174 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NRG Power Marketing LLC Docket No. IN20-4-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 8, 2021)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and NRG Power Marketing LLC (collectively, the Parties). This order is in the public interest because it 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 NRG Power Marketing LLC violated the ISO New England Inc. (ISO-NE) Transmission, Markets and Services Tariff (Tariff), Market Rule 1, § III.13 and 18 C.F.R. § 35.41(b) (2019) when it submitted inaccurate cost-based static de-list bids for two generating stations, Middletown and Montville (Resources), during the ISO-NE Eleventh Forward Capacity Auction (FCA 11) qualification period.

2. NRG Power Marketing LLC agrees to pay a civil penalty of $85,000 to the United States Treasury, and to be subject to compliance monitoring as provided in the Agreement. NRG Power Marketing LLC stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations.

I. Facts

3. NRG Power Marketing LLC is a direct, wholly owned subsidiary of NRG Energy, Inc. (jointly NRG). Middletown and Montville are owned, respectively, by Middletown Power LLC and Montville Power LLC, which are direct, wholly owned subsidiaries of NRG Energy, Inc. NRG Power Marketing LLC is the registered lead market participant for the Resources.

4. ISO-NE administers the Forward Capacity Market (FCM), in which eligible resources compete in an annual Forward Capacity Auction (FCA) to provide capacity three years later. A resource whose capacity clears the FCA acquires a capacity supply obligation (CSO) and commits to providing capacity for the relevant Capacity Commitment Period (CCP). A capacity resource must be available to operate when dispatched during scarcity conditions, which refer to any period in real-time when the supply of electricity is insufficient to meet the ISO-NE reserve requirements in the Tariff, and the Reserve Constraint Penalty Factors (RCPF) are setting the real-time reserve

price.[1] FCA participants with a CSO that wish to remove a resource for a single year may submit a static de-list bid during the qualification period for the relevant CCP.[2] Static de-list bids include: (1) net going forward costs; (2) expected Capacity Performance Payments; (3) a risk premium; and (4) opportunity costs.[3] The ISO-NE Internal Market Monitor (IMM) reviews static de-list bids (and related cost workbooks submitted by participants as required by the Tariff) to determine whether the submitted de-list bid price reasonably represents the expected capacity costs for the resource.[4]

5. Capacity resources with a CSO submitting a de-list bid must "provide documentation separately detailing the expected Capacity Performance Payments for the resource."[5] The Tariff requires that "[t]his documentation must include expectations regarding the applicable Capacity Balancing Ratio, the number of hours of reserve deficiency [i.e*.,* scarcity hours], and the resource's performance during reserve deficiencies."[6] The Tariff further requires that "[s]ufficient documentation and information about each bid component must be included in the . . . Existing Capacity Qualification Package to allow the Internal Market Monitor to make the requisite determinations."[7] Finally, the Tariff requires that "[t]he entire de-list submittal shall be accompanied by an affidavit executed by a corporate officer attesting to the accuracy of its content, including reported costs, the reasonableness of the estimates and adjustments of costs that would otherwise be avoided if the resource were not required to meet the obligations of a listed resource, and the reasonableness of the expectations and assumptions regarding Capacity Performance Payments, cash flows, opportunity costs, and risk premiums, and shall be subject to audit upon request by the ISO."[8]

6. Section 35.41(b) of the Commission's regulations, 18 C.F.R. § 35.41(b), provides that "[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

---

[1] *See* ISO-NE Tariff, § I.2.2 (definition of RCPF).

[2] *Id.*, § I.2.2.

[3] *Id.,* §§ III.13.1.2.3.2.1.2.A, III.13.1.2.3.2.1.3, III.13.1.2.3.2.1.4, III.13.1.2.3.2.1.5. *See also id.,* § III.13.1.2.3.2.1.

[4] *Id.,* § III.13.1.2.3.2 *et seq.*

[5] *Id.*, § III.13.1.2.3.2.1.3

[6] *Id*.

[7] *Id.*, § III.13.1.2.3.2.1.

[8] *Id.*

transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences."

7. Following a December 21, 2016 referral by the ISO-NE IMM, Enforcement initiated a non-public investigation (Investigation) into whether NRG's static de-list bids for the Resources submitted during the FCA 11 qualification process included inaccurate cost information.

8. Enforcement investigated whether NRG's static de-list bids and related communications with the IMM accurately stated NRG's expectation regarding scarcity-hours in the expected Capacity Performance Payments components of the static de-list bids. After examining the evidence, Enforcement concluded that NRG misstated (by overstatement) its expectation regarding scarcity hours, which resulted in higher static de-list bid prices submitted for the Resources.

9. Based on its Investigation, Enforcement also concluded that NRG misstated the Resources' net going forward costs with respect to its treatment of mothball costs in the static de-list bids. With the submission of a static de-list bid, a market participant must notify the ISO whether, if it does not receive a CSO, a resource will be active or inactive during the CCP.[9] Going forward costs are defined in the Tariff as the "costs that might otherwise be avoided or not incurred if the resource were not subject to the obligations of a listed capacity resource during the [CCP]."[10] Consistent with the Tariff, the FCA 11 de-list bid workbooks and ISO-NE User Guide required participants to adjust static de-list bid going forward costs by the unavoidable costs of mothballing units if they were designated as being inactive during the CCP. Likewise, if the units were designated as being active during the CCP, mothball costs were not to be included in static de-list bids. The static de-list bids NRG submitted for FCA 11 treated mothball costs inconsistently with NRG's statement in the static de-list bids as to whether the units would remain active if they did not receive CSOs.

10. NRG cooperated with Enforcement during the Investigation.

11. NRG has had one prior violation of the Commission's regulations within 10 years from the time of the violations at issue.

II. Violations

12. Enforcement determined that NRG submitted to ISO-NE and the IMM static de-list bids during the qualification period for FCA 11 that misstated the costs for the Resources in violation of section III.13 of the ISO-NE Tariff.

---

[9] *Id.,* § III.13.1.2.3.1.1.

[10] *Id.*, § III.13.1.2.3.2.1.2.A.

13. Enforcement determined that NRG violated section 35.41(b) of the Commission's regulations because its static de-list bid submissions to ISO-NE and the IMM, and its subsequent communications with the IMM, misstated the Resources' costs.

III. Stipulation and Consent Agreement

14. The Parties have resolved the Investigation by means of the attached Agreement.

15. NRG 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.

16. NRG agrees to pay a civil penalty of $85,000 to the United States Treasury.

17. NRG agrees to submit two annual compliance monitoring reports, in accordance with the terms of the Agreement, with a third Annual Report at Enforcement's option.

IV. Determination of Appropriate Sanctions and Remedies

18. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,[11] including the fact that NRG cooperated with Enforcement during the Investigation.

19. 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.[12]

20. The Commission also concludes that NRG's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.[13]

---

[11] *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

[12] We disagree with the dissent's contention that NRG's actions did not violate ISO-NE tariff provisions or Section 35.41 of the Commission's regulations. Moreover, we do not believe it is appropriate to reject a settlement that NRG itself, in the exercise of sound business judgment, has found to be in its best interest to fully and finally resolve this matter. The dissent acknowledges that the facts at issue merited an inquiry by Enforcement. Dissent at P 23. The Commission's longstanding policy is to encourage settlements to resolve investigations, *Revised Policy Statement on Enforcement,* 123 FERC ¶ 61,156 at P 33 (2008), and our standard for considering a final negotiated settlement is whether the agreement is fair, equitable, and in the public interest. That standard is easily met in this case.

[13] *Id.*

21. The Commission directs NRG to make the civil penalty payment as required by the Agreement within ten business days of the Effective Date of the Agreement.

22. The Commission directs NRG to comply with the provisions in the Agreement also requiring it to submit annual compliance reports for at least two years.

The Commission orders:

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

By the Commission. Chairman Danly is dissenting with a separate statement attached.
Commissioner Clements is not participating.
Commissioner Christie is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Accession #: 20210108-3083 Filed Date: 01/08/2021

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

NRG Power Marketing LLC Docket No. IN20-4-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and NRG Power Marketing LLC 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). The Investigation addressed whether NRG violated the ISO New England Inc. (ISO-NE) Transmission, Markets and Services Tariff (Tariff), Market Rule 1, § III.13[1] and 18 C.F.R. § 35.41(b) by submitting inaccurate static de-list bids for two generating stations, Middletown and Montville (Resources), each with multiple generating units, during the ISO-NE Eleventh Forward Capacity Auction (FCA 11) qualification period.

2. NRG Power Marketing LLC stipulates to the facts in Section II, but neither admits nor denies the alleged violations in Section III. NRG Power Marketing LLC agrees to: (a) pay a civil penalty of $85,000 to the United States Treasury and (b) be subject to compliance monitoring as provided more fully below.

II. STIPULATIONS

Enforcement and NRG Power Marketing LLC hereby stipulate and agree to the following facts.

A. Background

3. NRG Power Marketing LLC is a direct, wholly owned subsidiary of NRG Energy, Inc. (jointly NRG). The Middletown and Montville generating facilities are owned by Middletown Power LLC and Montville Power LLC, respectively, which are direct, wholly owned subsidiaries of NRG Energy, Inc. NRG Power Marketing LLC is the registered lead market participant for the Resources.

4. On December 21, 2016, the ISO-NE Internal Market Monitor (IMM) referred

[1] All references to ISO-NE's Tariff are to the version in effect during the time covered by Enforcement's Investigation.

NRG for potential violations of the Commission's regulations with respect to NRG's June 2016 submission of static de-list bids for the Resources during the Forward Capacity Auction (FCA) 11 qualification period, which NRG subsequently withdrew in October 2016 prior to the February 2017 FCA. Following the IMM's referral, Enforcement initiated a non-public preliminary investigation. NRG subsequently responded to data requests and requests for investigative testimony, and it cooperated with Enforcement during the investigation.

5. ISO-NE administers the Forward Capacity Market (FCM), in which eligible resources compete in an annual FCA to provide capacity three years later. A resource whose capacity clears the FCA acquires a capacity supply obligation (CSO) and commits to providing capacity for the relevant Capacity Commitment Period (CCP). A capacity resource must be available to operate during scarcity conditions, or scarcity hours, which refer to any period in real-time when the supply of electricity is insufficient to meet the ISO-NE reserve requirements set forth in the Tariff, and the Reserve Constraint Penalty Factors (RCPF) are setting the real-time reserve price.[2]

6. During the CCP, a capacity resource with a CSO must offer into the Day-Ahead and Real-Time markets for at least the quantity of its CSO[3] unless the resource takes certain steps under the Tariff to opt out of, or shed, its CSO.[4]

7. Existing FCA participants with a CSO that wish to remove a resource for a single year may submit a static de-list bid during the qualification period for the relevant CCP.[5] The Tariff states that a static de-list bid represents the "price below which [the participant] would not accept a [CSO] . . . at prices at or above the Dynamic De-List Bid Threshold [DDT] during a single Capacity Commitment Period . . . ."[6] As part of market power mitigation, the IMM reviews de-list bid submissions above the threshold price, which was $5.50/kW-month for FCA 11.

