

134 FERC ¶ 61,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, John R. Norris,
and Cheryl A. LaFleur.

Moussa I. Kourouma d/b/a Quntum Energy LLC

Docket No. IN11-2-000

ORDER TO SHOW CAUSE AND NOTICE OF PROPOSED PENALTY

(Issued February 14, 2011)

1. Pursuant to Rule 209(a)(2) of the Commission's Rules of Practice and Procedure,¹ the Commission's Revised Policy Statement on Enforcement,² and the Commission's Statement of Administrative Policy Regarding the Process for Assessing Civil Penalties,³ the Commission directs the above-captioned individual to show cause why he should not be found to have violated section 35.41(b) of the Commission's regulations under the Federal Power Act (FPA).⁴ Mr. Kourouma is alleged to have violated section 35.41(b) by deliberately submitting misleading information and knowingly omitting material facts regarding the true owner of Quntum Energy LLC (Quntum) in communications to the Commission and a Commission-approved regional transmission organization (RTO). The Commission further directs Respondent to show cause why he should not be assessed a civil penalty in the amount of \$50,000. Pursuant to Rule 213(a) of the Commission's Rules of Practice and Procedure,⁵ the Commission directs Respondent to file an answer with the Commission within 30 days of the date of this order.
2. This case presents allegations by the Commission's Office of Enforcement Staff (OE staff) of violations of the Commission's Market Behavior Rules. These allegations arose out of an investigation conducted by OE staff and are described in the Enforcement

¹ 18 C.F.R. § 385.209(a)(2) (2010).

² *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 35-36 (2008).

³ *Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317, at P 5 (2006).

⁴ 18 C.F.R. § 35.41(b) (2010).

⁵ 18 C.F.R. § 385.213(a) (2010).

Staff Report and Recommendation submitted to the Commission on January 7, 2011 (OE Staff Report).⁶ The OE Staff Report alleges that Mr. Kourouma omitted material information about his sole ownership of Quntum and submitted inaccurate information to the Commission in his application to the Commission seeking market-based rate (MBR) authority in Docket No. ER09-805-000. The OE Staff Report specifically alleges that Mr. Kourouma used his then one-year-old daughter's name and the name of an acquaintance and her mailing address in communications with the Commission and PJM Interconnection L.L.C. (PJM), so as to hide his participation in the formation and ownership of Quntum and its activities from his former employer, Energy Endeavors LP, and thus avoid enforcement of a non-compete clause. The OE Staff Report alleges that Mr. Kourouma knew that neither his daughter nor his acquaintance had an active management and/or ownership role in Quntum and therefore listing those individuals as Quntum's managers in communications to the Commission and PJM was false and misleading. Similarly, OE staff found Mr. Kourouma's failure to identify his direct ownership and management of Quntum was a knowing omission of a material fact in the application to the Commission for MBR authority.

3. Based on the allegations contained in the OE Staff Report, the Commission orders Respondent to respond to this order as set forth above.⁷ This order also is the notice of proposed penalty required pursuant to section 31 of the FPA.⁸ In the answer to this order, Respondent has the option to choose between either (a) an administrative hearing before an ALJ at the Commission prior to the assessment of a penalty under section 31(d)(2) or (b) an immediate penalty assessment by the Commission under section 31(d)(3)(A). If Respondent elects an administrative hearing before an ALJ, the Commission will issue a hearing order; if Respondent elects an immediate penalty assessment, and if the Commission finds a violation, the Commission will issue an order

⁶ The OE Staff Report is attached to this order as Appendix A. The OE Staff Report describes the background of OE staff's investigation, proposed findings of fact and conclusions of law, and proposed sanctions.

⁷ Under 18 C.F.R. § 385.213(c) (2010), Respondent must file an answer that provides a clear and concise statement regarding any disputed factual issues and any law upon which he relies. Respondent must also, to the extent practicable, admit or deny, specifically and in detail, each material allegation contained in the OE Staff Report and set forth every defense relied upon. Failure to answer an order to show cause will be treated as a general denial and may be a basis for summary disposition under Rule 217. 18 C.F.R. § 385.213(e)(2) (2010).

⁸ 16 U.S.C. § 823b(d) (2006).

assessing a penalty. If such penalty is not paid within 60 days of assessment, the Commission will commence an action in a United States district court for an order affirming the penalty, in which the district court will review the matter *de novo*.⁹

The Commission orders:

(A) Within 30 days of the date of this order, Respondent must file an answer in accordance with Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2010), showing cause why he should not be found to have violated 18 C.F.R. § 35.41(b) with respect to Quntum's application for market-based rate authority in Docket No. ER09-805-000 and Quntum's communications with PJM.

(B) Within 30 days of the date of this order, Respondent must file an answer in accordance with Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2010), showing cause why his alleged violation of section 35.41(b) of the Commission's regulations under the Federal Power Act should not warrant the assessment of a civil penalty in the amount of \$50,000.

(C) In any answer, Respondent should address any matter, legal, factual or procedural, that he would urge in the Commission's consideration of this matter.

(D) Within 30 days of the date of this order, Respondent may also elect (a) an administrative hearing before an ALJ at the Commission or (b) if the Commission finds a violation, an immediate penalty assessment by the Commission which a United States district court is authorized to review *de novo*.

(E) Within 30 days of the filing of the answer by Respondent, Enforcement staff may file a reply with the Commission.

By the Commission. Commissioner Moeller is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ FPA Section 31(d)(3)(B), 16 U.S.C. § 823b(d)(3)(B)(2006). *See also Process for Assessing Civil Penalties, supra* note 3.



FEDERAL ENERGY REGULATORY COMMISSION

**Moussa I. Kourouma
d/b/a Quntum Energy LLC**

Enforcement Staff Report and Recommendation

Office of Enforcement
Division of Investigations

January 7, 2011

Enforcement Staff Report re: Moussa I. Kourouma d/b/a Quntum Energy LLC

The Office of Enforcement (OE or Enforcement) reports to the Federal Energy Regulatory Commission (Commission) its findings of fact and conclusions of law regarding the conduct of Mr. Moussa I. Kourouma and his company Quntum Energy LLC (Quntum) in connection with Quntum's application to the Commission seeking authorization to engage in wholesale sales of electric energy, capacity, and ancillary services.

I. EXECUTIVE SUMMARY

Enforcement recommends that the Commission issue an Order to Show Cause to Moussa I. Kourouma d/b/a Quntum Energy LLC requiring him to show cause why he did not violate Commission regulations in connection with Quntum's application to the Commission seeking market-based rate (MBR) authority in Docket No. ER09-805-000, and why he should not pay a civil penalty in the amount of \$50,000.

On March 13, 2009, Quntum filed with the Commission a petition to engage in wholesale sales of electric energy, capacity, and ancillary services.¹ On April 3, 2009, Energy Endeavors LP (Energy Endeavors) filed a Motion for Leave to Intervene and Protest.² On May 8, 2009, Energy Endeavors filed a Supplemental Protest.³ In its initial and Supplemental Protests, Energy Endeavors asked the Commission to reject Quntum's application for MBR authority because Quntum failed to provide complete information regarding the entity's ownership. The Protests argued that Quntum's omission of certain requisite information prevented the Commission from conducting a meaningful market power analysis. Energy Endeavors also alleged that Quntum 1) made wholesale electric sales without authorization by the Commission, and 2) submitted false information to the Commission and PJM Interconnection L.L.C. (PJM).

Quntum's application was deficient in several respects and the Office of Energy Market Regulation (OEMR) issued a deficiency letter to obtain more information on the filing, allowing Quntum twenty-one days to respond.⁴ Quntum did not respond and on June 8, 2009, the application was rejected.⁵ OEMR referred the matter to the Office of

¹ Quntum Energy, LLC March 13, 2009 Application for MBR Authority, Docket No. ER09-805 (Quntum Application for MBR).

² Energy Endeavors LP April 3, 2009 Motion for Leave and Protest of Energy Endeavors LP under ER09-805 (Energy Endeavors Protest or Protest).

³ Supplemental Protest of Energy Endeavors LP under ER09-805 (Supplemental Protest).

⁴ April 22, 2009 Deficiency Letter from OEMR to Mr. Imani F. Kalle, Managing Member, Quntum (Deficiency Letter).

⁵ June 8, 2009 Rejection of Application for Market-Based Rate Authorization, Quntum Energy, LLC, Docket Nos. ER09-805-000 and ER09-805-001 (unpublished letter order)

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Enforcement and OE opened a preliminary, non-public investigation of Quntum pursuant to Part 1b of the Commission's regulations.⁶

After conducting its investigation, Enforcement staff determined that Moussa I. Kourouma violated the Commission's Market Behavior Rules by providing inaccurate and misleading information regarding Quntum's ownership to the Commission and a Commission-approved regional transmission organization (RTO).⁷

More specifically, staff determined, among other things, that:

- Moussa I. Kourouma is an electrical engineer who has worked in the industry as a transmission planning engineer, transmission analyst, and electric energy trader for approximately fifteen years.⁸
- Moussa I. Kourouma admitted that it was under his sole direction that Quntum was created and he was instrumental in preparing all filings and communications submitted to the Commission and PJM.⁹
- While employed with Energy Endeavors, Moussa I. Kourouma used his then one-year-old daughter's name to hide his participation in the formation, ownership, and active involvement of Quntum and its activities with the Commission and PJM.¹⁰
- Moussa I. Kourouma admitted he omitted material information about his sole ownership of Quntum and he submitted inaccurate information to the Commission and PJM so as "to cloak his continued energy trading from his former employer and thus avoid enforcement of a non-compete clause."¹¹

In the course of the investigation, Mr. Kourouma provided responses to staff's

(Rejection Order). OEMR issued the letter order pursuant to delegated authority under 18 C.F.R. § 375.307(a)(1).

⁶ 18 C.F.R. Part 1b (2010).

⁷ *See* 18 C.F.R. § 35.41(b) (2010).

⁸ *See* March 10, 2010 Response of Moussa I. Kourouma regarding the non-public investigation of Quntum Energy LLC at 3-4 (March 10, 2010 Response).

⁹ *See id.* at 2 and 5.

¹⁰ *See* August 5, 2009 Response of Moussa I. Kourouma regarding the non-public investigation of Quntum Energy LLC (August 5, 2009 Response) and March 10, 2010 Response.

¹¹ *See* March 10, 2010 Response at 2 and 5.

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data requests on August 5, 2009, March 10, 2010 and April 2, 2010.¹² Mr. Kourouma was informed both orally and in writing of staff's views, and was invited to apprise staff of any misstatement of fact or error Mr. Kourouma may perceive in staff's understanding of the facts. Staff also afforded Mr. Kourouma the opportunity to present any alternate views or defenses. Mr. Kourouma did not dispute any material facts.

Staff engaged Mr. Kourouma in good faith settlement negotiations, but was unable to reach an agreement to resolve the investigation. On August 18, 2010, staff provided Mr. Kourouma written notice, pursuant to 18 C.F.R. § 1b.19 (2010), of staff's intent to recommend that the Commission issue an Order to Show Cause. Mr. Kourouma responded on September 17, 2010; that response is being provided to the Commission with this Report.¹³ In his response, Mr. