

123 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

In re Edison Mission

Docket No. IN08-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued May 19, 2008)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Edison Mission Energy (EME), Edison Mission Marketing & Trading, Inc. (EMMT), and Midwest Generation, L.L.C. (Midwest Gen) (collectively, Edison Mission). This order is in the public interest because it resolves a matter in which Edison Mission engaged in conduct that misled Commission staff (staff) prior to, and during, an investigation of Edison Mission's bidding behavior in PJM Interconnection, LLC (PJM). This Agreement provides for Edison Mission to pay \$9,000,000, consisting of a \$7,000,000 civil penalty and a comprehensive compliance plan, the cost of which is estimated to be at least \$2,000,000, for violations of 18 C.F.R. § 35.41(b)(2007).

2. Section 35.41(b) of the Commission's regulations imposes a duty of candor upon electric power sellers authorized to engage in sales for resale of electric energy at market based rates to provide accurate, factual, and complete information in communications with the Commission. 18 C.F.R. § 35.41(b) (2007). Prior to, and during, a non-public, preliminary investigation of an Edison Mission bidding practice in PJM conducted pursuant to Part 1b of the Commission regulations, 18 C.F.R. Part 1b (2007) (the Investigation), Edison Mission made a series of representations and produced data and documents to staff regarding its supply offer strategy that, upon further explanation by Edison Mission, were revealed to have resulted in misleading staff. As a result of Edison Mission's actions over a three and a half year period, staff was not only misled and misdirected, but expended an enormous amount of time and resources due to the misstatements.

3. The Edison Mission bidding strategy examined by staff in the Investigation was Edison Mission's offering its capacity resource generation units at prices near the \$1,000/MWh PJM bid cap so that they would not be taken in the PJM day-ahead (DA) market and would instead be taken in the subsequent PJM real-time (RT) market (the high offer strategy).

4. Edison Mission's conduct and actions that misled staff concerning the high offer strategy greatly hampered and delayed Enforcement's understanding, analysis, and investigation of that strategy, causing staff to waste resources analyzing different explanations offered by Edison Mission for its bidding practices. During the course of the investigation, eight staff professionals reviewed tens of thousands pages of memos, reports, analyses and spread sheets. Staff also conducted over 20 witness interviews and depositions, including those of key Edison Mission employees, PJM personnel, and the PJM Market Monitor.

5. Edison Mission's conduct repeatedly resulted in incomplete statements or information that misled staff and impeded staff's analysis. Such conduct included the following:

- On the basis of a series of Edison Mission statements to staff in 2004, staff understood that the high offer strategy would co-terminate with the expiration at the end of 2004 of certain power purchase agreements that contained RT pricing provisions and that pre-dated the entry of the MidWest Gen units into PJM (the Legacy PPAs), but it did not. (Agreement, ¶ 20)
- Edison Mission's statements to staff regarding the high offer strategy in 2004 omitted key facts regarding how the strategy was being employed and for which units, and also included information that was inaccurate. (Agreement, ¶ 21)
- During the course of staff's investigation from May 2005 through late 2007, staff repeatedly showed that data Edison Mission provided to staff did not support Edison Mission's explanations for the high offer strategy or was contradicted by other evidence. Such inaccuracies included incorrect statements regarding Edison Mission first contingency analyses and the relationship of the Midwest Gen strategy to the high offer strategy as practiced by Edison Mission with respect to its Pennsylvania Homer City units. (Agreement, ¶¶ 24-26)
- Edison Mission repeatedly recharacterized how the high offer strategy worked in practice. Edison Mission, for example, said that it kept 750 to 1500 MW of generation out of the DA market as the result of a first contingency analysis and that Edison Mission was concerned that a tornado could cause the loss of energy from Edison Mission's two large Powerton units. Later, however, in a data response, Edison Mission explained that high bidding of 750 to 1500 MW was a "policy." When staff again conducted an analysis and confronted Edison Mission with data falling outside the "policy," Edison Mission said that the use of the word "policy" was inaccurate and that no such formal policy existed. (Agreement, ¶ 24)

- Edison Mission deleted emails potentially valuable to staff's Investigation despite a staff directive to preserve such emails; in fact, Edison Mission retained and produced some key documents but not others from similar time periods, leading staff to question whether documents had been selectively preserved. (Agreement, ¶ 27)

6. Edison Mission admits that its conduct in staff's Investigation violated 18 C.F.R. § 35.41(b) (2007) and acknowledges responsibility for the misallocation and misdirection of staff resources that thereby resulted.

