

174 FERC ¶ 61,086
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Alliance NYGT LLC

Docket No. IN21-4-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued February 8, 2021)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Alliance NYGT LLC (NYGT). 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 (2020), into whether NYGT violated 18 C.F.R. § 35.41(a)-(b) (2020) and several provisions of the New York Independent System Operator (NYISO) Market Administration and Control Services Tariff (MST) related to its submission of offers and information to NYISO.

2. NYGT agrees to: (a) disgorge \$369,264.19, plus \$94,710.09 in interest, to NYISO for the purpose of restitution and compensating market participants; (b) pay a civil penalty of \$420,000 to the United States Treasury; and (c) be subject to compliance monitoring as provided more fully below. NYGT stipulates to the facts set forth in Section II of the Agreement and admits that it violated 18 C.F.R. § 35.41(a)-(b) (2020) and several provisions of the MST, as described in Section III of the Agreement.

I. Facts

3. NYGT's Hillburn and Shoemaker generators (collectively referred to as "generators") each have a nameplate rating of approximately 40 MW. They are generally capable of operating on gas or kerosene (a type of fuel oil). The generators are located in the Lower Hudson Valley Region, with Hillburn located in Rockland County, New York, and Shoemaker located in Orange County, New York.

4. NYGT acquired the generators in 2007 and identified operational issues that caused them not to start in certain circumstances, which would require significant repairs to remedy. These operational issues were more pronounced when the generators operated on gas as opposed to kerosene.

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5. After acquiring the generators, NYGT completed liquid fuel upgrades on each, and subsequently notified NYISO that they were available on liquid fuel only, because the gas systems were disabled to facilitate repair and upgrades to those systems. Between approximately January 2009 and January 2012, NYGT operated the generators exclusively on kerosene.

6. NYGT completed this phase of the generators' gas equipment upgrades in 2012 and worked to transition to gas usage. That year, NYGT contacted a NYISO representative to request information related to updating the generators' reference prices in advance of the repairs being completed. Some problems persisted; NYGT failed to start on gas in response to a January 2013 dispatch request. Thereafter, the generators started operating primarily on gas to fulfill their awards. The units' reference prices, however, remained indexed to the more expensive liquid fuel.

7. Starting in September 2013, NYISO began communicating with NYGT about the type of fuel used to operate the generators. NYGT's responses were untimely, inaccurate, or incomplete.

8. It was not until March 2016 that NYGT began, and subsequently completed, the process of updating its reference prices to reflect gas capabilities for both generators.

II. Violations

9. Enforcement determined that NYGT violated 18 C.F.R. § 35.41(a)-(b) and certain provisions of NYISO's MST.

10. Sections 35.41(a)-(b) of the Commission's regulations require NYGT to (a) "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;" and (b) "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the . . . Commission-approved independent system operators . . . unless Seller exercises due diligence to prevent such occurrences."

11. NYGT is a "Seller" under 18 C.F.R. § 35.41 because it has authority "to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act." 18 C.F.R. § 35.36(a)(1) (2020).

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12. NYISO's MST contains the following provisions:

- NYISO MST, Attachment H § 23.3.1.4.6.2 (“Market Parties¹ shall monitor Generator reference levels and shall endeavor to timely . . . contact the ISO to request an adjustment to a Generator’s reference level(s) when the Generator’s fuel type or fuel price change.”);
 - NYISO MST, Attachment H § 23.3.1.4.6.8 defines “timely” for purposes of Section 23.3.1.4.6 as, “the submission of fuel type and/or fuel price information using the methods specified in Section 23.3.1.4.6.4 of these Mitigation Measures prior to market close for the relevant Real-Time Market hour. For purposes of this Section 23.3.1.4.6, ‘timely’ notice or submission to the Day-Ahead Market shall mean the submission of fuel type and/or fuel price information using the methods specified in Section 23.3.1.4.6.4 of these Mitigation Measures at least 15 minutes prior to the close of the Day-Ahead Market (*i.e.*, by 4:45 a.m.)”
- NYISO MST, Attachment H § 23.3.1.4.6.4 (“Consistent with the rules specified in this Section . . . Market Parties shall notify the ISO of changes in fuel type or fuel price by (i) submitting revised fuel type or fuel price information to the ISO’s Market Information System along with the Generator’s Bid(s), or (ii) by directly contacting the ISO to request a reference level update consistent with ISO procedures, or (iii) by utilizing both of the available notification methods.”); and
- NYISO MST, Attachment H § 23.3.1.4.7 (“Except as otherwise authorized in accordance with Section 23.3.1.4.6.8 above, Market Parties shall timely report significant changes to the cost components used to develop their Generator’s reference levels to the ISO in order to permit the revised costs to be timely reflected in the Generator reference levels.”).

¹ NYGT is a Market Party, which is defined as “any person or entity that is, or for purposes of the determinations to be made pursuant to Section 23.4.5.7 of this Attachment H proposes or plans a project that would be, a buyer or a seller in, or that makes bids or offers to buy or sell in, or that schedules or seeks to schedule Transactions with the ISO in or affecting any of the ISO Administered Markets, or any combination of the foregoing.” NYISO MST, Attachment H § 23.2.1 (Definitions).

