

104 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell

Fact-Finding Investigation into Possible
Manipulation of Electric and Natural Gas
Prices

Docket No. PA02-2-011

BP Energy Company

Docket No. EL03-60-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued July 18, 2003)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Staff conducting the investigation in Docket No. PA02-2-000 (Staff) and BP Energy Company (BP Energy). This agreement resolves, as to BP Energy, all issues arising from a preliminary, non-public investigation conducted pursuant to Part 1b of the Commission's Rules, 18 C.F.R. Part 1b (2003), and arising from the proceedings in Docket No. EL03-60-000 and the Final Report on Price Manipulation in Western Markets in Docket No. PA02-2-000.¹

BACKGROUND

2. On February 13, 2002, the Commission directed a Staff fact-finding investigation into whether any entity manipulated prices in electricity or natural gas markets in the West or otherwise exercised undue influence over wholesale electricity prices in the West, since January 1, 2000. On March 26, 2003, the Commission publicly released Staff's Final Report, which among other things, discusses several occasions where a BP Energy trader called a Reliant Energy Services, Inc. (Reliant) trader and asked him to buy power from an offer he planned to place on the Bloomberg PowerMatch electronic

¹Final Report on Price Manipulation in the Western Markets at Chapter VI, pages 55-56 (Docket No. PA02-2-000 March 2003) (Staff Final Report). The Commission incorporated the Staff Final Report, and the underlying record in Docket No. PA02-2-000, by reference into the record in Docket No. EL03-60-000.

trading platform (Bloomberg). The Reliant trader would then sell the power back to the BP Energy trader at the same price, but the transaction would not take place on the electronic trading platform.

3. Concurrent with the Staff Final Report, in Docket No. EL03-60-000, the Commission issued an order finding that, as relevant here, based on the described conduct, BP Energy "appear[s] to have manipulated electricity prices at Palo Verde, an important trading hub."² The Commission explained that its grant of authority to sell power at market-based rates depends on a functioning, competitive market that is not impaired by market manipulation and that implicit in the Commission's orders granting market-based rates is a presumption that a company's behavior will not involve fraud or deception. The Commission then required BP Energy to show cause why its market-based rate authority should not be revoked.

4. BP Energy filed an answer to the Show Cause Order on April 16, 2003. BP Energy acknowledges that the recorded conversations of the BP Energy trader are "inappropriate, disappointing, and embarrassing for the company."³ BP Energy states that it regrets and apologizes for the trader's conduct related to the trades at issue and that, following a full internal investigation, it has terminated the trader's employment.⁴

5. BP Energy argues that the trades at issue were small, within the market range at the time, and did not manipulate the Palo Verde market. BP Energy offers testimony to make the point that it did not possess sufficient market share to establish market power. Its witness also testifies that BP Energy lacked the ability to manipulate the market because it is a "small player in a big business" and the trades were not reported to publishers of price indices.⁵ BP Energy claims that it did not profit from the trades in question since the trader bought back the same amount of energy at the same price. Further, the trader made no subsequent trades on the days in issue, no other BP trader made any trades in the applicable product after the trades at issue, and the trades did not impact the company's financial statements.

²Reliant Energy Services, Inc. and BP Energy Company, 102 FERC ¶ 61,315 at P 11 (2003) (Show Cause Order).

³BP Energy Answer at 1.

⁴Id.

⁵Id. at 9.

6. BP Energy states that it has strengthened its policies and procedures to ensure that it is conducting its power trading in a manner consistent with the Commission's expectations and requirements. It seeks to assure the Commission that the behavior at issue in this show cause proceeding will not recur and describes in detail the new policies and controls that it has implemented.

7. BP Energy also argues that the proposed remedy of revocation of its market-based rate authority is not in proportion to the alleged misconduct. It points out that the Show Cause Order pertains to the actions of one trader nearly three years ago, and the trades at issue involved small volumes of electricity that did not have an effect on the Palo Verde hub.

8. Finally, BP Energy argues that the Show Cause Order fails to establish a prima facie case. It adds that the facts recited in the order do not demonstrate attempted or actual market manipulation.

THE AGREEMENT

9. BP Energy has entered into an Agreement with Staff which would resolve all issues arising from a preliminary, non-public investigation conducted pursuant to Part 1b of the Commission's Rules, 18 C.F.R. Part 1b (2003), and arising from the proceedings in Docket No. EL03-60-000 and the Final Report on Price Manipulation in Western Markets in Docket No. PA02-2-000. The Agreement does not resolve the industry-wide investigation in Docket No. IN03-10-000.

