

173 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;
Neil Chatterjee and Richard Glick.

Competitive Energy Services, LLC
Richard Silkman

Docket Nos. IN12-12-000
IN12-13-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued November 25, 2020)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Richard Silkman (Silkman) and Competitive Energy Services, LLC (CES) (together, Respondents) (Enforcement and Respondents collectively, the Parties). This order is in the public interest because it resolves on fair and equitable terms: (a) the Commission's claims against Respondents for violations of section 222 of the Federal Power Act (FPA) and 18 C.F.R. § 1c.2 (2020) and (b) the Commission's action captioned *FERC v. Silkman*, No. 1:16-cv-205-JAW (D. Me.) (Federal Court Lawsuit) in which the Commission seeks affirmance of the Orders Assessing Civil Penalties it issued to CES and Silkman in which it concluded that Respondents violated section 222 of the FPA and 18 C.F.R. § 1c.2.

2. Respondents admit to the facts set forth in the Agreement, but neither admit nor deny the violations. They agree to make payments totaling \$1,475,000 in installments over seven years, divided as follows: (a) CES will pay \$166,841.13 in disgorgement to ISO-New England, Inc. (ISO-NE) and a penalty of \$708,158.87 to the United States Treasury and (b) Silkman will pay a penalty of \$600,000 to the United States Treasury. Respondents will pay the settlement amount in annual installments of \$210,714.28 a year for seven years (although Respondents at their option may make the payments earlier or in a greater amount), with the payments allocated first to disgorgement and then civil penalties. Respondents will allocate each payment among themselves as they determine appropriate.

I. Factual and Procedural Background

3. CES is a privately-held company incorporated in Maine in 2001. It is organized as a limited liability company and has its principal place of business in Portland, Maine. CES provides energy consulting and other services to clients throughout North America.

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4. Silkman resides in Maine and, in 2007 and 2008, was a managing member of CES.
5. From approximately July 2007 to February 2008 (the Relevant Period), Respondents were retained by Rumford Paper Company (Rumford) with respect to Rumford's participation in ISO-NE's Day-Ahead Load Response Program (DALRP).
6. Enforcement investigated the role of Respondents in connection with the DALRP during the Relevant Period. The investigation culminated in the issuance of Orders to Show Cause on July 12, 2012. *Richard Silkman*, 140 FERC ¶ 61,033 (2012); *Competitive Energy Services, LLC*, 140 FERC ¶ 61,032 (2012) (Orders to Show Cause). The Orders to Show Cause required Respondents to explain why their behavior should not be found to have violated the Commission's regulations and the FPA.
7. After briefing by Respondents and Enforcement in Docket Nos. IN12-12-000 and IN12-13-000, on August 29, 2013, the Commission issued Orders Assessing Civil Penalties against Respondents. *Richard Silkman*, 144 FERC ¶ 61,164 (2013) *Richard Silkman*, 140 FERC ¶ 61,033 (2012) (<https://www.ferc.gov/sites/default/files/enforcement/civil-penalties/actions/2016/144FERC61164.pdf>); *Competitive Energy Services, LLC*, 144 FERC ¶ 61,163 (2013) (<https://www.ferc.gov/sites/default/files/enforcement/civil-penalties/actions/2016/144FERC61163.pdf>) (Orders Assessing Penalties). In the Orders Assessing Civil Penalties, the Commission set forth the bases for its findings that Respondents' conduct during the Relevant Period with respect to the DALRP violated section 222 of the FPA and 18 C.F.R. § 1c.2.
8. On December 2, 2013, the Commission filed the Federal Court Lawsuit in the United States District Court for the District of Massachusetts to request an order affirming the Commission's Orders Assessing Civil Penalties.
9. On April 11, 2016, the District Court for the District of Massachusetts transferred the case to the District of Maine.
10. On March 31, 2017, February 21, 2020, and July 29, 2020, Enforcement and Respondents engaged in judicial settlement conferences. This process, together with telephone conferences between the Court and the Parties, ultimately led to the Agreement.

II. Stipulation and Consent Agreement

11. Enforcement and Respondents have resolved the matters discussed above by means of the attached Agreement.

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12. Respondents stipulate to the facts recited in Section II of the Agreement, but neither admit nor deny that they violated the FPA or 18 C.F.R. § 1c.2.

13. Respondents agree to pay \$1,475,000, in disgorgement and civil penalties (Settlement Payment) on the following terms:

- a. CES will pay \$166,841.13 in disgorgement to ISO-NE. Silkman will pay a penalty of \$600,000 to the United States Treasury. CES will pay the remainder, not to exceed \$708,158.87, constituting a civil penalty, to the United States Treasury.
- b. Respondents will pay the collective amount of the disgorgement and civil penalties, allocated among themselves as they determine, in annual installments of \$210,714.28 a year for seven years (although Respondents at their option may make the payments earlier or in a greater amount), with the payments allocated first to disgorgement and then civil penalties.
- c. The first installment payment will be made within 30 days of the Effective Date of this Agreement (Initial Payment).
- d. On the first through sixth anniversaries of the date when Respondents' Initial Payment is due, Respondents shall make a payment of \$210,714.28 (each year).