7. Because much of Edison Mission's conduct regarding the high offer strategy occurred after August 8, 2005, the Commission may impose a civil penalty for those violations. 16 U.S.C. ¶ 825o-1(b) (2006).

8. In approving the Agreement, the Commission considered the factors set forth in section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), and our *Policy Statement on Enforcement*, 113 FERC ¶ 61,068 (2006), including the severity of the violations. In this matter, we believe the violations were severe because they involved repeated conduct that misled staff in the course of an investigation. Edison Mission also admits that it did not exercise sufficient care in its communications with staff.

9. The Commission further notes that the violations that occurred in this matter were severe and not the type of data errors or omissions that sometimes occur in investigations involving large data production. Such matters are usually timely and easily cured with supplemental production and correcting any misstatements. In contrast, here Edison Mission's acts that misled staff were protracted, related to core issues under investigation, and caused extensive misallocation of resources.

10. No findings with respect to Edison Mission's use of the high offer strategy are made in the Agreement, but Edison Mission discontinued use of this strategy in April 2006 and agrees not to use it in the future.

11. Edison Mission also will develop and implement a comprehensive regulatory compliance program. Edison Mission will retain independent external consultant[s] to assist Edison Mission in this endeavor. The program will include a thorough review of the effectiveness of Edison Mission's compliance processes. After the program has been implemented, Edison Mission will report the results of the program, including any and all recommendations, to Enforcement. Edison Mission agrees that it will spend whatever funds are necessary to complete this project. Costs are estimated to be approximately \$2 million.

12. Given the nature and circumstances of the violations in this matter, the Commission finds the Agreement, including the civil penalty and the compliance program specified in the Agreement, are fair and equitable, and in the public interest.

The Commission orders:

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

By the Commission. Commissioner Moeller concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Edison Mission Marketing & Trading)
Edison Mission Energy) Docket No. IN08-3-000
Midwest Generation, L.L.C.)
)

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) conducted a preliminary, non-public investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2007), into whether the bidding practices associated with certain units owned and operated by Edison Mission Energy (EME), Edison Mission Marketing & Trading, Inc. (EMMT), and Midwest Generation, L.L.C. (Midwest Gen) (collectively, Edison Mission) that are designated as Capacity Resources pursuant to the PJM tariff violated any statute, rule or regulation administered by the Commission (the Investigation). Throughout the investigation, representations were made to the staff that, upon further explanation by Edison Mission, were revealed to be incomplete or inaccurate. These representations caused staff resources to be misallocated and misdirected. Enforcement and Edison Mission enter into this Stipulation and Consent Agreement (Agreement) to resolve the Investigation, and Edison Mission admits to violating 18 C.F.R. § 35.41(b) (2007), which, *inter alia*, obligates sellers authorized to engage in sales for resale of electric energy at market based rates to provide accurate, factual, and complete information in communications with the Commission.

2. Under the PJM tariff, Capacity Resources must offer all available energy into the day-ahead (DA) market. In addition, there is a generally applicable offer cap of \$1000/MWh in PJM. For almost two years, beginning in May of 2004 and ending in April of 2006, Edison Mission regularly offered a large portion of the MidWest Gen units' available supply into the DA market at prices just below that offer cap. The intent of those offers was to ensure that the generation was not taken in the DA market, thus allowing that generation to clear in the real time (RT) market (the High Offer Strategy). At the same time, EMMT also offered a portion of its portfolio at competitive prices that it expected to be accepted in the DA market. EMMT's generation that was offered high in the DA market was subsequently reoffered at competitive prices in the RT market. Reliability was never an issue as the units were always available for reliability purposes.

3. Edison Mission maintained throughout the investigation that it had legitimate business reasons for preferring to participate in the RT market over the DA market. The explanation of the particular business reasons offered to staff for the High Offer Strategy changed over time. When originally questioned in 2004, EMMT emphasized that the high offers were made to manage certain power purchase agreements that contained RT pricing provisions, pre-dated the entry of the MidWest Gen units into PJM, and would expire at the end of 2004 (the Legacy PPAs). Later, Edison Mission explained that the offers continued because of hedging needs, as well as a desire to minimize financial risks associated with outages and derates of the MidWest Gen units.

