

FERC Approves \$2.7 Million Settlement Resolving Electric Power Market Manipulation Investigation

October 29, 2010

On October 28, the Federal Energy Regulatory Commission (Commission) issued an order approving a \$2.7 million settlement relating to allegations that North America Power Partners (NAPP) engaged in fraudulent conduct in violation of the Commission's prohibition against market manipulation and committed multiple violations of the PJM Interconnection, LLC's (PJM) Open Access Transmission Tariff (OATT). The Commission's order resolves an Office of Enforcement investigation into NAPP's conduct that occurred more than two years ago. NAPP did not admit or deny the allegations contained in the settlement with the Office of Enforcement.

The Office of Enforcement's investigation stems from NAPP's activities in PJM's Demand Response Programs during 2007 and 2008. NAPP, a Curtailment Service Provider, acts as an agent for individual resources that seek to participate in PJM's Demand Response Programs. In March 2008, PJM referred certain issues relating to NAPP's participation in PJM's Synchronized Reserve Market (SRM), Interruptible Load for Reliability Program (ILR), and the Interchange Energy Market (IEM) to the Office of Enforcement. Through the course of its investigation, the Office of Enforcement alleged the following:

- NAPP offered resources into PJM's SRM at times when NAPP was aware that the resources were unavailable to respond to a Synchronized Reserve Event, requiring the resources to reduce demand.
- NAPP submitted inaccurate peak load contribution data to PJM in connection with NAPP's registration of resources as participants in PJM's ILR, which overstated the peak load contribution of NAPP's resources by 39.5 MW.
- NAPP registered 101 resources as participants in PJM's ILR before obtaining authorization from the resources.
- NAPP offered a resource with a real-time locational marginal pricing rate into PJM's day-ahead energy market, in violation of PJM's OATT.
- NAPP transacted in the day-ahead IEM without having such transactions controlled by a sufficiently staffed and communications-enabled market operations center, in violation of PJM's OATT.

The Office of Enforcement alleged that NAPP's actions constituted a fraudulent scheme in violation of the Commission's prohibition against market manipulation and also violated multiple provisions of PJM's OATT. As a product of NAPP's settlement with the Office of Enforcement, NAPP is obligated to

pay a civil penalty of \$500,000; disgorge \$2,258,127, plus interest, in unjust profits; and undertake a compliance program that provides semiannual reports to the Office of Enforcement for two years.

Notably, the Office of Enforcement concluded that NAPP violated the Commission’s prohibition against market manipulation even though NAPP’s activities *did not* affect market prices or cause actual harm to system reliability. Instead, the Office of Enforcement maintained that the Commission’s market manipulation prohibition was violated because NAPP’s actions operated as a fraud upon PJM. In this regard, the Office of Enforcement asserted that NAPP’s most serious violations were committed willfully and intentionally through the participation or oversight of NAPP’s Senior Vice President of Operations at that time. Further, NAPP’s alleged lack of cooperation at the initial stages of the investigation was cited as an exacerbating factor, offset by its improved cooperation in later stages of the investigation.

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