8. Pursuant to the Tariff, static de-list bids include: (1) net going forward costs; (2) expected Capacity Performance Payments; (3) a risk premium; and, (4) opportunity

---

[2] *See* ISO-NE Tariff, § I.2.2 (definition of RCPF).

[3] *Id.*, § III.13.6.1.1.1.

[4] *See id.,* § III.13.1.2.3.1; § III.13.4; § III.13.5.1.

[5] *Id.*, § I.2.2.

[6] *Id.*, § III.13.1.2.3.1.1.

costs.[7] Per the Tariff, the ISO-NE IMM reviews static de-list bids (and related cost workbooks submitted by participants as required by the Tariff) to determine whether the submitted de-list bid price reasonably represents the expected capacity costs for the resource.[8] If a resource chooses to submit a static de-list bid, it must do so approximately eight months prior to the annual auction (itself held 40 months in advance of the delivery period). Static de-list bids may be withdrawn by the participant up until the ISO-NE withdrawal deadline. However, once a static de-list bid is accepted, it cannot be adjusted to reflect changes in costs.

9. Going forward costs are defined in the Tariff as the "costs that might otherwise be avoided or not incurred if the resource were not subject to the obligations of a listed capacity resource during the [CCP.]"[9] As stated in the Tariff, "[c]osts that are not avoidable in a single [CCP] and costs associated with the production of energy are not to be included."[10] For FCA11, participants were to submit the specifics of their going forward costs, including those relating to mothballing (*i.e.*, costs incurred to deactivate units), via a workbook issued by ISO-NE.

10. Capacity resources with a CSO submitting a de-list bid must "provide documentation separately detailing the expected Capacity Performance Payments for the resource."[11] "This documentation must include expectations regarding the applicable Capacity Balancing Ratio, the number of hours of reserve deficiency [*i.e.,* scarcity hours], and the resource's performance during reserve deficiencies."[12] Per the Tariff, "[s]ufficient documentation and information about each bid component must be included in the . . . Existing Capacity Qualification Package to allow the Internal Market Monitor to make the requisite determinations."[13] The Tariff requires that "[t]he entire de-list submittal shall be accompanied by an affidavit executed by a corporate officer attesting to the accuracy of its content, including . . . the reasonableness of the expectations and

---

[7] *Id.,* §§ III.13.1.2.3.2.1.2.A, III.13.1.2.3.2.1.3, III.13.1.2.3.2.1.4, III.13.1.2.3.2.1.5. *See also id.,* § III.13.1.2.3.2.1.

[8] *Id.,* § III.13.1.2.3.2 *et seq.*

[9] *Id.*, § III.13.1.2.3.2.1.2.A.

[10] *Id.*

[11] *Id.*, § III.13.1.2.3.2.1.3.

[12] *Id.*

[13] *Id.*, § III.13.1.2.3.2.1.

assumptions regarding Capacity Performance Payments[.]"[14] In the de-list bid workbook submission, if capacity performance revenues are less than capacity performance costs, all other inputs being held constant, higher scarcity hours will increase the de-list bid costs.

11. Section 35.41(b) of the Commission's regulations, 18 C.F.R. § 35.41(b), provides that "[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."

B. Expectation Regarding Scarcity Hours

12. NRG forecasted scarcity hours for FCA 11 on multiple occasions for internal purposes other than the submission of the FCA 11 static de-list bids.

13. In mid-May 2016, an NRG employee responsible for developing recommendations regarding static de-list bids for FCA 11 recommended that NRG not submit any static de-list bids based on a review of internal cost estimates for NRG's existing capacity resources. This review was done before preparation of a draft FCA 11 static de-list bid workbook. Upon review by a higher-ranking NRG employee, a determination was made to prepare static de-list bids for the Resources. This led to a recommendation to submit such bids, which was presented to NRG senior management for further consideration. Personnel with substantial authority participated in NRG's de-list bid-related decisions, including the final decision to submit static de-list bids for the Resources.

14. NRG used ISO-NE's static de-list bid submission workbooks for FCA 11 to submit the cost data and other information for the Resources.

15. NRG recognized that using a scarcity-hours value consistent with internal NRG forecasts for FCA 11 would reduce the static de-list bid prices below the $5.50 DDT.

16. On June 6, 2016, NRG electronically submitted to ISO-NE and the IMM static de-list bids for the Resources totaling 1,244 MW. NRG submitted a separate static de-list bid workbook for each of the two Resources, as well as a written document that provided information it asserted justified the scarcity-hours value claimed in the workbooks. The workbooks contained the static de-list bid prices and cost information for each Resource. NRG used a specified value of scarcity hours (Scarcity Hour Value) in the expected Capacity Performance Payments section of the static de-list bid workbooks and in the written document submitted with the de-list bid workbooks that differed from forecasts used for other purposes within NRG at various points in time, including in other

[14] *Id.*

documents making forecasts with respect to FCA 11.

17. On June 21, 2016, the IMM sent NRG an initial set of questions regarding the static de-list bid submissions. The IMM asked that NRG provide support for the Scarcity Hour Value. In its written response to the IMM on July 9, 2016, NRG asserted that it considered various factors and the capacity market design, leading it to arrive at the Scarcity Hour Value.

18. In an August 31, 2016 written response to a second set of questions issued by the IMM, NRG made further assertions regarding its Scarcity Hour Value.

19. The IMM issued Qualification Determination Notifications (QDNs) to NRG on September 30, 2016, by which it mitigated NRG's static de-list bids by reducing NRG's Scarcity Hour Value. In the QDNs the IMM issued to NRG, it noted that it determined NRG did not provide adequate support for the submitted Scarcity Hour Value. The IMM also noted that its review took into consideration the original submission and all subsequent communications between the IMM and NRG. The IMM further noted that NRG did not adequately substantiate its asserted Scarcity Hour Value, as a result, NRG did not provide a reasonable expectation regarding Capacity Performance Payments in accordance with Tariff section III.13.1.2.3.2.1.