10. The Agreement requires that for a period of six months following the date of issuance of this order, BP Energy's sales of electricity in the United States portion of the Western Electricity Coordinating Council (WECC) will be subject to review by the Commission and potential refunds. Specifically, BP Energy agrees to provide monthly reports to the Commission's Office of Market Oversight and Investigation (OMOI), providing data on all completed electricity trades in the WECC on a transaction-by-transaction basis. BP Energy also agrees that, within 30 days of a monthly report, OMOI may investigate BP Energy's trading policies by so notifying BP Energy. BP Energy will have an opportunity to respond, and the trade will be subject to refund upon a finding by the Commission that the prohibited trading practice resulted in an unjust and unreasonable rate.

11. In addition, BP Energy agrees to implement a new policy of random review by BP Energy's Compliance Office of the taped conversations of BP Energy's power traders with

market participants for transactions in the United States portion of the WECC. This random review will occur over a period of six months after the issuance of this Order.

12. Also, BP Energy agrees to provide copies of trading tapes randomly selected and reasonably requested by OMOI for its review during this six-month period. Further, BP Energy agrees to implement a retention policy for trading tapes of three years, or such other period as the Commission may prescribe in Docket No. EL01-118-000, et al.

13. Further, BP Energy agrees to contribute \$3,000,000 to fund low-income home energy assistance programs for customers in California and Arizona, within 30 days of the date of issuance of this order. The Agreement specifies that BP Energy will file a report with the Commission detailing the distributions of these monies, within 45 days of the date of issuance of this order.

14. The Agreement provides that the Commission "does not accept all of the propositions stated in BP Energy's submissions in Docket No. EL03-60-000." Similarly, by agreeing to this Agreement, BP Energy "does not admit that any of the BP Energy activities described in the August 13, 2002 Initial Report in Docket No. PA02-2-000, the March 26, 2003 Final Report in that Docket, and the March 26, 2003 Show Cause Order in Docket No. EL03-60-000, constituted a violation of any federal statute or of any Commission rule, regulation, or order issued thereunder, or adversely affected the price formation process."

Discussion

15. The Commission finds that the matters addressed in the Agreement are within the exclusive jurisdiction of the Commission over wholesale electricity rates by public utilities and its authority to examine any rule, regulation, practice or contract affecting such rates. 16 U.S.C. § 824 (2000); accord 16 U.S.C. § 824d (2000). The Commission finds that the Agreement is fair and reasonable and that its approval is in the public interest.⁶ 16 U.S.C. § 824d (2000).

⁶Our providing for interventions in Docket No. EL03-60-000 does not alter the fact that the Commission is conducting an investigation in Docket No. PA02-2-000, in which the Commission has enforcement discretion. Indeed, even though the Commission has, albeit rarely, allowed interventions in Part 1b investigations, 18 C.F.R. Part 1b (2003), those interventions did not transform the investigation into an adjudication. See *Baltimore Gas & Electric v. FERC*, 252 F.3d 456 (D.C. Cir. 2001) (holding that

(continued...)

16. BP Energy's response to the Show Cause Order recognizes the seriousness of the identified trading activity, and BP Energy states that it has strengthened and refined its trading policies, putting into place safeguards and internal controls intended to ensure that this kind of conduct will not recur. In addition, BP Energy has agreed here to, among other conditions, subject its sales of electricity in the United States portion of the WECC to Commission review for a period of six months and have those sales be subject to refund upon a finding by the Commission that the transactions were not just and reasonable, and to contribute \$3,000,000 to fund low income home energy assistance programs for customers in California and Arizona.

The Commission orders:

(A) The Commission hereby approves the attached Stipulation and Consent Agreement without modification.

(B) The Commission's approval of the Agreement does not constitute precedent regarding any principle or issue in these dockets.

(C) BP Energy is hereby directed to file monthly reports with the Commission's Office of Market Oversight and Investigation for a period of six months from the date of issuance of this order, to provide to the Commission's Office of Market Oversight and Investigation copies of trading tapes, and to comply with the other provisions of the Agreement, as set forth in Part II, paragraphs A, et seq. of the Agreement.

⁶(...continued)

notwithstanding the participation of intervenors in a Section 1b investigation, the Commission had exercised unreviewable discretion in approving a settlement with the company under investigation over the objections of those intervenors); see generally Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices, 103 FERC ¶ 61,019 at P 14-15 (2003), reh'g pending. Accordingly, requests for rehearing of this order would not lie.

(D) BP Energy is hereby directed to provide \$3,000,000 to fund low income home energy assistance programs for customers in California and Arizona, within 30 days of the date of issuance of this Order and to file with the Commission a report detailing the distribution of these monies within 45 days of the date of issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.