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New Commission Approves City Power Manipulation Settlement

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Yesterday, the Federal Energy Regulatory Commission (FERC) issued an ***order*** approving a settlement agreement between FERC's Office of Enforcement and City Power Marketing, LLC, and its owner, K. Stephen Tsingas (together, City Power). The order resolves the Commission's claims that City Power violated FERC's anti-manipulation rule and its rule requiring truthful communications with the Commission.

Without admitting or denying the allegations, Tsingas agreed to pay a $1.42M civil penalty and $1.3M in disgorgement, and City Power must pay a $9M civil penalty. FERC initially had sought a civil penalty of $1M and $14M against Tsingas and City Power, respectively, and $1,276,358 in disgorgement (joint and several). Under the settlement, Tsingas also is temporarily banned from directly or indirectly participating in any FERC-jurisdictional markets for 3 years.

First Enforcement Order of the New Commission

This is FERC's first enforcement order since Chairman Neil Chatterjee and Commissioner Robert Powelson were confirmed on August 3, 2017, ending the six-month period of FERC lacking a quorum. Although this settlement was negotiated prior to Chairman Chatterjee's and Commissioner Powelson's confirmations, its approval sends the first signal that the new administration's FERC nominees are not going to do an about-face with respect to FERC's application of its anti-manipulation rules in the context of what it refers to as "gaming" (i.e., "acting for the purpose of impairing, obstructing, or defeating a well-functioning market").

Procedural Background

On March 6, 2015, FERC issued an order directing City Power to show cause why it should not be found to have violated FERC's anti-manipulation rule in connection with virtual trading activities in the wholesale market administered by PJM Interconnection LLC ("PJM"). The order also gave City Power the option to choose between an administrative hearing before a FERC Administrative Law Judge prior to the assessment of a penalty or an immediate penalty assessment by FERC followed by *de novo* review of FERC's penalty assessment in a federal district court.

After City Power elected *de novo* review, the Commission issued an order assessing civil penalties against City Power (including Tsingas) and filed a lawsuit in the U.S. District Court for the District of Columbia on September 1, 2015. To date, the court had dealt both FERC and City

Power defeats, first rejecting City Power's motion to dismiss and then denying FERC's motion for summary judgment and declining to adopt FERC's limited view of City Power's rights under the *de novo* review.

Trading Conduct at Issue

The Commission took issue with the following three trading strategies involving Up-to-Congestion ("UTC") transactions:

- **Round-Trip Trades:** City Power allegedly executed off-setting UTC trades along the same path to increase its collection of Marginal Loss Surplus Allocation (MLSA) payments, which were allocated on a pro rata basis to all transmission customers that paid for transmission service. The first leg of the trade would be placed from location A to location B and the second leg would be placed from location B to location A. Once executed, the positions off-set each other with respect to price risk. However, in combination with transmission City Power reserved, these offsetting trades increased City Power's eligibility for MLSA payments. The Commission analogized City Power's round-trip trading to the "Death Star" circular strategy employed by Enron during the Western Energy Crisis.

- **SOUTHIMP-SOUTHEXP Trades:** The second alleged strategy involved trading UTCs between the PJM import and export pricing points at a single interface (SOUTHIMP and SOUTHEXP). At the time of the activity at issue, the spread between SOUTHIMP and SOUTHEXP always settled at $0 because the nodes had equivalent prices in both the real-time and day-ahead markets. Aware of this fact, City Power allegedly placed trades between SOUTHIMP and SOUTHEXP for the purpose of collecting MLSA payments.

- **NCMPAIMP-NCMPAEXP Trades**: The third alleged strategy involved trading between NCMPAIMP and NCMPAEXP—two PJM external interface pricing nodes that had traditionally experienced very small price spreads. City Power allegedly used a computer program—a "low volatility tool"—to identify paths with the smallest price spreads and established UTC positions along these paths for the purpose of collecting MLSA payments.

Payment Plan

The settlement agreement establishes a 10-year payment plan for Tsingas with the first installment of $825,000 being due within 60 days of the order. Notably, the settlement prohibits the Commission from ever holding City Power (including Tsingas) liable for a claim arising out of the conduct addressed in the Commission's civil penalty order once Tsingas pays an initial disgorgement amount of $825,000. After this initial payment, FERC will be "forever bar[red]" from bringing "any and all administrative or civil claims arising out of the conduct" at issue, regardless of whether the remainder of the penalties and disgorgement are ever collected. However, were City Power to fail to pay the remaining amounts due, such failure would constitute a violation of a final order potentially subjecting City Power to additional enforcement by the Commission.