

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.<sup>1</sup>

**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

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<sup>1</sup>Final 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."<sup>2</sup> 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."<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.

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

<sup>3</sup>BP Energy Answer at 1.

<sup>4</sup>Id.

<sup>5</sup>Id. 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.<sup>6</sup> 16 U.S.C. § 824d (2000).

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<sup>6</sup>Our 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.

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<sup>6</sup>(...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.


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(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.

(SEAL)



Magalie R. Salas,  
Secretary.

**STIPULATION AND CONSENT AGREEMENT  
TO BE SUBMITTED TO  
THE FEDERAL ENERGY REGULATORY COMMISSION**

The Staff of the Federal Energy Regulatory Commission conducting the investigation in Docket No. PA02-2-000 ("Staff") and BP Energy Company ("BP Energy") enter into this Stipulation and Consent Agreement ("Agreement"). The Agreement resolves 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 (2002), and arising from proceedings in Docket No. EL03-60-000 and the *Final Report on Price Manipulation in Western Markets*, Docket No. PA02-2-000 (March 26, 2003) and will become effective on the date that the Federal Energy Regulatory Commission ("Commission") issues its order approving this Agreement without modification ("Effective Date").

**I. BACKGROUND**

Staff and BP Energy hereby stipulate and agree to the following:

A. On February 13, 2002, the Commission directed a Staff fact-finding investigation into whether any entity manipulated short-term prices for electricity or natural gas in the West, or otherwise exercised undue influence over wholesale electricity prices in the West, since January 1, 2000.<sup>1</sup> On August 13, 2002, Staff released its *Initial Report* in Docket No. PA02-2-000, recommending corrective actions and further, company-specific proceedings to investigate possible misconduct. In conducting these company-specific investigations, Staff issued numerous data requests to a wide variety of market participants.

B. In Staff's *Final Report on Price Manipulation in Western Markets*, Docket No. PA02-2-000 (March 26, 2003), Staff discussed three occasions when a BP Energy trader called a trader at Reliant Energy Services, Inc. ("Reliant") to ask him to accept an offer that the BP Energy trader intended to place on the Bloomberg PowerMatch electronic trading platform, if the offer was not accepted by another market participant. Transaction records indicate that the BP Energy trader and the Reliant trader entered into two such transactions on April 24, 2000 and April 28, 2000, each for delivery of 25 megawatts of electricity in October 2000 at the Palo Verde trading hub.

C. On March 26, 2003, the Commission issued an *Order Proposing Revocation of Market-based Rate Authority* ("Show Cause Order"),<sup>2</sup> directing BP Energy to show cause why the Commission should not revoke BP Energy's market-based rate authority for violations of Section 205 of the Federal Power Act.<sup>3</sup>

<sup>1</sup> *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, 98 FERC ¶ 61,165 (2002).

<sup>2</sup> *Reliant Energy Services, Inc.*, Docket No. EL03-59-000, and *BP Energy Company*, Docket No. EL03-60-000, 102 FERC ¶ 61,315 (2003).

<sup>3</sup> 16 U.S.C. § 824d(a) (2000).

D. On April 16, 2003, BP Energy submitted a thorough Answer to the Show Cause Order, reflecting the seriousness with which BP Energy took the activity of its trader. BP Energy incorporates its Answer dated April 16, 2003 herein in its entirety. In its response, BP Energy publicly acknowledged that overfamiliarity among traders and the inappropriate sharing of information, as evidenced by audiotapes of trader telephone conversations surrounding the trades at issue, could be harmful, or at the very least could be perceived as harmful, even where there is no impact on pricing in the market. The Commission Staff acknowledges the seriousness with which BP Energy has taken the matters raised in the Show Cause proceeding, the thoroughness of BP Energy's response and the efficacy of BP Energy's communication and cooperation with the Commission and its Staff in resolving the issues following the issuance of the Show Cause Order.

E. In its response, BP Energy specifically stated that "the recorded conversations of the BP Energy trader are inappropriate, disappointing, and embarrassing for the company." BP Energy described its internal and external investigation of the company's trading practices. BP Energy further described the corrective actions that the company has taken. Upon learning of the nature of the conversations, BP Energy removed the trader from the trading desk and, after a full investigation, terminated the trader's employment. In addition, BP Energy issued to its power traders revised *Guidelines for Conduct by BP Energy Market Participants* ("*Trading Guidelines*"), a revised *Trading Controls and Policies Manual*, and conducted training sessions for all trading personnel. In the *Trading Guidelines*, BP Energy expressly prohibits the inappropriate activities that were identified during the Commission's investigation of the Western markets. BP Energy has designated a Compliance Officer to ensure adherence to BP Energy's *Trading Guidelines* and *Trading Controls and Policies Manual*.

F. In March 2003, BP Energy revised its *Trading Guidelines*. Specifically, it is BP Energy's policy that:

- All those engaged in front-office roles should formally receive these *Trading Guidelines*. "Front office" includes all staff that interface with trading market counter-parties or trading platforms and are authorized to make commercial commitments on BP Energy's behalf.
- Front-office employees are engaged in an annual discussion with their trading team and management on the content of these *Trading Guidelines* and are required to sign a form acknowledging that they are behaving consistent with the *Trading Guidelines* contents as part of an annual ethical certification process.
- All new front-office employees must be inducted in these *Trading Guidelines* and sign a document confirming their familiarity before beginning their involvement in BP Energy's trading function.

G. BP Energy strengthened and continues to improve its policies and procedures to ensure it is conducting its power trading activities in a manner aligned with



the Commission's expectations and requirements, BP Energy's internal policies, and a commitment to promote a competitive market. As detailed in BP Energy's Answer to the Show Cause Order, BP Energy also has undertaken a number of additional initiatives to improve the quality of internal controls surrounding its trading activities, including the integration of BP Energy's electricity trading desk into BP's global trading activities, and the appointment of a BP Energy Compliance Officer.

H. In response to the Show Cause Order, BP Energy presented evidence to show that the trades at issue did not financially benefit, and were not intended to benefit, BP Energy, the trader in question, or other BP Energy traders and did not affect electricity prices at the Palo Verde trading hub.

I. Notwithstanding BP Energy's response to the Show Cause Order, it is Staff's position that the trades at issue were above market and adversely affected the price formation process in the Western Electricity Coordinating Council ("WECC").

## II. REVIEW AND REMEDIES

For a period of six months from the Effective Date, BP Energy will sell power at market-based rates subject to the following conditions:

A. For a period of six months from the Effective Date, BP Energy's sales of electricity in the United States portion of the WECC will be subject to review by the Commission. During this six-month period, BP Energy agrees to provide monthly reports to the Office of Market Oversight and Investigations ("OMOI"), including the information in paragraph II.B. below, pursuant to the confidentiality provisions of 18 C.F.R. § 388.112 (2002). Such reports shall be provided to the OMOI within ten (10) business days of the end of each calendar month.

B. On a transaction-by-transaction basis, BP Energy agrees to provide data on all completed electricity trades in the WECC. The data shall include counter-party name and buy-sell indication, and if executed on an electronic trading platform, the name of the electronic trading platform. The report shall further provide price, quantity, transaction date, start and end date, and delivery point for each transaction, and any non-standard terms and conditions that would impact pricing for such trades.

C. BP Energy agrees that, for a period of six months from the Effective Date, all sales of electricity by BP Energy for delivery within the United States portion of the WECC will be subject to review by the OMOI. Within 30 days following submission of the report in paragraph II.A. above, the OMOI may investigate BP Energy's trading practices 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.

D. 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 monthly for a period of six months from the Effective Date.

E. For each month during this six-month period, BP Energy agrees to provide copies of trading tapes for transactions in the United States portion of the WECC randomly selected and reasonably requested by the OMOI for its review. BP Energy also will provide copies of tapes relating to such other transactions reported pursuant to paragraph II.B above as the OMOI may reasonably request within the time period specified in paragraph II.C. above.

F. BP Energy agrees to implement a retention policy for power trading tapes of three years, or such other period as the Commission may prescribe in Docket No. EL 01-118-000 et al.

G. Within thirty days of the Effective Date, BP Energy agrees to contribute a total of \$3 million to the United Way to fund low-income home energy assistance programs in California and Arizona. Within forty-five days of the Effective Date, BP Energy agrees to file a report with the Commission detailing the distribution of the contribution to the United Way. BP Energy agrees that this contribution will be in addition to any other contributions BP Energy or its affiliates might otherwise contribute to the United Way in 2003.

### III. TERMS

A. This Agreement resolves 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 (2002), and constitutes a full and complete resolution of all administrative or civil claims the Commission has or may have against BP Energy, its parents and affiliates, their successors and assigns, and any of their officers, directors or employees, either before the Commission or in the courts, with respect to the investigation in Docket No. PA02-2-000 and the allegations raised in the March 26, 2003 Final Report in that Docket, and the March 26, 2003 Show Cause Order in Docket No. EL03-60-000. Notwithstanding this paragraph, this Agreement does not apply to the industry-wide investigation of all participants in the short-term energy markets operated by the Cal ISO and Cal PX discussed in the Commission's Order issued June 25, 2003 in Docket No. IN03-10-000.<sup>4</sup>

B. By agreeing to this resolution, 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 resolution, 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

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<sup>4</sup> *Investigation of Anomalous Bidding Behavior and Practices in the Western Markets*, Docket No. IN03-10-000, 103 FERC ¶ 61,347 (2003).

formation process. This Agreement and any Commission order approving this Agreement shall not be deemed or construed as an admission or as evidence of wrongdoing or violation of any law or regulation, or any Commission rule, regulation, or order issued thereunder, by BP Energy.

C. The matters addressed in this Agreement involve sales of electricity under BP Energy's market based tariff on file with and within the exclusive jurisdiction of the Commission over wholesale electricity rates and any rule, regulation, practice or contract affecting such rates.<sup>5</sup> With respect to these matters, the Commission finds that the Agreement is fair and reasonable and is in the public interest.<sup>6</sup>

D. Notwithstanding the Commission's March 26, 2003 Show Cause Order allowing "[a]ny interested person desiring to be heard in these proceeding [to] file notices of intervention or motions to intervene," this proceeding is being addressed and resolved in accordance with the Commission's Rules Relating to Investigations, Part 1b of the Commission's Rules, 18 C.F.R. Part 1b (2002), which do not provide for third-party standing in investigative proceedings. At the time BP Energy filed its Answer to the March 26, 2003 Show Case Order, BP Energy sought a Commission order bifurcating this proceeding into a non-public investigation phase conducted under Part 1b procedures and, if necessary, a second phase under which the Commission would engage in a ratemaking proceeding under the Commission's ordinary procedural rules that apply to public ratemaking. In the interim, the Commission has clarified that show cause proceedings such as this proceeding remain a Part 1b investigation in which the Commission may exercise unreviewable discretion to consider and resolve notwithstanding the intervention of third parties.<sup>7</sup> This Agreement is expressly subject to the Commission finding that this proceeding is subject to the Commission's unreviewable discretion to resolve notwithstanding the intervention of third parties.

E. This Agreement will not be disclosed to the public or be subject to public comment or disclosure before the Effective Date. If this Agreement does not become effective in accordance with its terms for any reason, then it shall be deemed privileged and not admissible in evidence or made a part of the record in any proceeding for any purpose in accordance with Part 1b and Rule 385.602(e) of the Commission's Rules of Practice and Procedure. If it does become effective in accordance with its specific terms, then the Commission may make the provisions of this Agreement public.

F. If the Commission does not issue an order approving this Agreement, without modification or condition, the Agreement shall be null and void, unless otherwise agreed in writing between Staff and BP Energy.

G. Commission approval of this Agreement shall constitute all requisite waiver(s) of any and all otherwise applicable Commission rules, regulations or orders to permit the implementation of the provisions hereof and a determination that the

<sup>5</sup> 16 U.S.C. § 824e (2000); accord 16 U.S.C. § 824d (2000).

<sup>6</sup> 18 C.F.R. § 385.602(g)(3) (2002).

<sup>7</sup> *Enron Power Marketing Inc.*, 103 FERC ¶ 61,343, at 18 and n.17 (June 25, 2003).

Agreement is fair, reasonable, and in the public interest and otherwise consistent with the Federal Power Act and the Commission's rules and regulations thereunder. Commission approval of this Agreement shall not constitute an approval of, or precedent regarding, any principle, issue or methodology underlying its provisions, nor shall this Agreement establish a "settled practice".<sup>8</sup>


H. The undersigned representatives of BP Energy affirm that they have each read this Agreement, that all of the matters set forth in the Agreement are true and correct to the best of their knowledge, information and belief, and that they understand that the Agreement is entered into by Staff in express reliance on those representations.

I. This Agreement binds BP Energy and their agents, successors and assigns.

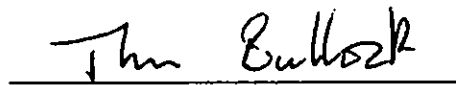
J. BP Energy waives judicial review by any court of any Commission order approving the Agreement without modification, in accordance with its terms.

K. 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.

Agreed to and accepted:

  
Donald J. Gelinas, Associate Director  
Office of Markets, Tariffs and Rates

7/16/03  
Date

  
Tim Bullock, President  
BP Energy Company

7/16/03  
Date

<sup>8</sup> *Public Service Commission v. Federal Energy Regulatory Commission*, 642 F.2d 1335 (D.C. Cir. 1980).