20. As a result of its mitigation, the IMM reduced NRG's static de-list bid prices to the $5.50 DDT for all but two of the Resource units. Following receipt of the QDNs, NRG withdrew the static de-list bids, which otherwise would have become final on October 7, 2016.

C. Mothball Costs

21. In its de-list bid submission, a market participant must indicate whether, if it does not receive a CSO, a resource will be active or inactive. The Tariff provides whether certain costs may be included in the going forward cost calculation depending on if the unit will be active or inactive.[15]

22. In defining going forward costs, the Tariff states that costs that are *not* avoidable during the relevant CCP are *not* to be included in the going forward costs.[16] Consistent with the Tariff, the de-list bid workbooks and ISO-NE User Guide required participants

---

[15] *See id.*, § III.13.1.2.3.2.1.2.A ("Staffing, maintenance, capital expenses, and other normal expenses that would be avoided only if the resource were not participating in the energy and ancillary services markets may not be included, except in the case of a resource that has indicated in the submission of a Static De-List Bid that the resource will not be participating in the energy and ancillary services markets during the [CCP].").

[16] *Id.* ("Costs that are not avoidable in a single Capacity Commitment Period . . . are not to be included.").

to adjust static de-list bid going forward costs by the unavoidable costs of mothballing units if they were designated as being inactive during the CCP. Likewise, if the units were designated as being active during the CCP, mothball costs were not to be included in static de-list bids.

23. The static de-list bids NRG submitted for FCA 11 treated mothball costs inconsistently with NRG's statement in the static de-list bids as to whether the units would remain active if they did not receive CSOs. NRG recognized that mothball costs would impact the de-list bid, but ultimately represented the status of the units in its submittal inconsistently with how it treated mothball costs.

III. VIOLATIONS

24. Enforcement determined that NRG submitted to ISO-NE and the IMM static de-list bids for the Resources during the qualification period for FCA 11 that misstated the costs for these Resources, in violation of section III.13 of the ISO-NE Tariff.

25. Enforcement determined that NRG violated section 35.41(b) of the Commission's regulations by transmitting inaccuracies concerning the Resources' costs via (a) submission of its static de-list bid submissions to ISO-NE and the IMM, and (b) subsequent communications with the IMM.

26. A resource may only exit the FCM above the $5.50 DDT if a de-list bid is submitted for the resource and accepted by the IMM during the FCA qualification process. The misstated costs in the static de-list bids resulted in NRG submitting static de-list bids above the $5.50 DDT.

27. Enforcement determined that NRG made inaccurate statements to ISO-NE and the IMM regarding the Resources' expected Capacity Performance Payments by misrepresenting its expectations regarding scarcity hours during the CCP associated with FCA 11. Enforcement concluded NRG made those misrepresentations when it submitted the static de-list bids to ISO-NE and in its subsequent communications with the IMM. Enforcement determined that NRG used the Scarcity Hour Value with the understanding that if it used a lower number (consistent with its contemporaneous forecasts), its static de-list bids would not have been accepted because the de-list bid prices for the Resources would have fallen below the $5.50 DDT. Enforcement also found that NRG failed to fulfill the Tariff requirement of documenting and justifying its Scarcity Hour Value.

28. Enforcement further determined that NRG misstated the Resources' net going forward costs with respect to its treatment of mothball costs in the static de-list bids.

IV. REMEDIES AND SANCTIONS

29. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to NRG's conduct evaluated in Enforcement's

Investigation, NRG 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. NRG further agrees to undertake obligations set forth in the following paragraphs.

A. Civil Penalty

30. NRG agrees to pay a civil penalty of $85,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

B. Compliance

31. NRG 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. After the receipt of the second annual report, Enforcement may, at its sole discretion, require NRG to submit a report for one additional year.

32. Each compliance monitoring report shall: (1) identify any known violations of ISO-NE Tariff or Commission regulations that occurred during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures NRG instituted or modified during the reporting period related to Compliance with the ISO-NE Tariff and Commission regulations; and, (3) describe all ISO-NE and Commission-related compliance training that NRG administered during the reporting period related to ISO-NE static de-list bids, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

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

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

V. TERMS

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

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

37. Failure by NRG to make the civil penalty payment, 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 NRG to additional action under the enforcement provisions of the FPA.

38. If NRG does not make the required civil penalty payment described above within the time agreed by the parties, interest will be calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii)(A), (B) 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.

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

40. 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 NRG has been made to induce the signatories or any other party to enter into the Agreement.

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

42. In connection with the civil penalty provided for herein, NRG 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). NRG 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.

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

44. 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.

45. The undersigned representative of NRG 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.

46. This Agreement is executed in multiple copies, 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

Date: 6-22-20

Joseph A. Holtman
Vice President
NRG Power Marketing LLC

Date: 6/18/20

Document Accession #: 20210108-3083 Filed Date: 01/08/2021

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

NRG Power Marketing LLC Docket No. IN20-4-000

(Issued January 8, 2021)

DANLY, Chairman, *dissenting*:

1. I dissent from the order in this case (Order) approving the Stipulation and Consent Agreement (Settlement Agreement) between the Office of Enforcement (Enforcement) and NRG Power Marketing LLC (NRG). The Order approves the imposition of a penalty against NRG for submitting an aggressive bid reflecting a different expectation from that of the ISO-NE Internal Market Monitor (IMM) and Enforcement as to whether the ISO-NE market would be at equilibrium four years later.

