

160 FERC ¶ 61,013
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

City Power Marketing, LLC
and K. Stephen Tsingas

Docket No. IN15-5-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued August 22, 2017)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and City Power Marketing, LLC (City Power) and K. Stephen Tsingas (together, Defendants). Approval of the Agreement is in the public interest because the Agreement resolves on fair and equitable terms: (a) the Commission's claims against Defendants for violations of section 222 of the Federal Power Act (FPA) and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c (2017), and of the Commission's rule requiring truthful communications with (among others) the Commission, 18 C.F.R. § 35.41(b) (2017); and (b) the Commission's action captioned *FERC v. City Power Marketing, LLC*, No. 1:15-cv-01428-JDB (D.D.C.) (the Federal Court Lawsuit).

2. The Defendants neither admit nor deny the alleged violations and agree that: (a) Tsingas shall make a payment in total of \$2,720,000, consisting of \$1,300,000 in disgorgement to PJM Interconnection, Inc. (PJM) and a penalty of \$1,420,000 to the U.S. Treasury; and (b) City Power shall make a civil penalty payment of \$9,000,000 to the U.S. Treasury, in accordance with the terms set forth in the Agreement. Tsingas further agrees that he, and any person acting on his behalf, will be banned from engaging or participating (whether through consulting, advising, directing, or strategizing), directly or indirectly, in any trading transaction (whether physical or financial or virtual) within the Commission's jurisdiction for three years from the date the Agreement was signed by Defendants.

I. Factual and Procedural Background

3. City Power is a financial trading firm in Fort Lauderdale, Florida. For several years, Tsingas has been the sole owner of City Power.

4. Starting in 2006, City Power engaged in financial trading in PJM, including Up To Congestion trading. In July 2010, City Power engaged in three types of Up To

Congestion trades that became the subject of an investigation by Enforcement: (a) round trip trades; (b) trades between the SOUTHIMP and SOUTHEXP nodes in PJM; and (c) trades between the NCMPAIMP and NCMPAEXP nodes in PJM. In the course of that investigation, City Power made statements to Enforcement about instant messages exchanged by its employees. After Enforcement investigated these three types of trades and City Power's statements about instant messages, the Commission issued an Order to Show Cause. *City Power Marketing, LLC*, 150 FERC ¶ 61,176 (2015) (Order to Show Cause). The Order to Show Cause required Defendants to explain why their behavior should not be found to have violated the Commission's regulations and the FPA.

5. After briefing by both Defendants and Enforcement, on July 2, 2015, the Commission issued an Order Assessing Civil Penalties against Defendants. *City Power Marketing, LLC*, 152 FERC ¶ 61,012 (2015), available at <https://www.ferc.gov/enforcement/civil-penalties/actions/2015/152FERC61012.pdf>. In the order, the Commission found that the three types of trades described above violated section 222 of the FPA and the Commission's Anti-Manipulation Rule. The Commission also found that City Power violated 18 C.F.R. § 35.41(b), through false and misleading statements and material omissions in its communications with Enforcement during the investigation about the existence of instant messages.

6. The Commission ordered Defendants to disgorge approximately \$1.3 million in unjust profits, ordered City Power to pay a civil penalty of \$14 million, and ordered Tsingas to pay a civil penalty of \$1 million. The Commission specified that City Power and Tsingas were jointly and severally liable both for payment of disgorgement and for payment of City Power's penalty assessment.

7. After Defendants failed to make the payments required by the Commission's order, on September 1, 2015, the Commission filed the Federal Court Lawsuit in the U.S. District Court for the District of Columbia, seeking affirmance of the Order.

8. On August 10, 2016, the District Court issued an order denying Defendants' motion to dismiss the Federal Court Lawsuit. *FERC v. City Power Mktg., LLC*, 199 F. Supp. 3d 218 (D.D.C. 2016). On January 30, 2017, the District Court issued an order denying, without prejudice, the Commission's motion for summary judgment, pending resolution of certain limited discovery requests. *FERC v. City Power Mktg., LLC*, No. 1:15-cv-01428 (JDB), 2017 WL 398322 (D.D.C. Jan. 30, 2017). At the Court's suggestion, the parties engaged in mediation on February 28, 2017, which led to the Agreement.

II. Stipulation and Consent Agreement

9. Enforcement and the Defendants resolved the matter discussed above by means of the attached Agreement.

10. The Defendants stipulate to the facts recited in Section II of the Agreement, but neither admit nor deny that they violated the FPA or Commission regulations.

