, Emera Energy agrees to bear responsibility for EESS 6.

<sup>2</sup> Effective March 29, 2019, Rumford Power Inc. was no longer affiliated with Emera Energy.

Exchange (ICE) for that location.

4. The ISO-NE Tariff allows market participants to make a FPA Request “whenever the Market Participant’s expected price to procure fuel . . . will be greater than that used by the Internal Market Monitor [(IMM)] in calculating the Reference Levels for the Supply Offer.” See ISO-NE Tariff, Market Rule 1, Appendix A § III.A.3.4(a). A market participant submitting a FPA Request must submit documentation or analysis to the IMM substantiating this belief. *Id.* at § III.A.3.4(a)(ii). This documentation or analysis may include one of three forms specifically enumerated in the Tariff: 1) “an invoice or purchase confirmation,” 2) “a quote from a named supplier,” or 3) “a price from a publicly available trading platform.” *Id.* § III.A.3.4(b). The ISO-NE Tariff instructs market participants to consult the IMM when encountering problems with the FPA Request Process. *Id.* § III.A.3.1. Emera Energy relied primarily on the third form of documentation or analysis, screenshots of prices from publicly available trading platforms, namely ICE, to substantiate its Rumford-related FPA Requests.

5. On November 21, 2016, Emera Energy self-reported to Enforcement that it had substantiated sixteen FPA Requests for Rumford during the period August 2015 through November 2016 with an ICE screenshot displaying an offer to sell natural gas posted by Emera Energy. Because of illiquidity at PNGTS, Emera Energy was sometimes unable to provide a price from a publicly available trading platform, namely a screenshot of prices on ICE, supporting the company’s belief that the cost of natural gas for Rumford would be higher than the gas price used by the IMM for its Reference Level. Where no offers were available on ICE at PNGTS, Emera Energy personnel responsible for submitting FPA Requests would request that Emera Energy’s gas desk post to ICE an offer to sell natural gas at PNGTS. The purpose of this posting was to provide the type of documentation and analysis envisioned by Appendix A § III.A.3.4 that Emera Energy could then submit to the IMM as part of a FPA Request.

6. Emera Energy received Net Commitment Period Compensation (NCPC) from ISO-NE associated with those FPA Requests.

7. On or about November 9, 2016, following a regular FERC compliance training session for Emera Energy personnel, an Emera Energy employee approached one of Emera Energy’s in-house counsel regarding the submission by Emera Energy of FPA Requests to the IMM for Rumford. The company reviewed its records and the process in question and submitted the November 21, 2016 self-report. Emera Energy ceased the above-described practice contemporaneous with its internal review. Emera Energy also promptly consulted with the IMM regarding the practice.

8. Emera Energy fully cooperated with Enforcement during the investigation.

### **III. VIOLATIONS**

9. Enforcement determined that Emera Energy violated ISO-NE Tariff Market Rule 1, Appendix A § III.A.3.4(b) and 18 C.F.R. § 35.41(a).

10. Emera Energy was bound by ISO-NE Tariff Market Rule 1, Appendix A § III.A.3.4(b), which requires that documentation and analysis supporting a FPA Request must reflect “an arm’s length transaction.” The Commission has consistently held that affiliated entities are not capable of engaging in “arm’s length transactions” because there is insufficient assurance that an agreed upon price will genuinely reflect market forces. The indirect quote of a price by Emera Energy’s gas desk to Emera Energy’s power desk via an ICE posting for the purpose of generating a FPA Request did not reflect an “arm’s length transaction.”

11. 18 C.F.R. § 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.” The above-described violation of ISO-NE Tariff Market Rule 1, Appendix A § III.A.3.4(b) constitutes a violation of 18 C.F.R. § 35.41(a).

12. Enforcement concluded that the above-described practice resulted in NCPC overpayments of \$14,120 when Emera Energy increased its ISO-NE reference level by requesting an above-market fuel price adjustment.

### **IV. REMEDIES AND SANCTIONS**

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

#### **A. Civil Penalty**

14. Emera Energy agrees to pay a civil penalty of \$5,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

## **B. Disgorgement**

15. Emera Energy agrees to pay disgorgement within ten days of the Effective Date of this Agreement to ISO-NE in the amount of \$14,120, plus \$2,002.19 in interest, calculated pursuant to section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2019).

## **V. TERMS**

16. 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 Emera Energy and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

17. Commission approval of this Agreement without material modification shall release Emera Energy and forever bar the Commission from holding Emera Energy, 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.

18. Failure by Emera Energy 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 Emera Energy to additional action under the enforcement provisions of the FPA.

19. If Emera Energy 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.

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

21. 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 Emera Energy has been made to induce the signatories or any other party to enter into the Agreement.

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

23. In connection with the civil penalty provided for herein, Emera Energy 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). Emera Energy 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.

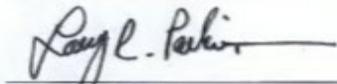
24. This Agreement can be modified only if in writing and signed by Enforcement and Emera Energy, and any modifications will not be effective unless approved by the Commission.

25. 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.

26. The undersigned representative of Emera Energy 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.

27. 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  
Director, Office of Enforcement  
Federal Energy Regulatory Commission



William V. Szubielski  
Vice President  
Legal and Regulatory Affairs  
Emera Energy Incorporated

Date: DEC. 13, 2019

Date: December 13, 2019