2. In my view, we should not penalize companies based on our disagreement with forecasts of future events submitted for independent review in a tariff-prescribed bid review process, even if we think that a company's forecast is overly aggressive. Instead, the proper remedy in such a case is to require the use of a different forecast that is more reasonable. This is the Commission's standard practice when reviewing applications under all the regimes we oversee and, in fact, that is what the IMM did here. Once the IMM substituted its forecast for the one submitted by NRG, that should have been the end of the matter. Instead of penalizing NRG, Enforcement's investigation should be terminated.

3. The Order also imposes a penalty for NRG's failure to fill out the mothball cost section of the required workbook submission supporting NRG's static de-list bids consistently with NRG's statement in the static de-list bids regarding whether the units would remain active if they failed to receive a capacity award. Again, a penalty is not the proper remedy for such a failure. Instead, under the tariff-prescribed bid review process and the Commission's standard practice, when incomplete or inconsistent information is submitted in an application, the proper response is to require appropriate information to be supplied. The IMM had ample opportunity to request that NRG provide additional information regarding mothball costs, but never did so. Nor did the IMM refer to NRG's failure to supply consistent information regarding mothball costs when the IMM referred this matter to Enforcement. I cannot support imposing a penalty for failure to provide information that the IMM could have requested in the course of a months-long, tariff-prescribed, iterative process but, by its inaction, indicated was immaterial.

4. I recognize that NRG has executed the Settlement Agreement and agreed to pay a penalty. But NRG adamantly denied wrongdoing in the course of the investigation and

admits to no violation in the Settlement Agreement. Clearly, NRG chose the lesser of two evils: it agreed to pay a civil penalty of $85,000 in order to extinguish Enforcement's claim, thereby avoiding further litigation expense. I perfectly understand NRG's decision. However, I strongly disagree with any suggestion in the Commission's order that NRG's agreement to settle demonstrates that the settlement is fair, equitable, and in the public interest.[1] An agreement requiring the subject of an investigation to pay a penalty for violating a tariff provision cannot be fair, equitable, or in the public interest when the subject did not violate the tariff. It is the moral equivalent of accepting a guilty plea from a criminal defendant the prosecutor knows to be innocent. We should not approve this agreement. The Commission should instead terminate Enforcement's investigation and take no further action.

I. ISO-NE's FORWARD CAPACITY AUCTION AND STATIC DE-LIST BID REVIEW PROCESS

5. As explained in more detail in the Order, participants in ISO-NE's annual Forward Capacity Auction (FCA) who have a capacity supply obligation and wish to remove a resource from the FCA for a single year may submit a static de-list bid during the qualification period.[2] The purpose of this type of bid is to allow the owner of a generation resource to withdraw that resource from the auction if the auction price is below the costs of its resource for the auction year, permitting the resource to avoid the obligation to sell power at a loss.

6. Static de-list bids for pivotal suppliers must be cost justified in order to prevent a supplier from submitting above-cost bids and thereby engaging in economic withholding. However, a cost-justified static de-list bid is not required in order for the owner of a resource to withdraw from the auction at a price below the Dynamic De-List Bid Threshold,[3] which was $5.50/kW-month for the relevant auction.

7. Under the Tariff-prescribed process, the IMM reviews all static de-list bids and cost data submitted by auction participants over a four-month period to determine whether the submitted bid price represents the expected capacity costs for the resource.[4] If, based on its review of a static de-list bid, the IMM determines that the bid is inconsistent with the resource's net going forward costs, reasonable expectations about

---

[1] *See* Order, 174 FERC ¶ 61,016, at P 19 n.12 (2021).

[2] *See* ISO New England Inc. (ISO-NE) Transmission, Markets and Services Tariff (Tariff), § III.13.1.2.3.1.1.

[3] *See id.*

[4] *See id.* § III.13.1.2.3.2 *et seq.*

the resource's Capacity Performance Payments, reasonable risk premium assumptions, and reasonable opportunity costs, the IMM will develop a revised bid based on IMM-determined values.

8. Auction participants submitting a static de-list bid must "provide documentation separately detailing the expected Capacity Performance Payments for the resource."[5] The Tariff requires that "[t]his documentation must include expectations regarding the applicable Capacity Balancing Ratio, the number of hours of reserve deficiency [*i.e.*, scarcity hours], and the resource's performance during reserve deficiencies."[6] The Tariff further requires that "[s]ufficient documentation and information about each bid component must be included in the . . . Existing Capacity Qualification Package to allow the Internal Market Monitor to make the requisite determinations."[7]

9. Although the Order admirably recites these Tariff requirements, conspicuously absent from the Order is any discussion of another requirement established by the Tariff: an iterative, months-long consultation process between the auction participant submitting a de-list bid and the IMM. The Tariff provides that the IMM "shall review Static De-List Bids . . . and, after due consideration *and consultation* with the Lead Market Participant, as appropriate, shall develop an Internal Market Monitor-accepted Static De-List Bid."[8] As IMM witnesses described the iterative process in testimony submitted to the Commission:

> Over the four month period between June and September, the IMM consults with each Market Participant about its Static De-List Bid submission. The IMM routinely asks clarifying questions about the information in the participant's submittal. It is not uncommon for the IMM to spend hours with a Market Participant, on the phone or in person, discussing its submitted data so the IMM can fully understand the Market Participant's expectations about net going forward costs, resource performance and risks.[9]

---

[5] *Id.* § III.13.1.2.3.2.1.3.

[6] *Id*.

[7] *Id.* § III.13.1.2.3.2.1.

[8] *Id.* § III.13.1.2.3.2.1.1.1 (emphasis added).

[9] Joint Testimony of Jeffrey D. McDonald and Robert V. Laurita on Behalf of ISO-NE Inc. at 16-17, Docket No. ER15-1650-000 (May 1, 2015).

10. If the consultation results in an IMM-revised bid, then the revised bid can either be accepted by the participant and used in the auction, or the participant can reduce its bid below the Dynamic De-List Bid Threshold, or withdraw its bid altogether.[10] Thus, at the end of the iterative evaluation process, an auction participant that initially submitted a static de-list bid will either participate in the auction with a bid at or below the price reviewed and approved by the IMM or will not have a static de-list bid in the auction.

11. The Order also fails to explain that, shortly before NRG submitted the static de-list bids at issue here, the IMM unsuccessfully attempted to modify the static de-list bid review process. ISO-NE and New England Power Pool (Filing Parties) collectively submitted a filing, supported by testimony from the IMM, proposing to limit the flexibility of market participants to submit and then revise their static de-list bids. The Filing Parties asserted that the IMM's experience was that "the post-review modification process gives capacity suppliers the incentive to submit initial de-list bids in excess of their expected going-forward costs and allows capacity suppliers to use the IMM review process to explore whether the IMM will allow de-list bids at prices that substantially exceed their costs."[11]

12. The Commission rejected this proposal. We stated that we recognized the IMM's concern "about capacity suppliers using the Static De-List Bid review process as a price exploration exercise to ascertain whether the IMM may allow inflated bids."[12] However we were "not convinced that the concerns the Filing Parties and the IMM raise warrant the changes proposed to the Static De-List Bid rules."[13] Instead of revising the process, we required ISO-NE to retain the existing flexibility in its Tariff that allows auction participants to submit initial static de-list bids at higher prices than those ultimately approved by the IMM.

II. NRG's STATIC DE-LIST BIDS AT ISSUE IN THIS PROCEEDING

13. The Settlement Agreement approved in our Order addresses NRG's June 2016 submission of static de-list bids for the Middletown and Montville generating facilities during the FCA 11 qualification period. This period applied to deliveries commencing four years later, on June 1, 2020. Under the Tariff, if the auction price dropped below NRG's submitted bid price, and if NRG's bid was approved by the IMM, NRG would be permitted to remove the Middletown and Montville facilities from the auction and would

---

[10] *See id.* §§ III.13.1.2.3.1.1, III.13.1.2.3.2.1.1, and III.13.1.2.4(b).

[11] *ISO New England Inc.*, 151 FERC ¶ 61,270, at P 16 (2015).

[12] *Id.* P 25.

[13] *Id.*

not be obligated to offer them into the ISO-NE energy market for the period June 1, 2020 to May 31, 2021.

14. The element of NRG's static de-list bids central to this proceeding was the expected scarcity hours, *i.e.*, the number of hours in which ISO-NE would experience a reserve deficiency, four years in the future. The greater number of scarcity hours, the more likely NRG would be to incur a penalty under ISO-NE's Capacity Performance Payment regime, and the higher NRG's going forward costs. NRG's bid was based on its forecast number of scarcity hours. This was ISO-NE's own estimate of scarcity hours in the event the ISO-NE market was in equilibrium (*i.e.*, with no excess capacity) during the delivery period four years in the future.

15. As required by the Tariff, NRG submitted workbooks providing data supporting its bids. Included with its submission was NRG's required rationale for using its expected number of scarcity hours.

16. In response to the IMM's questions during the Tariff-prescribed consultation process, NRG further explained (on July 9, 2016) the bases for its static de-list bid submissions, including the Scarcity Hour Value. In its response, NRG relied on public ISO-NE data, particularly with respect to historic static de-list bids and potential future bids given significant market changes.

17. In response to further IMM questions later in the iterative process, NRG provided further support (on August 31, 2016) for its Scarcity Hour Value.

18. Although ISO-NE projected the same Scarcity Hour Value as NRG if the market were to be in equilibrium four years in the future, the IMM projected that the market would not be in equilibrium but would have significant excess supply. Based on this forecast of excess supply four years in the future, the IMM reduced the scarcity hours assumption underlying NRG's static de-list bid.

19. In addition to requiring a projection of expected scarcity hours, the IMM workbook also had a section where auction participants submitting de-list bids were to input the costs of mothballing their resources if the owner withdrew its resource from the auction and indicated that the resource would be retired upon such withdrawal. These costs would not be incurred if the resource remained in the auction and received a capacity award, and thus were required to be subtracted from the calculation of going forward costs as representing a cost-savings resulting from receiving a capacity award in the auction.

20. NRG's treatment of mothball costs in its workbook was inconsistent with NRG's statement in the static de-list bids as to whether the units would remain active if they did not receive a capacity supply obligation. However, the IMM—in the course of the extensive back-and-forth in which it scrutinized the components of NRG's bid—never mentioned this inconsistency. Further, the IMM declined to treat mothball costs differently in its revision of NRG's static de-list bid. As I explain below, the IMM's

failure to treat mothball costs differently in its revision, while not dispositive, casts serious doubt on the materiality of the inconsistency in NRG's submission.

21. When the IMM revised NRG's cost calculation, it reduced NRG's bid to $5.50/kW-month, which was the Dynamic De-List Bid Threshold at or below which no cost justification is required to remove a resource from the auction. NRG then withdrew its static de-list bids. The ultimate outcome of the consultation process? The IMM effectively rejected NRG's static de-list bids.