11. The Defendants agree that Tsingas shall make a payment in total of \$2,720,000, consisting of \$1,300,000 in disgorgement to PJM and a penalty of \$1,420,000 to the U.S. Treasury, and that City Power shall make a civil penalty payment of \$9,000,000 to the U.S. Treasury. Tsingas further agrees that he, and any person acting on his behalf during the period of this trading prohibition, shall be banned from engaging or participating (whether through consulting, advising, directing, or strategizing), directly or indirectly, in any trading transaction (whether physical or financial or virtual) within the Commission's jurisdiction for three years from March 30, 2017.

12. PJM shall promptly allocate Defendants' disgorgement payments for the benefit of current PJM ratepayers through an internal accounting procedure.

III. Determination of Appropriate Sanctions and Remedies

13. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

14. The Commission also concludes that the Defendants' civil penalty is consistent with its Revised Policy Statement on Enforcement.¹

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹ *Enforcement of Statutes, Regulations & Orders*, 123 FERC ¶ 61,156 (2008).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City Power Marketing, LLC
and K. Stephen Tsingas

Docket No. IN15-5-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

The Office of Enforcement (“Enforcement”) of the Federal Energy Regulatory Commission (“Commission”) and City Power Marketing, LLC (“City Power”) and K. Stephen Tsingas (together, “Defendants”) enter into this Stipulation and Consent Agreement (“Agreement”) to resolve (i) the Commission’s claims against Defendants for violations of section 222 of the Federal Power Act (“FPA”) and the Commission’s Anti-Manipulation Rule, 18 C.F.R. § 1c, and of the Commission’s rule requiring accurate communications with (among others) the Commission, 18 C.F.R. § 35.41(b), and (ii) the Commission’s lawsuit captioned *FERC v. City Power Marketing, LLC*, No. 1:15-cv-01428-JDB (D.D.C.) (the “Federal Court Lawsuit”). The Defendants neither admit nor deny the alleged violations. In order to fully resolve this matter, Defendants agree that Tsingas shall make a disgorgement payment of \$1,300,000 to PJM Interconnection, Inc. (“PJM”) and a civil penalty payment of \$1,420,000 to the U.S. Treasury, and that City Power shall make a civil penalty payment of \$9,000,000 to the U.S. Treasury, in accordance with the terms set forth below.

II. STIPULATED FACTS

1. City Power is a financial trading firm in Fort Lauderdale, Florida, currently owned entirely by Tsingas.
2. Starting in 2006, City Power engaged in financial trading in PJM. As detailed in the Commission Orders referenced below, after Enforcement investigated certain of Defendant’s July 2010 trades in PJM, the Commission issued an Order to Show Cause on March 6, 2015. *City Power Marketing, LLC*, 150 FERC ¶ 61,176 (2015) (“Order to Show Cause”).
3. On April 7, 2015, Defendants submitted a joint notice of their election under section 31(d)(3)(A) of the FPA as well as an answer to the Order to Show Cause. On May 5, 2015, OE Staff filed a reply to the Defendants’ Answer. On June 3, 2015, Defendants submitted an answer to the OE Staff Reply.
4. On July 2, 2015, the Commission issued an Order Assessing Civil Penalties against Defendants. *City Power Marketing, LLC*, 152 FERC ¶ 61,012 (2015).

5. On September 1, 2015, the Commission filed the Federal Court Lawsuit in the United States District Court for the District of Columbia to request affirmance of the Commission's Order Assessing Civil Penalties.

6. On August 10, 2016, the District Court issued an order denying Defendants' motion to dismiss the Federal Court Lawsuit. *FERC v. City Power Mktg., LLC*, 199 F. Supp. 3d 218 (D.D.C. 2016). On January 30, 2017, the District Court issued an order denying, without prejudice, the Commission's motion for summary judgment. *FERC v. City Power Mktg., LLC*, No. cv-15-1428 (JDB), 2017 WL 398322 (D.D.C. Jan. 30, 2017). On February 28, 2017, the parties engaged in mediation. On March 1, 2017, at the request of the parties, the District Court temporarily suspended all court deadlines.

III. COMMISSION DETERMINATION OF VIOLATIONS

7. In its Order Assessing Civil Penalties, published at 152 FERC ¶ 61,012, the Commission found that certain of Defendants' trades in PJM violated section 222 of the FPA and the Commission's Anti-Manipulation Rule. The Commission also found that City Power violated 18 C.F.R. § 35.41(b) through its communications with Enforcement concerning instant messages.

IV. REMEDIES AND SANCTIONS

8. For purposes of this Agreement, the Defendants stipulate to the facts set forth in Section II of this Agreement, but neither admit nor deny the determinations set forth in Section III of this Agreement or the Commission's findings in its Order Assessing Civil Penalties.