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13. After NYGT completed its phase of the generators' gas equipment upgrades in 2012, it failed to notify NYISO that the generators now had the ability to operate on gas, which is less expensive than kerosene. As a result, NYGT received inflated make-whole payments. offers to buy or sell in, or that schedules or seeks to schedule Transactions with the ISO in or affecting any of the ISO Administered Markets, or any combination of the foregoing.” NYISO MST, Attachment H § 23.2.1 (Definitions).

III. Stipulation and Consent Agreement

14. Enforcement and NYGT have resolved the Investigation by means of the attached Agreement.

15. NYGT stipulates to the facts recited in Section II of the Agreement, and admits to the violations described in Section III of the Agreement.

16. NYGT agrees to pay \$369,264.19, in disgorgement, plus interest, calculated pursuant to section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2020), and a civil penalty of \$420,000.

17. The disgorgement and civil penalty amounts are to be paid in the following manner: within ten days of the Effective Date, NYGT shall pay a lump sum of \$100,000 to NYISO as disgorgement (including interest). Beginning with the first day of the first full quarter after the Effective Date, NYGT shall pay sixteen equal quarterly installments of \$48,998.39, with such quarterly payments first paid to NYISO as disgorgement until the disgorgement (including interest) is fully paid, and thereafter such quarterly payments to be made to the United States Treasury in satisfaction of the penalty. Each quarterly payment is due on the first day of each quarter.

18. NYGT 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. In addition, NYGT agrees to conduct at least one training program relating to compliance with the Commission's regulations and MST.

IV. Determination of Appropriate Sanctions and Remedies

19. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,² including the fact that NYGT admits to the violations described in Section II of the Agreement.

² *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

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20. 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.

21. The Commission also concludes that NYGT's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.³

22. The Commission directs NYGT to make the civil penalty and disgorgement payments as required by the Agreement.

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

24. The Commission directs NYISO to allocate the disgorged funds consistent with Enforcement's approval of NYISO's plan for doing so.

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³ *Id.*

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Alliance NYGT LLC

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STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Alliance NYGT LLC (NYGT) 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 (2020), into whether NYGT submitted offers and information to the New York Independent System Operator (NYISO) that did not accurately reflect the fuel used to run its generators, failed to respond to NYISO's inquiries regarding the type of fuel required and used to run its generators, and omitted material information from its responses to NYISO about its fuel use.

2. NYGT stipulates to the facts in Section II and admits that it violated 18 C.F.R. § 35.41(a)-(b) (2020) and several provisions of the NYISO Market Administration and Control Services Tariff (MST), as described in Section III. NYGT agrees to: (a) disgorge \$369,264.19, plus \$94,710.09 in interest, to NYISO for the purpose of restitution and compensating market participants; (b) pay a civil penalty of \$420,000 to the United States Treasury; and (c) be subject to compliance monitoring as provided more fully below.

II. STIPULATIONS

3. Enforcement and NYGT hereby stipulate and agree to the following facts.

4. NYGT's Hillburn and Shoemaker generators (collectively referred to as "generators") each have a nameplate rating of approximately 40 MW. They are generally capable of operating on gas or kerosene (a type of fuel oil). The generators are located in the Lower Hudson Valley Region, with Hillburn located in Rockland County, New York, and Shoemaker located in Orange County, New York.

5. NYGT acquired the generators in 2007 and identified operational issues that caused them not to start in certain circumstances, which would require significant repairs to remedy. These operational issues were more pronounced when the generators operated on gas as opposed to kerosene.
6. After acquiring the generators, NYGT completed liquid fuel upgrades on each, and subsequently notified NYISO that they were available on liquid fuel only, because the gas systems were disabled to facilitate repair and upgrades to those systems. Between approximately January 2009 and January 2012, NYGT operated the generators exclusively on kerosene.
7. NYGT completed this phase of the generators' gas equipment upgrades in 2012 and worked to transition to gas usage. That year, NYGT contacted a NYISO representative to request information related to updating the generators' reference prices in advance of the repairs being completed. While some problems persisted—for example, NYGT attempted to run the units on gas to respond to a dispatch request in January 2013, but they would not start—after January 2013, the generators started operating primarily on gas to fulfill their awards. The units' reference prices, however, remained indexed to the more expensive liquid fuel.
8. Starting in September 2013, NYISO began communicating with NYGT about the type of fuel used to operate the generators. NYGT's responses were untimely, inaccurate, or incomplete.
9. It was not until March 2016 that NYGT began, and subsequently completed, the process of updating its reference prices to reflect gas capabilities for both generators.
10. Following its Investigation, Enforcement determined that NYGT violated 18 C.F.R. § 35.41(a)-(b) and certain provisions of NYISO's MST. Enforcement notes that over the course of the Investigation NYGT demonstrated full cooperation, including by providing extensive data and analysis regarding the generators' offers.

