156 FERC ¶ 61,155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

In re David Silva — Docket No. IN16-6-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued September 1, 2016)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and David Silva. Silva is a former employee of NET Midstream, LLC, and other affiliated companies including National Energy & Trade L.P. He traded from January 2006 to October 2015. This order is in the public interest because it resolves the investigation into whether Silva violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1 (2016), by manipulating physical natural gas prices in January 2012 in order to benefit his related financial position (the Investigation). Silva agrees to a one-year ban from participation in any FERC-jurisdictional natural gas markets and to pay a civil penalty of $40,000, which shall be paid to the United States Treasury.

I. Facts

2. Silva is an experienced natural gas trader who obtained an undergraduate business degree with a concentration in finance and a masters degree in business administration in energy risk management. From January 2011 to February 2012, he was responsible for more than 80 percent of National Energy & Trade, L.P.'s (National Energy) trading of physical basis, financial basis, index swaps, and swing swaps. Silva received higher compensation than the other traders at National Energy because of his experience and marketability.

3. Silva sold financial basis at Tetco M3 during the week before the January 2012 bidweek for February 2012 flow.

4. On January 25, 2012, as bidweek opened, Silva began offering to sell physical basis on behalf of National Energy at 2:17 a.m., almost three hours before any other market participant submitted a bid or offer, and several hours before Silva or his former trader colleagues typically began working. In testimony, Silva claimed not to remember trading at this early hour and offered no explanation of why he would have done so.

5. Silva's January 25, 2012 physical basis opening offer was approximately ten cents below the most recent prices of consummated physical basis and financial basis offers from twelve hours before on January 24, 2012. Enforcement identified no change in fundamentals that occurred, or was expected to occur, in the overnight hours to explain such a downward departure.

6. Silva initiated the twenty lowest offers out of the forty-one physical basis offers made at Tetco M3 on January 25, 2012.

7. Silva's sales of physical basis at Tetco M3 on January 25, 2012 were 63 percent of all sales that day.

8. Silva consummated all twenty-five of the physical basis sales before beginning to repurchase the financial basis position he sold the week before.

9. The lower price at which Silva was able to repurchase his financial basis position, as compared to the sales of that position the week before, resulted from the large volume and low prices of the early morning physical basis transactions on January 25, 2012.

10. Enforcement found that Silva's trades had the effect of moving down prices at Tetco M3. In making these trades, Silva sold financial basis, sold physical basis, then re-purchased financial basis. Silva lost money on the physical basis transactions and, in the process, lowered the Inside FERC (IFERC) settlement index. Simultaneously, Silva held financial positions that benefited from this lowered settlement index. Silva's financial positions benefited from the difference between the price at which he sold financial basis between January 19, 2012 and January 24, 2012 and the price at which he repurchased that financial basis on January 25, 2012.

11. National Energy received profits of $212,780.50 related to Silva's violations in connection with the transactions set forth in Paragraphs 4 through 11.[1]

II. Violations

12. Enforcement determined that Silva violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1.

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[1] On September 1, 2016, in an *Order Approving Stipulation and Consent Agreement*, *National Energy & Trade, L.P.*, 156 FERC 61,154 (2016), the Commission resolved the investigation into, among other things, National Energy's conduct at Tetco M3.

13. The Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1, prohibits any entity from: (a) using a fraudulent device, scheme or artifice, or engaging in any act, practice, or course of business, that operates or would operate as a fraud, (b) with the requisite *scienter*, (c) in connection with a transaction subject to the jurisdiction of the Commission. Enforcement determined that Silva violated the Commission's Anti-Manipulation Rule.

14. Enforcement determined that the unlawful trades constituted a scheme or artifice. Enforcement also determined that the requisite *scienter* existed, as the only explanation for the trades was that they were designed and intended to lower the Inside FERC index so as to benefit Silva's related financial position. Finally, the physical gas trades are within the Commission's jurisdiction.

III. Stipulation and Consent Agreement

15. Enforcement and Silva have resolved the Investigation by means of the Agreement. Silva stipulates and agrees to the facts set forth in the Agreement, but neither admits nor denies that his trading violated the Commission's rules, regulations, or policies. Silva agrees to a one-year ban from participation in any FERC-jurisdictional natural gas markets and to pay a civil penalty of $40,000, which shall be paid to the United States Treasury.

16. The Commission directs Silva to make the civil penalty payments as required by the Agreement.

17. Per the Agreement made effective upon issuance of this order, for a period of one year after the date of an order approving this Agreement, neither Silva nor any person or entity acting on his behalf, nor any entity, partnership, company, or affiliate in which he has a financial interest, shall participate in any FERC-jurisdictional natural gas trading.

IV. Determination of the Appropriate Sanctions and Remedies

18. In determining the appropriate remedy, Enforcement considered the factors described in the *Revised Policy Statement on Enforcement*.[2] Specifically, Enforcement considered the following factors: (1) seriousness of Silva's actions, which amounted to fraudulent conduct in violation of 18 C.F.R. § 1c.1, (2) Silva's violations were committed

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[2] 123 FERC ¶ 61,156 (2008); *Policy Statement on Enforcement*, 113 FERC ¶ 61,068 (2005). Although the Penalty Guidelines do not apply to natural persons, the Commission will look to these Guidelines for guidance in setting penalties. *See Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 (2010) at § 1A1.1, Application Note 1 (Revised Policy Statement on Penalty Guidelines); *Enforcement of Statutes, Orders, Rules, and Regulations*, 130 FERC ¶ 61,220 (2010) (Initial Policy Statement on Penalty Guidelines).

without regard for compliance with the Commission's regulations and (3) Silva's limited financial resources coupled with his agreement to not trade in any FERC-jurisdictional natural gas markets for one year.

19. The Commission concludes that the penalties and other remedies set forth in the Agreement are a fair and equitable resolution of the Investigation and in the public interest, as they reflect the nature and seriousness of Silva's conduct, and recognize the considerations as stated above and in the attached Agreement. We also conclude that the payment schedule outlined in the Agreement is appropriate given Silva's ability to pay.

The Commission orders:

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

By the Commission. Chairman Bay is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

David Silva Docket No. IN16-6-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and David Silva (Silva), enter into this Stipulation and Consent Agreement (Agreement) to resolve a non-public, preliminary investigation conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2016). Silva is a former employee of NET Midstream, LLC, and other affiliated companies including National Energy & Trade L.P. He traded from January 2006 to October 2015. The investigation examined whether Silva violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1 (2016), by manipulating physical natural gas prices in January 2012 in order to benefit his related financial position (the Investigation).

2. Silva stipulates and agrees to the facts but neither admits nor denies that he violated 18 C.F.R. § 1c.1. Silva agrees to a one-year ban from participation in any FERC-jurisdictional natural gas markets and to pay a civil penalty of $40,000, which shall be paid to the United States Treasury.

II. STIPULATED FACTS

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

4. Silva is an experienced natural gas trader who obtained an undergraduate business degree with a concentration in finance and a masters degree in business administration in energy risk management. From January 2011 to February 2012, the year prior to the manipulation, he was responsible for more than 80 percent of National Energy & Trade, L.P.'s (National Energy) trading of physical basis, financial basis, index swaps, and swing swaps. Silva received higher compensation than the other traders at National Energy because of his experience and marketability.

5. Silva cooperated in the investigation.

6. Silva sold financial basis at Tetco M3 during the week before the January 2012 bidweek for February 2012 flow.

7. On January 25, 2012, as bidweek opened, Silva began offering to sell physical basis on behalf of National Energy at 2:17 a.m., almost three hours before any other market participant submitted a bid or offer, and several hours before Silva or his former trader colleagues typically began working. In testimony, Silva claimed not to remember trading at this early hour and offered no explanation of why he would have done so.

8. Silva's January 25, 2012 physical basis opening offer was approximately ten cents below the most recent prices of consummated physical basis and financial basis offers from twelve hours before on January 24, 2012. Enforcement identified no change in fundamentals that occurred, or was expected to occur, in the overnight hours to explain such a downward departure.

9. Silva initiated the twenty lowest offers out of the forty-one physical basis offers made at Tetco M3 on January 25, 2012.