4. Edison Mission maintains that it never intended to mislead the staff, but it acknowledges that many of its responses to staff inquiries lacked due care in their preparation and had the effect of misleading the staff. Edison Mission also acknowledges responsibility for the misallocation and misdirection of staff resources resulting therefrom.

II. STIPULATED FACTS

Enforcement and Edison Mission hereby stipulate and agree to the following:

A. Background

The MidWest Gen Units

5. Through Midwest Gen, EME owns and operates 15 coal-fired generating units and 71 dual-fueled peaking units at nine sites located in the ComEd zone of PJM. The total generating capacity of Midwest Gen in the ComEd zone is currently 5876 MWs. The ComEd zone of PJM consists of approximately 25,850 MWs of generating capacity. The Midwest Gen units became part of the ComEd zone of the PJM footprint in May 2004. EMMT, a subsidiary of EME, offers generation into the PJM market under its market-based rate authorization.

PJM Market Design and Capacity Resource Bidding Requirements

6. PJM runs a centrally dispatched, competitive wholesale electricity market in a region encompassing parts of 13 states and the District of Columbia. PJM operates a DA energy market, RT energy market, daily capacity market, interval, monthly and multi-monthly capacity markets, regulation market, spinning reserve market, and annual and monthly auction markets in financial transmission rights. PJM's energy market consists of a variety of energy transactions including the sale or purchase of energy in the DA and RT energy markets, bilateral and forward markets, and self-supply.

7. The PJM market is set up to provide market participants with competitively priced and reliable generation. To accomplish these goals, the tariff allows market sellers to elect to be Capacity Resources. A Capacity Resource is a generating facility that is committed to meeting loads within PJM and that satisfies a Load Serving Entity's (LSE) capacity obligation under the Reliability Assurance Agreement (RAA).

8. Once designated as a Capacity Resource, the seller is eligible to participate in the Installed Capacity (ICAP) market through the capacity credit market auction and through bilateral contracts with LSEs for its unforced capacity.¹ A Capacity Resource is also eligible to self-supply its own capacity requirements. Eligibility to participate in PJM's capacity market through the capacity credit auction or through bilateral contracts is a significant economic benefit. EME received capacity payments resulting from its designation of the Midwest Gen units as Capacity Resources in the ComEd zone from May 2004 through April 2006.

9. If a unit elects to be a Capacity Resource, as EME elected for the Midwest Gen units, the units *must* be offered into the DA market. Capacity Resources are required by section 1.10.1A(d) of PJM's tariff to participate in the DA market: "Market Sellers owning or controlling the output of a Capacity Resource that has not been rendered unavailable by a Generation Planned Outage shall submit offers for the available capacity of such Capacity Resource"

10. PJM's tariff provides that generation accepted into the DA market receives the DA LMP, plus "make-whole payments." "Make-whole payments" are payments or credits for start-up and no-load fees that are paid to generation resources committed in the day-ahead market or the rebidding period if the LMP does not cover those costs.

11. Offers from generators that are not Capacity Resources are optional in the DA market. If physical conditions require a Capacity Resource to forego the DA market at any time, the Capacity Resource must declare an outage. Capacity Resources that are unavailable due to a Generation Planned Outage, a Generator Maintenance Outage, or a Generation Forced Outage do not have to make offers into the DA market. Those units are flagged as unavailable in PJM's eDart system and are not considered available in the DA market. All offers made in the DA and RT markets must be less than \$1000/MWh.

12. PJM is known as a two settlement market because the DA market and RT market each create separate binding commitments to buy and sell generation. PJM has two commitment processes for generation units: a DA market and a rebidding period.

¹ Unforced capacity is the total capacity of a generator adjusted for that generator's forced outage experience. For example, a generator that is on forced outage for ten percent of the time would have unforced capacity equal to 90 percent of its total capacity rating.