22. After NRG withdrew its bids at the conclusion of the tariff-prescribed review process, the IMM referred the matter to the Commission for two possible violations: (1) the IMM alleged that NRG may have misrepresented its resources' costs by submitting misleading de-list bid information, in violation of the Commission's rule against submitting false or misleading information, or omitting material information, in communications with the ISO; and (2) the IMM alleged that NRG may have misrepresented its costs to position itself to be able to strategically manipulate the outcome of the 2017 Forward Capacity Auction (FCA 11), in violation of the Commission's market manipulation rule. The referral relied on NRG's forecast number of scarcity hours for each of these claims. The IMM did not allege that NRG violated the Tariff.[14] Nor did the IMM mention NRG's treatment of mothball costs.

III. NRG SHOULD NOT BE PENALIZED

23. As an initial matter, I agree that the IMM's referral merited an inquiry by Enforcement. But that is because the IMM alleged that NRG engaged in market manipulation which, on its face, warranted a closer look. However, the market manipulation allegation appears to have no merit, since it is not even mentioned in our order or in the stipulation between Enforcement and NRG. In my view, once Enforcement determined that the IMM's market manipulation allegations were unfounded, the investigation should have been terminated.

24. Enforcement alleges that NRG has committed two violations that support the imposition of a penalty: (1) that NRG's static de-list bids violated section III.13 of the Tariff; and (2) that NRG violated section 35.41(b) of the Commission's regulations[15] by transmitting inaccuracies concerning the resources' costs in its static de-list bid submissions and subsequent communications with the IMM. In my view, penalties are not warranted on either basis.

---

[14] The failure of the IMM to refer NRG for violation of the tariff is not, of course, dispositive, and Enforcement can certainly pursue tariff violations in the absence of an IMM referral. I nevertheless think that it is worth noting that the IMM, with whom NRG engaged directly throughout review process, did not appear to believe that NRG violated the tariff.

[15] 18 C.F.R. § 35.41(b) (2020).

a. NRG's Scarcity Hour Value Used to Develop its Bids Did Not Violate the Tariff or Section 35.41(b) of the Commission's Regulations

25. NRG complied with the Tariff when it used its expected number of scarcity hours to support its static de-list bids. NRG complied with the Tariff requirement that scarcity hours be used in the calculation and, as also required, NRG provided a rationale for its use of this number. NRG also complied with the Tariff's requirement to engage with the IMM in its review and NRG provided further explanation and information when the IMM so requested.

26. Enforcement's Tariff violation allegation does not appear to be that NRG failed to take any step required by the Tariff.[16] Rather, Enforcement points to that part of the Tariff requiring that static de-list bids "must include *expectations* regarding . . . the number of hours of reserve deficiency [*i.e.*, scarcity hours]."[17] Enforcement asserts that NRG violated this requirement because NRG did not "expect" there to be its submitted number of scarcity hours four years in the future. This alleged misstatement regarding NRG's expectation of scarcity hours also forms the basis for Enforcement's allegation that NRG violated section 35.41(b) of the Commission's regulations.

27. It is problematic, to say the least, for Enforcement to seek penalties in a case that hinges on freighting the term "expectations" with such meaning. Such a determination necessarily assumes that NRG had one objectively verifiable "expectation" of scarcity hours that was misstated in the static de-list bids.

28. NRG's original June 6, 2016 bid justification explained its rationale for its Scarcity Hour Value, which it based on ISO-NE's projection. NRG listed what it considered to be the justification for its forecast that the market would be at equilibrium. This turned out to be a higher number of scarcity hours than, perhaps the IMM "expected," but it was not so high that we can conclude it was objectively higher than NRG ever could have expected.

---

[16] I note, however, that the Settlement Agreement states that "Enforcement also found that NRG failed to fulfill the Tariff requirement of documenting and justifying its Scarcity Hour Value." Settlement Agreement at P 27. I cannot understand how Enforcement could support such a finding. NRG clearly provided the rationale for its forecast and provided additional information when so requested by the IMM, as the Tariff requires. The IMM and Enforcement may not have found NRG's justification to be persuasive, but that does not constitute a tariff violation. It cannot be the case that an auction participant violates the ISO Tariff every time the IMM finds that an element of its static de-list bid is not supported and substitutes a different value.

[17] Tariff, § III.13.1.2.3.2.1.3 (emphasis added).

29. Enforcement's claim that NRG did not "expect" its submitted number of scarcity hours is based on Enforcement's observation (as reflected in the statement in the Settlement Agreement) that "NRG used a specified value of scarcity hours . . . that differed from forecasts used for other purposes within NRG at various points in time."[18] The question thus is whether NRG could have "expected" equilibrium conditions notwithstanding contrary internal forecasts.

30. I am aware of no law that demands a company have only one "expectation." Indeed, it would be surprising if there were—companies like NRG employ many people, and these employees probably have differing expectations about virtually every subject they consider. The "expectation" of a company, if one were forced to identify such a thing, is most fairly the one that the company declares in some formal proceeding or forum, after the various employees make recommendations, discuss their thoughts and, after those thoughts are taken into consideration, the management of the company directs an official pronouncement. I note that this is much the same principle we apply to the Commission. Our position on an issue is the position expressed in orders approved by a majority vote of the sitting Commissioners, regardless of how vigorous an internal debate may have preceded the order's approval. In this case, the pronouncement of NRG's expectation came when NRG submitted the support for its static de-list bid to the IMM. Contrary forecasts within an organization, especially within different groups of an organization as was the case here, are not abnormal. NRG should not be penalized simply because internal NRG forecasts predicted a lower number of scarcity hours than were ultimately included in NRG's static de-list bid.

31. Even if one were to concede that it was possible to identify *an* "expectation" held by a company, it is hard to see how a market participant could have so much confidence in *any* prediction regarding market conditions four years hence that it could be described as *the* expectation.[19] Particularly in this case. Remember the prevailing conditions within ISO-NE when NRG's bids were submitted in 2016. There was a new market design with a new demand curve likely to reduce prices. There was pent up "demand" for static de-list bids, with the largest resource in New England (Mystic 8 & 9) publicly threatening to retire. And, aside from ISO-NE specific considerations, there were any number of other possible unthought-of eventualities facing the market including, strictly by way of hypothesis, an unforeseeable global pandemic.

---

[18] Settlement Agreement at P 16.

[19] I concede that, perhaps, a utility could submit a number of scarcity hours that was so high—8760 hours for example—that there could be no possible justification. Under such circumstances the Commission could find that such a figure would exceed any market participant's "expectations." But that is not the case here, and even if it were, I am not certain that a penalty would be justified because the tariff would still have entitled the IMM to review that forecast and substitute its own number for the one submitted by the market participant.

32. Imposing a penalty for forecasting a number of scarcity hours with which the IMM disagreed is particularly troubling here. As I noted above, shortly before NRG's bids were submitted, we issued an order rejecting Tariff amendments designed to change the static de-list bid process, notwithstanding the IMM's assertion that "the post-review modification process gives capacity suppliers the incentive to submit initial de-list bids in excess of their expected going-forward costs and allows capacity suppliers to use the IMM review process to explore whether the IMM will allow de-list bids at prices that substantially exceed their costs."[20] We cannot penalize NRG for violating the ISO-NE Tariff when we expressly acknowledged that the conduct referred by the IMM and complained of by Enforcement is authorized by that Tariff.

33. Finally, I pause to note that, in developing its updated net CONE projection filed on December 31, 2020, ISO-NE projected long-term capacity equilibrium conditions[21] even though ISO-NE currently has a capacity surplus. The net Cone projection represents an important input into ISO-NE's capacity auction. We cannot credibly penalize NRG for employing the same projection in its static de-list bid.

b. NRG's Treatment of Mothball Costs in Developing its Bids Does Not Constitute a Violation of Section 35.41(b) of the Commission's Regulations and Does Not Otherwise Warrant a Penalty

34. I do not believe that NRG's submission of inconsistent assumptions regarding mothball costs in this case constitutes a violation of the section 35.41(b) requirement that a seller not submit false or misleading information or omit material information. In order for this inconsistent treatment to serve as the basis of a penalty, it must be material.

35. In this case, NRG's treatment of mothball costs is not material. The Tariff anticipates that the IMM will raise issues such as these during the prescribed review process. Here, the IMM never once mentioned that NRG's treatment of mothball costs in its bids was incorrect, nor did the IMM mention the mothball cost treatment in its referral. Moreover, the IMM did not, in its reformation of NRG's bid revise NRG's mothball costs. These facts very strongly suggest that the omission was not material.

36. Moreover, the IMM's revision of NRG's scarcity hours submission *by itself* brought its static de-list bid to the $5.50 Dynamic De-List Bid Threshold under which no further justification for submitting a de-list bid is required. Once that figure was revised, no further inquiry into the contents of the de-list bid was necessary. The mothball costs, if treated differently, could not have raised the de-list bid price, so its value was immaterial. This cannot serve as the basis for a penalty.

---

[20] *ISO New England*, 151 FERC ¶ 61,270 at P 16.

[21] *See* ISO New England Inc., Updates to CONE, Net CONE, and Capacity Performance Payment Rate**,** Docket No. ER21-787-000 at 16 (filed Dec. 31, 2020).

37. Finally, in assessing each of Enforcement's allegations, the Commission should bear in mind its typical practice when in receipt of incomplete applications or applications containing incorrect or inconsistent information. The filing of such an application in any of the regimes we administer is not treated as the predicate for an action by Enforcement. Instead, we either reject the application as incomplete or require additional submissions to provide the missing or incorrect information.

38. For example, under Part 35 of our regulations, applicable to cost-based rates, public utilities are required to provide detailed cost and revenue information as to past periods, and forecasts of the same costs and revenues for the 12 months following the proposed effective date of the rate increase.[22] The information supplied must be accompanied by an attestation from an officer of the applicant that the submissions "are true, accurate, and current representations of the utility's books, budgets, or other corporate documents."[23]

39. Notwithstanding this requirement in our regulations, we do not penalize applicants for basing rate filings on statements that are demonstrably incorrect. For example, when evaluating the proposed cost-based reliability must-run agreement filed by Mystic Development, LLC (Mystic), we observed that the proposed fuel index in that agreement overstated Mystic's cost of fuel in a way that was inconsistent with Mystic's fuel supply agreement. Rather than penalize Mystic for violating our regulations or for making a misstatement, we simply required that the fuel index be revised to correctly reflect Mystic's cost of fuel.[24]

---

[22] *See* 18 C.F.R. § 35.13(d) (2020).

[23] 18 C.F.R. § 35.13(d)(6) (2020).

[24] *See Mystic Dev., LLC*, 114 FERC ¶ 61,200, at P 51 (2006); 18 C.F.R. § 375.307(a)(1)(v) (2020) (providing for the Commission to seek additional information when examining rate filings if the showing in a utility's submission is insufficient to make a determination).

40. In my view, fairness would demand that—in all but the most egregious cases—we decline to impose penalties for less-than-perfect submissions to the IMM or the Commission when there is opportunity for review and revision. To do otherwise is to apply our enforcement authority erratically and unevenly, requesting further submission from some utilities while subjecting some unfortunates to the burdens of investigation and civil penalties.

For these reasons, I respectfully dissent.

_____

James P. Danly
Chairman

Document Content(s)