III. Determination of Appropriate Sanctions and Remedies

14. In recommending the appropriate remedy, Enforcement considered information provided by CES during negotiations. Based on this information and the facts as set forth in the Orders Assessing Civil Penalties, the Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

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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

Competitive Energy Services, LLC
Richard Silkman

Docket No. IN12-12-000
Docket No. IN12-13-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (“Enforcement”) of the Federal Energy Regulatory Commission (“Commission”) and Richard Silkman (“Silkman”) and Competitive Energy Services, LLC (“CES”) (together, “Respondents”) (Enforcement and Respondents collectively, the “Parties”) enter into this Stipulation and Consent Agreement (“Agreement”) to resolve (i) the Commission's claims against Respondents for violations of section 222 of the Federal Power Act (“FPA”) and 18 C.F.R. § 1c.2, and (ii) the Commission's lawsuit captioned *FERC v. Silkman*, No. 1:16-cv-205-JAW (D. Me.) (“Federal Court Lawsuit”). In order to fully resolve these matters, Respondents agree that they shall make certain payments in accordance with the terms set forth below totaling \$1,475,000, and the Commission agrees to dismiss with prejudice the Federal Court Lawsuit in accordance with the terms set forth below.

II. STIPULATED FACTS

2. CES is a privately-held company incorporated in Maine in 2001. It is organized as a limited liability company and has its principal place of business in Portland. CES provides energy consulting services and other services to clients throughout North America.
3. Silkman resides in Maine and was in 2007 and 2008 a managing member of CES.
4. From approximately July 2007-February 2008 (the “Relevant Period”), Respondents were retained by Rumford Paper Company (“Rumford”) with respect to Rumford’s participation in ISO New England, Inc.’s (“ISO-NE”) Day-Ahead Load Response Program (“DALRP”).
5. Enforcement investigated the role of Respondents in connection with the DALRP during the Relevant Period. The investigation culminated in the issuance of Orders to Show Cause on July 12, 2012. *Richard Silkman*, 140 FERC ¶ 61,033 (2012); *Competitive Energy Services, LLC*, 140 FERC ¶ 61,033 (2012) (Orders to Show Cause).

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6. On July 27, 2012, Respondents submitted a joint notice under section 31(d)(3) of the FPA, 16 U.S.C. § 823b(d)(3), which provides under the procedure selected by Respondents that: “the Commission shall promptly assess such penalty, by order after the date of the receipt of the notice ... of the proposed penalty”; “if the civil penalty has not been paid within 60 calendar days after the assessment order has been made ..., the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty”; and “the court shall have authority to review *de novo* the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in Part [*sic*], such assessment.”

7. The filings in the Orders to Show Cause proceedings made by the Office of Enforcement and by Respondents, in opposition, are available in Docket Nos. IN12-12-000 and IN12-13-000 in the Commission's eLibrary system (<https://elibrary.ferc.gov>).

8. On August 29, 2013, the Commission issued Orders Assessing Civil Penalties against Respondents. *Richard Silkman*, 144 FERC ¶ 61,164 (2013); *Competitive Energy Services, LLC*, 144 FERC ¶ 61,163 (2013) (Orders Assessing Penalties).

9. On December 2, 2013, the Commission filed the Federal Court Lawsuit in the United States District Court for the District of Massachusetts to request an order affirming the Commission's Orders Assessing Civil Penalties.

10. On April 11, 2016, the District Court for the District of Massachusetts transferred the case to the District of Maine.

11. In both the proceedings before the Commission and in the Federal Court Lawsuit, Respondents disagreed with and contested the determinations set forth in Section III of this Agreement and the Commission's findings in its Orders Assessing Civil Penalties.

12. On March 31, 2017, February 21, 2020, and July 29, 2020, Enforcement and Respondents engaged in judicial settlement conferences. This process, together with telephone conferences between the Court and the Parties, ultimately led to the Agreement.

III. COMMISSION DETERMINATION OF VIOLATIONS

13. In its Orders Assessing Civil Penalties, the Commission set forth the bases for its findings that Respondents' conduct during the Relevant Period with respect to the DALRP violated section 222 of the FPA and 18 C.F.R. § 1c.2.

IV. REMEDIES AND SANCTIONS

14. For the purposes of this Agreement, Respondents stipulate to the facts set forth in Section II of this Agreement, but neither admit nor deny the determinations set forth in Section III of this Agreement or the Commission's findings in its Orders Assessing Civil Penalties.