The DA market closes at noon on the day before the operating day for which the transactions are scheduled. Between the close of the DA market at 12:00 noon and 4:00 p.m. the same day, PJM determines the “*least-price* means (minimizing production costs in terms of bid prices submitted) of satisfying the demand bids, decrement bids, operating reserves and other ancillary service requirements of the market buyers, including the reliability requirements of PJM” (emphasis added). At 4:00 p.m., PJM announces the “winners” of the DA offers including the hourly schedules for the next day (generation and demand) and DA LMPs. This schedule is referred to as the “first commitment.” The DA hourly schedules and DA LMPs represent binding commitments to the market participants – an accepted offer to provide generation and an accepted bid to purchase generation must be honored at the DA LMP posted at 4:00 p.m., regardless of the RT price.²

13. Between 4:00 and 6:00 p.m., PJM has a rebidding period in which the tariff allows all available generation not selected in the DA market to make offers for use in the RT market. Non-Capacity Resources that did not make offers into the DA market may make offers during this time.³ Capacity Resources that are available but were not selected in the DA market scheduling process may reoffer at this time. If the earlier offer made for the Capacity Resource is not altered, the original offer remains in effect. At 6:00 p.m., PJM performs a second unit commitment. This commitment’s focus is reliability and the objective is to minimize only start-up and no-load costs for any additional resources that are committed. Units taken in the second commitment are paid the RT LMP and are also eligible to receive make-whole payments whenever the RT LMP payments do not cover the unit’s start-up and no-load costs.

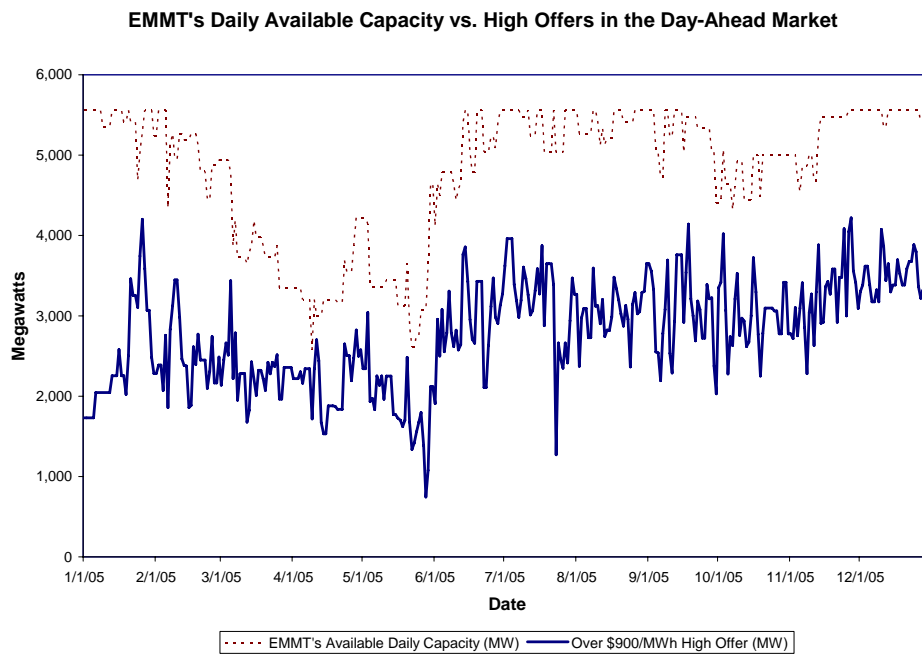
14. The RT energy market is the actual real-time physical market. In the RT market, sellers that deviate from the amounts of energy scheduled in the DA market are obligated to sell energy for the amount of the deviations at the RT price or price difference. At the end of the operating day, PJM balances the DA and RT markets for settlement/billing purposes. The balancing settlement is based on actual hourly quantity deviations from the DA scheduled quantities and on RT prices integrated over the hour. Generators are paid RT LMPs for any generation that exceeds their DA scheduled quantities (and will pay for generation deviations below their scheduled quantities). During the RT, or operating day, RT LMPs are calculated every five minutes.

² The DA settlement is based on scheduled hourly quantities and on DA hourly prices.

³ There is no obligation to make such an offer; however, if a non-Capacity Resource did not make an offer in the DA market, it may only offer in the rebidding period.