9. For purposes of settling any and all disputes, allegations, and claims within the jurisdiction of the Commission relating to the alleged violations and the Federal Court Lawsuit, City Power agrees to pay a penalty of \$9,000,000 to the U.S. Treasury and Tsingas agrees to pay a total of \$2,720,000, consisting of \$1,300,000 in disgorgement to PJM and a penalty of \$1,420,000 to the U.S. Treasury. The schedule for Tsingas' payments is set forth below. Solely for the purpose of resolving this matter through settlement, the Commission agrees that it (or any entity assigned to collect) will not now nor in the future assert that Tsingas is personally liable for the penalty against City Power under this Agreement, whether under a theory of joint and several liability or otherwise.

10. Tsingas shall make a payment of \$825,000 by wire transfer to PJM within 60 days of the Effective Date of this Agreement. Tsingas' payment of this amount is a condition of the Commission's release of claims against Defendants.

11. On the first, second, and third anniversaries of the date when Tsingas' initial \$825,000 payment is due, Tsingas shall make a payment of \$50,000 (each year). On the

fourth, fifth, and sixth anniversaries of that date, Tsingas shall make a payment of \$175,000 (each year). On the seventh, eighth, ninth, and tenth anniversaries of that date, Tsingas shall make a payment of \$305,000 (each year). Tsingas shall direct all payments to PJM for disgorgement until he has paid the agreed-upon full disgorgement amount called for in this Agreement (\$1,300,000) as compensation for losses. Thereafter, Tsingas shall make all payments to the U.S. Treasury for civil penalties.

12. City Power shall make a payment of \$9,000,000 to the U.S. Treasury within 30 days of the Effective Date of this Agreement.

13. When making payments under this Agreement, Defendants shall promptly provide Enforcement (directly or through counsel) with notice in the form of documentation that the payment was made (whether in the form of a receipt or copy of an instrument). Defendants (or their counsel) shall provide this confirmation by email and U.S. Mail to the Director of the Office of Enforcement.

14. Within three business days of receiving confirmation of the initial \$825,000 payment by Tsingas, the Commission shall file a Notice of Dismissal With Prejudice of the Federal Court Lawsuit. The Commission and the Defendants agree to bear their own costs and fees from the case.

15. Tsingas agrees that neither he, nor any person acting on his behalf, will engage or participate (whether through consulting, advising, directing, or strategizing), directly or indirectly, in any trading transaction (whether physical or financial or virtual) within the Commission's jurisdiction for three years from the date this Agreement is signed by Defendants. This paragraph does not apply to any business entity in which Tsingas has an ownership interest, or its employees, so long as Tsingas does not personally engage or participate in, directly or indirectly, or otherwise operate or consult about, any trading transaction within the Commission's jurisdiction for three years.

V. TERMS

16. 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 matters specifically addressed herein, and that arose on or before the Effective Date, as to Defendants or any affiliated entity.

17. Commission approval of this Agreement without material modification, along with payment by Tsingas of the initial \$825,000 disgorgement amount, shall release Defendants and forever bar the Commission from holding Defendants, any affiliated entity, and any successor in interest liable for any and all administrative or civil claims arising out of the conduct addressed in the Commission's Order Assessing Civil Penalties.

18. Failure by a Defendant to make any required payment or comply with any other provision of this Agreement shall be deemed a violation by that Defendant of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. § 792, et seq., and may subject that Defendant to additional action under the enforcement provisions of the FPA. In the case of failure to make a required payment, such action shall be limited to collection of any unpaid amount, plus interest. Any action taken in connection with failure to make a payment shall be subject to the conditions in Paragraph 9.

19. If a Defendant does not make any required payment described above at the time agreed by the parties, interest payable to PJM and to the U.S. Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19a (2016) from the date that payment is due, in addition to the amounts specified above and any other enforcement action and penalty that the Commission may take or impose (relating to collection and subject to the conditions in Paragraph 9).

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

21. 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 Defendants has been made to induce the signatories or any other party to enter into the Agreement.

22. 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 Defendants shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Defendants.

23. In connection with the disgorgement and civil penalty payments provided for herein, Defendants agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order under the FPA, 16 U.S.C. § 792, et seq., as amended. Defendants waive 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.

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

Commission. This agreement represents the entire agreement and understanding of the parties and supersedes any previous understandings on its subject matter.

25. 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.

26. Tsingas, for himself and as the representative of City Power, 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.

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

ACCEPTED AND AGREED TO:



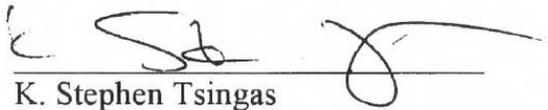
Larry R. Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: ~~March~~ ^{April} 5, 2017



City Power Marketing, LLC
BY: K. Stephen Tsingas

Date: March 30, 2017



K. Stephen Tsingas

Date: March 30, 2017