III. VIOLATIONS

11. Sections 35.41(a)-(b) of the Commission's regulations require NYGT to (a) "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;" and (b) "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the . . . Commission-approved independent system operators . . . unless Seller exercises due diligence to prevent such occurrences."

12. NYGT is a “Seller” under 18 C.F.R. § 35.41 because it has authority “to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act.” 18 C.F.R. § 35.36(a)(1) (2020).

13. NYISO’s MST contains the following provisions:

- NYISO MST, Attachment H § 23.3.1.4.6.2 (“Market Parties⁴ shall monitor Generator reference levels and shall endeavor to timely . . . contact the ISO to request an adjustment to a Generator’s reference level(s) when the Generator’s fuel type or fuel price change.”);
- NYISO MST, Attachment H § 23.3.1.4.6.8 defines “timely” for purposes of Section 23.3.1.4.6 as, “the submission of fuel type and/or fuel price information using the methods specified in Section 23.3.1.4.6.4 of these Mitigation Measures prior to market close for the relevant Real-Time Market hour. For purposes of this Section 23.3.1.4.6, ‘timely’ notice or submission to the Day-Ahead Market shall mean the submission of fuel type and/or fuel price information using the methods specified in Section 23.3.1.4.6.4 of these Mitigation Measures at least 15 minutes prior to the close of the Day-Ahead Market (*i.e.*, by 4:45 a.m.)”
- NYISO MST, Attachment H § 23.3.1.4.6.4 (“Consistent with the rules specified in this Section . . . Market Parties shall notify the ISO of changes in fuel type or fuel price by (i) submitting revised fuel type or fuel price information to the ISO’s Market Information System along with the Generator’s Bid(s), or (ii) by directly contacting the ISO to request a reference level update consistent with ISO procedures, or (iii) by utilizing both of the available notification methods.”); and
- NYISO MST, Attachment H § 23.3.1.4.7 (“Except as otherwise authorized in accordance with Section 23.3.1.4.6.8 above, Market Parties shall timely report significant changes to the cost components used to develop their Generator’s reference levels to the ISO in order to permit the revised costs to be timely reflected in the Generator reference levels.”).

⁴ NYGT is a Market Party, which is defined as “any person or entity that is, or for purposes of the determinations to be made pursuant to Section 23.4.5.7 of this Attachment H proposes or plans a project that would be, a buyer or a seller in, or that makes bids or offers to buy or sell in, or that schedules or seeks to schedule Transactions with the ISO in or affecting any of the ISO Administered Markets, or any combination of the foregoing.” NYISO MST, Attachment H § 23.2.1 (Definitions).

14. After NYGT completed this phase of the generators' gas equipment upgrades in 2012, it failed to notify NYISO that the generators now had the ability to operate on gas, which is less expensive than kerosene. As a result, NYGT received inflated make-whole payments.

IV. REMEDIES AND SANCTIONS

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

16. NYGT agrees to pay disgorgement to NYISO for the purpose of restitution and compensating market participants in the amount of \$369,264.19, plus \$94,710.09 calculated pursuant to section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2020).

17. NYGT agrees to pay a civil penalty of \$420,000 to the United States Treasury.

18. The disgorgement and civil penalty amounts are to be paid in the following manner: within ten days of the Effective Date, NYGT shall pay a lump sum of \$100,000 to NYISO as disgorgement (including interest). Beginning with the first day of the first full quarter after the Effective Date, NYGT shall pay sixteen equal quarterly installments of \$48,998.39, with such quarterly payments first paid to NYISO as disgorgement until the disgorgement (including interest) is fully paid, and thereafter such quarterly payments to be made to the United States Treasury in satisfaction of the penalty. Each quarterly payment is due on the first day of each quarter.

19. NYGT shall conduct at least one training program relating to compliance with the Commission's regulations and MST.

20. NYGT 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 NYGT to submit reports for one additional year.

21. Each compliance monitoring report shall: (1) identify any known violations of Commission regulations or MST that occurred during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; and (2) describe the required Commission-related and MST-related

compliance training that NYGT administered during the reporting period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

22. Each compliance monitoring report shall also include an affidavit executed by a representative of NYGT stating that it is true and accurate to the best of his/her knowledge.

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

V. TERMS

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

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

26. Failure by NYGT 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 NYGT to additional action under the enforcement provisions of the FPA.

27. If NYGT does not make the required payments described above within the times agreed by the parties, interest will be calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii)(A) and (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.

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

29. 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 NYGT has been made to induce the signatories or any other party to enter into the Agreement.

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

31. In connection with the civil penalty provided for herein, NYGT 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). NYGT 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.

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

33. 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.

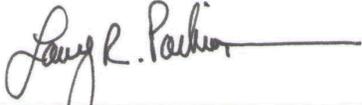
34. The undersigned representative of NYGT affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

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

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Agreed to and Accepted:



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



Daniel A. Mullen
Attorney for Alliance NYGT LLC
Step toe & Johnson LLP

Date: 1/19/2021

Date: 1/19/2021

Document Content(s)

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