

FERC v. City Power Marketing – The Commission’s First Enforcement Settlement Since Regaining Quorum

Q On August 22 the Federal Energy Regulatory Commission (FERC) issued its first enforcement order since regaining a quorum earlier this month. What is the case about?

Matthew Connolly: In the case, *FERC v. City Power Marketing, LLC*, No. 1:15-cv-01428 (D.D.C.), FERC alleged that City Power and its owner K. Stephen Tsingas engaged in market manipulation in the PJM market in July 2010 by using Up-to-Congestion (UTC) transactions to receive excessive amounts of credit payments to transmission customers. UTCs are virtual transactions to buy or sell congestion between two points through which the trader seeks to profit from the price spread between the locations.

FERC also alleged that City Power falsely denied the existence of instant messages and other documents relevant to FERC’s investigation in violation of section 35.41(b) of the Commission’s regulations.

In June 2015, FERC issued an Order Assessing Penalties (OAP) against City Power and Tsingas directing City Power and Tsingas to pay disgorgement of \$1.3 million and assessing civil penalties of \$14 million against City Power and \$1 million against Tsingas.

City Power and Tsingas declined to pay the disgorgement and penalties, causing FERC to file an enforcement action in September 2015 to affirm its OAP.

Q What are the key terms of the settlement?

MC: FERC’s Office of Enforcement and the defendants settled the case in late March 2017, at a time when the Commission lacked a quorum and therefore was unable to approve any enforcement settlements. There are four key terms to the settlement:

- (1) City Power must pay a \$9 million civil penalty within 30 days, \$5 million less than what FERC assessed in the OAP. Under the settlement, FERC agreed not to assert that Tsingas is personally liable for this penalty.
- (2) Tsingas must pay \$1.3 million in disgorgement and \$1.42 million in civil penalties, slightly higher than the amount assessed in the OAP, payable in annual installments over the next 10 years.
- (3) Tsingas is banned from participating, directly or indirectly, in a FERC-jurisdictional market for three years. Notably, FERC would not have been able to pursue this remedy had the court decided the case on the merits.
- (4) The defendants neither admit nor deny the allegations.

Q Does this settlement suggest a shift in priorities or trends for FERC?

MC: Once in federal court, Enforcement and the defendants have consistently attempted to mediate their disputes, and there have been several settlements, like this one, arising out of a post-filing mediation. No court has decided a FERC enforcement matter to date. In this case, the \$9 million penalty assessed against City Power is below the range called for under FERC’s Policy Statement on Penalty Guidelines (approximately \$12.6-25.3 million). FERC has previously rigidly applied its Penalty Guidelines to entities in market manipulation cases, rarely deviating unless a defendant shows financial hardship. That may be changing.

Now that FERC has regained its quorum, I expect to see several more enforcement orders in the coming months.

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Matthew Connolly of Nutter represents energy companies and traders in FERC matters. Matt has extensive experience representing energy companies and traders in enforcement and compliance matters. He currently represents an entrepreneurial energy trading firm and an individual trader in federal court regarding market manipulation charges in the California wholesale electricity market.

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