10. Silva's sales of physical basis at Tetco M3 on January 25, 2012 were 63 percent of all sales that day.

11. Silva consummated all twenty-five of National Energy's physical basis sales before beginning to repurchase the financial basis position he sold the week before.

12. The lower price at which Silva was able to repurchase his financial basis position, as compared to his sales of that position the week before, resulted from the large volume and low prices of his early morning physical basis transactions on January 25, 2012.

13. Enforcement found that Silva's trades had the effect of moving down prices at Tetco M3. In making these trades, Silva sold financial basis, sold physical basis, then re-purchased financial basis. Silva lost money on the physical basis transactions and, in the process, lowered the Inside FERC (IFERC) settlement index. Simultaneously, Silva held financial positions that benefited from this lowered settlement index. Silva's financial positions benefited from the difference between the price at which he sold financial basis between January 19, 2012 and January 24, 2012 and the price at which he repurchased that financial basis on January 25, 2012.

14. National Energy received profits of $212,780.50 related to Silva's violations in connection with the transactions set forth in Paragraphs 6 through 13.

III. VIOLATIONS

15. Enforcement commenced the Investigation and issued data requests, obtained trade data from the Intercontinental Exchange (ICE), and took testimony from several National Energy employees. After a detailed analysis of the ICE and National Energy data, as well as the testimony, Enforcement concluded that Silva manipulated natural gas prices at

Tetco M3 during the January 2012 bidweek in violation of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1.

IV. REMEDIES AND SANCTIONS

16. Significant in Enforcement's determination of the appropriate remedies and sanctions to settle this matter was consideration of Silva's limited financial resources coupled with his agreement to not participate in any FERC-jurisdictional natural gas markets for one year. Enforcement might seek a significantly higher penalty for similar conduct by an individual in different financial circumstances.

17. Silva stipulates to the facts as described in Section II of this Agreement, but neither admits nor denies Enforcement's determination described in Section III of this Agreement that his conduct violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1. For purposes of settling any and all civil and administrative disputes arising from the matters examined during the Investigation, Silva agrees to the remedies set forth in the following paragraphs.

18. Silva agrees to a total civil penalty in the amount of $40,000, which he will pay to the United States Treasury as described below.

19. Taking into account Silva's financial situation and ability to pay, the civil penalty payments shall be made as follows:

a. $10,000 to the U.S. Treasury one year after the Effective Date;

b. $10,000 to the U.S. Treasury two years after the Effective Date;

c. $10,000 to the U.S. Treasury three years after the Effective Date; and

d. $10,000 to the U.S. Treasury four years after the Effective Date.

20. Within ten days of each payment to the U.S. Treasury, Silva will certify to Enforcement that he has satisfied the payment obligation.

21. If Silva provides documentation that his income is insufficient to satisfy the payment obligations, Enforcement, at its sole discretion, may modify the payment schedule.

22. For a period of one year after the Effective Date, neither Silva nor any person or entity acting on his behalf, nor any entity, partnership, company, or affiliate in which he has a financial interest, shall participate in any FERC-jurisdictional natural gas trading.

V. TERMS

23. 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 Investigation as to Silva or any affiliated entity.

24. Commission approval of this Agreement without material modification shall release Silva and forever bar the Commission from holding Silva, any affiliated entity, and any successor in interest to Silva liable for any and all administrative or civil claims arising out of the Investigation.

25. Failure by Silva to make the civil penalty payment or comply with any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Natural Gas Act (NGA), 15 U.S.C. §717, *et seq.* (2012), and may subject Silva to additional action under the enforcement provisions of the NGA.

26. If Silva does not make the required civil penalty payment described above at the time agreed by the parties, interest will begin to accrue pursuant to the Commission’s regulations at 18 C.F.R. § 154.501(d) 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.

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

28. Silva agrees that he enters 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 Silva has been made to induce the signatories, or any other party to enter into the Agreement.

29. Unless the Commission issues an order approving the Agreement without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Silva shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Silva.

30. In connection with the civil penalty provided for herein, Silva 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 22 of the NGA, 15 U.S.C. § 717t-1 (2012). Silva 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.

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

32. Silva 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.

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

Agreed to and accepted:

Larry R. Parkinson

Larry Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission
Date 8-16-16

David Silva
Date 8-10-16

Document Content(s)