15. For purposes of settling any and all disputes, allegations, and claims within the jurisdiction of the Commission relating to the alleged violations and the Federal Court Lawsuit, Respondents agree to pay \$1,475,000, in disgorgement and civil penalties ("Settlement Payment") on the following terms that Enforcement determined to be appropriate under the circumstances of this case in light of information provided by CES:

- a. CES will pay to ISO-NE disgorgement of \$166,841.13. Silkman will pay \$600,000 in civil penalties to the United States Treasury. CES will pay the remainder, not to exceed \$708,158.87, in civil penalties to the United States Treasury.
- b. Respondents will pay the collective amount of the disgorgement and civil penalties, allocated among themselves as they determine, in annual installments of \$210,714.28 a year for seven years (although Respondents at their option may make the payments earlier or in a greater amount), with the payments allocated first to disgorgement and then civil penalties.
- c. The first installment payment will be made within 30 days of the Effective Date of this Agreement ("Initial Payment").
- d. On the first through sixth anniversaries of the date when Respondents' Initial Payment is due, Respondents shall make a payment of \$210,714.28 (each year).

16. Respondents shall promptly notify Enforcement when it makes the required payments by providing proof of payment by email to the Director of the Office of Enforcement. Enforcement shall promptly confirm the receipt of such payments from Respondents.

17. Within three business days of receiving proof of the Initial Payment, the Commission shall file on behalf of the parties a Joint Stipulation of Dismissal with Prejudice in the Federal Court Lawsuit. The Commission and Respondents agree to bear their own costs and fees from the case.

V. TERMS

18. The Effective Date of this Agreement (“Effective Date”) shall be the earliest date on which the Commission has issued an order approving this Agreement without material modification or conditions. When effective, this Agreement shall resolve the matters specifically addressed herein as to Respondents and any affiliated entity, and their agents, officers, directors, and employees, both past and present, and any successor in interest to Respondents.

19. Commission approval of the Agreement without material modification shall release Respondents and any successor or affiliate, and forever bar the Commission from holding Respondents and any successor or affiliate, and their respective agents, officers, directors, and employees, past and present, liable for any and all administrative or civil claims arising out of the conduct addressed in the Commission's Orders Assessing Civil Penalties.

20. CES states that it has no present intention to dissolve before it makes all of the payments due under the Agreement. The Commission reserves all of its rights under both Maine and federal law to recover the payments CES is obligated to make under this Agreement should CES dissolve before it makes all such payments. This clause shall have no impact on Silkman’s obligations under this Agreement.

21. Respondents failure to (a) make timely the disgorgement and civil penalty payments set forth in Section IV above, or (b) comply with the other provisions of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. § 792, *et seq.*, and may subject Respondents and any successor companies to additional action under the enforcement and penalty provisions of the FPA.

22. If Respondents fail to make the disgorgement and civil penalty payments set forth in Section IV above by the deadlines set forth in this Agreement, interest shall accrue from the date each payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose. Interest under this paragraph shall be calculated using the rates and methodology set forth in the Commission’s regulations at 18 C.F.R. § 35.19a(a)(2)(iii)(A).

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

24. 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

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of Enforcement or Respondents has been made to induce the signatories or any other party to enter into the Agreement.

25. Notwithstanding anything to the contrary herein, unless the Commission issues an order approving this Agreement in its entirety and without material modification, the Agreement (including, without limitation, the disgorgement, civil penalty, and any and all stipulations and representations) shall be null and void and of no effect whatsoever, and neither Enforcement nor Respondents shall be bound by any provision or term of this Agreement, unless otherwise agreed to in writing by Enforcement and Respondents.

26. In connection with the civil penalty provided for herein, Respondents agree that the Commission's order approving this Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316(A)(b) of the FPA, 16 U.S.C. § 825o-1(b). Respondents waive 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.

27. This Agreement may be modified only if in writing and signed by Enforcement and Respondents. No modification will be effective unless approved by the Commission.

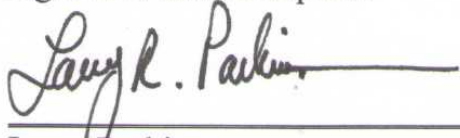
28. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts this Agreement on the entity's behalf.

29. Respondents affirm that they have read this Agreement, that all the matters set forth in this Agreement are true and correct to the best of their knowledge, information, and belief, and that they understand that this Agreement is entered into by Enforcement in express reliance on those representations.

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


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Agreed to and Accepted:



Larry Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission

Dated: 9/30/20



Richard Silkman
By: Peter J. Brann

Dated: 9/29/20



Competitive Energy Services, LLC
By: Peter J. Brann

Dated: 9/29/20

Document Content(s)

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