The Mechanics of the High Offer Strategy

15. EMMT regularly offered between 750 and 4,200 MWs of generation into the DA market at over \$900/MWh in 2005.⁴ These offers were never accepted in the DA market. On each day, EMMT's remaining portfolio of available base load generation, between 300 and 3,800 MWs, was offered into the DA market at a competitive level, *i.e.*, at a level EMMT expected the units would be taken in the DA market. Generation not accepted in the DA market through the High Offer Strategy was then reoffered by EMMT during the rebidding period at a competitive level for selection in the RT market. EMMT's offers made during the rebidding period were either accepted by PJM or self-scheduled by EMMT in the RT energy market. The following graph shows the history of EMMT's high offers into the DA market in 2005.



16. At the end of each Operating Day, nearly all of the available generation from the Midwest Gen units participated in the available PJM markets. The units were always available for ensuring system reliability.

⁴ The average daily number of megawatts offered into the day-ahead market under the high offer strategy in 2005 was approximately 3,000.

Concern Expressed by the PJM Market Monitor

17. Shortly after the MidWest Gen units became part of PJM, the PJM Market Monitor, Joseph Bowring, notified staff that EMMT was submitting offers into the DA market for Midwest Gen's base-load steam units at between \$900 and \$999/MWh – just under the tariff's offer cap of \$1000/MWh. Bowring told staff that those high offers had the effect of keeping the units out of the DA market. Bowring was concerned that the high offers could be selected on a peak day and set prices at \$999/MWh.

Edison Mission Stopped Engaging in the High Offer Strategy

18. In April 2006, Edison Mission voluntarily stopped the High Offer Strategy and commits not to resume that strategy in the future.

B. Edison Mission's Obligation to Provide Accurate, Factual, and Complete Information

19. Edison Mission's interactions with Commission staff concerning the High Offer Strategy occurred over three and a half years. As explained below, throughout the three and a half years, Edison Mission made representations to the staff that caused the staff to waste resources analyzing different explanations for EMMT's bidding practices. Edison Mission's statements and omissions greatly hampered and delayed Enforcement's understanding, analysis, and investigation of Edison Mission's bidding practices. During the course of the investigation, staff reviewed tens of thousands of pages of memos, reports, analyses and spread sheets. Staff also conducted more than 20 witness interviews and depositions, including those of key EMMT employees, PJM personnel, and the PJM Market Monitor. Inconsistencies became apparent in the testimony of key Edison Mission employees during informal presentations to Enforcement staff and depositions, by which time there should have been little room for confusion over the basic facts relating to Edison Mission's bidding behavior.

Before the Preliminary Investigation

20. Staff made two inquiries into the High Offer Strategy in spring 2004. Based on EMMT's representations, staff understood that, but for the Legacy PPAs, EMMT would not continue the High Offer Strategy. In those conversations, EMMT told staff that it was offering some of the Midwest Gen units into the DA market at over \$900/MWh in order to manage the risk associated with the Legacy PPAs' RT settlement provisions and because the counterparty could nominate energy after the fact. EMMT also told staff that the Legacy PPAs were expiring serially, with the last one expiring at the end of 2004. On the basis of these statements, staff understood that the High Offer Strategy would co-terminate with the Legacy PPAs.

21. Edison Mission's next contact with staff concerning the High Offer Strategy was on July 20, 2004. On July 16, 2004, in preparation for that meeting, EMMT officers and counsel reviewed a document, provided during discovery, that described that the High Offer Strategy was used for *both* fulfilling the legacy PPAs and for merchant (non-PPA) units. The talking points provided to staff on July 20, however, discuss *only* the use of the High Offer Strategy for the Legacy PPAs and are silent as to the use of the High Offer Strategy to hedge merchant units. Moreover, in later analyzing data received over the course of the investigation, staff received information showing that, at the particular time of the July 2004 meeting, EMMT was not using the High Offer Strategy for the PPA units, but *only* for the merchant units and was using decremental bids to address the risks of the PPA units. Edison Mission explained to staff that it used both decremental bids and the High Offer Strategy to accomplish its business objectives. Thus, the explanation offered at the July meeting concerning the use of the High Offer Strategy for the PPA units was inaccurate and caused staff to be misled.

22. In early 2005, in the course of monitoring Edison Missions's offer behavior, Commission staff observed that EMMT was continuing its High Offer Strategy for the Midwest Gen units despite the fact that the last of the Legacy PPAs had expired in December of 2004. Because of Edison Mission's representations, staff believed that the strategy would end upon termination of the Legacy PPAs and contacted Edison Mission on April 19, 2005, to find out why the High Offer Strategy was continuing. Edison Mission explained to staff the continuing use of the High Offer Strategy on the basis that EMMT was hedging the DA/RT differential, *i.e.*, protecting against the situation where the company offers into the DA market and is taken only to have the plant experience a derate or an outage the next day, thus requiring the company to buy power at a higher RT price and incur operating reserve charges. Edison Mission explained that it had entered into several new hedging contracts that were indexed to RT prices to replace the now-expired PPAs. Concerned by this different explanation for the High Offer Strategy and the fact that the strategy had not ceased as staff believed it would, Enforcement staff opened a preliminary, non-public investigation on May 27, 2005. Enforcement notified Edison Mission it was commencing a preliminary, non-public investigation on July 12, 2005.

During the Preliminary Investigation

23. During the course of the investigation, which took over two years, EMMT made numerous inaccurate and incomplete statements in, and omitted material information from, its data responses and conversations with staff. Each of these inaccuracies and incomplete statements caused staff to waste valuable time and resources. When staff would complete an analysis that showed that information or reasons provided by Edison Mission did not make sense, Edison Mission changed its explanation or added new information. Thus, staff would be forced to start its analysis afresh in light of the new information.

24. For example, Edison Mission said that it kept 750 to 1500 MW of generation out of the DA market as the result of a first contingency analysis and that Edison Mission was concerned that a tornado could cause the loss of energy from Edison Mission's two large Powerton units. Later, however, in a data response, Edison Mission explained that high bidding of 750 to 1500 MW was a "policy." When staff again conducted an analysis and confronted Edison Mission with data falling outside the policy boundary, Edison Mission said that the use of the word "policy" was inaccurate and that no such formal policy existed.

25. In addition, Edison Mission originally told staff that upon entry of the MidWest Gen units into PJM, it simply applied the High Offer Strategy previously used at Homer City to the MidWest Gen units. When staff confronted Edison Mission with data that appeared to be inconsistent with that assertion, Edison Mission explained that it experimented with different bidding strategies, including the increased use of decremental bids, when the MidWest Gen units first joined PJM in order to minimize PJM costs and to accomplish its business objectives. Similarly, after analyzing Edison Mission's bidding data for four randomly chosen days in order to test the veracity of claims Edison Mission made about its bidding practices, staff found that the data for one of the four days contradicted Edison Mission's prior representations to staff concerning the bidding strategy. When staff questioned Edison Mission about the inconsistency, Edison Mission explained in a data response that a "refinement to process" took place on that day. However, an Edison Mission employee later testified that no refinement to process took place on that day and claimed that it was an "employee execution error."

26. Staff was also misled concerning the interplay between the MidWest Gen fleet and Edison Mission's Homer City units. Throughout almost the entire investigation, Edison Mission had claimed in data responses and deposition testimony that bidding at Homer City was independent of bidding at the MidWest Gen units. Staff relied on that representation in its review and analysis of the data and in its conversations with an outside expert. In questioning Edison Mission about certain numbers related to the High Offer Strategy that appeared incorrect in light of prior representations, Edison Mission finally explained that, in order to minimize PJM costs, MidWest Gen's decision whether to submit high or decremental bids took into account positions at Homer City. In short, for at least some limited purposes, the MidWest Gen units and the Homer City units were treated as a single portfolio. Stated differently, for two years, staff relied on inaccurate representations, causing it to spend endless hours trying to make sense of numbers that could never add up.

27. The extent and timing of Edison Mission's data response production also hindered Enforcement's preliminary investigation. During staff's investigation, EMMT stated that it did not have the majority of EMMT emails for September 2003 through September 2005 because the emails had been deleted as part of management's corporate

e-mail deletion policy. However, despite instructions to retain and not destroy documents relevant to staff's inquiries contained in staff's July 25, 2005 initial data request, Edison Mission did not suspend its automatic email deletion policy until October 6, 2005, more than two months later. In addition, while certain emails and other documents from the earlier period relating to the High Offer Strategy were produced, others were not, raising Enforcement concerns regarding potential selective preservation by Edison Mission of documents material to the investigation. Edison Mission, for example, was also unable to produce a significant email communication an EMMT director authored in May 2004 describing communications with Bowring about the High Offer Strategy that the director described in sworn testimony, despite production of other emails to or from the director during the same period. Also described but not produced was a spreadsheet containing supply offer curves handed out to the director and multiple traders just prior to commencement of the High Offer Strategy in May 2004, which might have shed light upon the strategy's purpose and design.

28. Commission regulations impose a duty of candor upon sellers authorized to engage in sales for resale of electric energy at market based rates. Such entities 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 . . . unless Seller exercises due diligence to prevent such occurrences." 18 C.F.R. § 35.41(b) (2007). Edison Mission admits to violating 18 C.F.R. § 35.41(b) (2007).

III. REMEDIES AND SANCTIONS

Edison Mission and Enforcement enter into this Agreement to resolve the investigation, Edison Mission's High Offer Strategy, and Edison Mission's representations to Enforcement regarding the same. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation into the matter self-reported by Edison Mission, Enforcement and Edison Mission agree that on and after the effective date of this Agreement, Edison Mission shall take the following actions:

29. Edison Mission shall pay a civil penalty of \$7 million to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined in paragraph 31 below.

30. Edison Mission will develop and implement a comprehensive regulatory compliance program. Edison Mission will retain independent external consultant[s] to assist Edison Mission in this endeavor. The program will include a thorough review of the effectiveness of Edison Mission's compliance processes, including communications with the PJM Market Monitor and Enforcement staff. After the program has been implemented, Edison Mission will report the results of the program, including any and

all recommendations, to Enforcement. Edison Mission agrees that it will spend whatever funds are necessary to complete this project. Costs are currently estimated to be approximately \$2 million.

IV. TERMS

31. 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 matter specifically addressed herein as to Edison Mission and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to Edison Mission.

32. Commission approval of this Agreement without material modification shall release Edison Mission and forever bar the Commission from holding Edison Mission or its employees liable for any and all administrative, civil claims arising out of, related to, or connected with the misrepresentation violations addressed in this Agreement or the subject matter of the investigation.

33. Failure to make a timely civil penalty payment or to comply with the compliance report 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), 18 U.S.C. §§ 792, *et seq.* and may subject Edison Mission to additional action under the enforcement and penalty provisions of the FPA.

34. If Edison Mission does not make the civil penalty payment above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission’s regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

35. The Agreement binds Edison Mission and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on Edison Mission, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

36. 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 Edison Mission has been made to induce the signatories or any other party to enter into the Agreement.

37. 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 Edison Mission shall be bound by any

provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Edison Mission.

38. In connection with the payment of the civil penalty provided for herein, Edison Mission 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 of the FPA, 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended. Edison Mission 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.

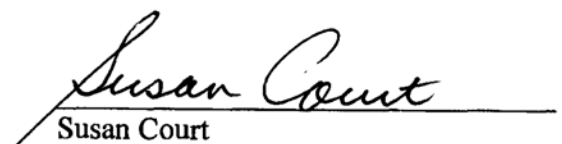
39. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

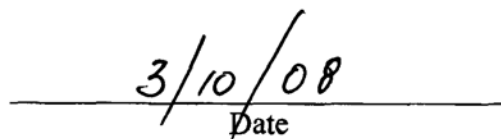
40. The undersigned representative of Edison Mission affirms that he has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express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

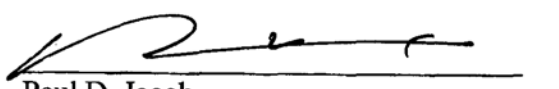
41. The Agreement may be signed in counterparts.

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

Agreed to and Accepted:


Susan Court
Director
Office of Enforcement
Federal Energy Regulatory Commission


Date


Paul D. Jacob
President
Edison Mission Marketing & Trading, Inc.


Date

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

In re Edison Mission

Docket No. IN08-3-000

(Issued May 19, 2008)

MOELLER, Commissioner concurring:

I would emphasize that the settlements we approve should serve as guideposts to the public, and these guideposts should be reasonable and helpful. That being said, I would have preferred that this order contain more of an explanation as to how the specific penalty amount was determined.

Philip D. Moeller
Commissioner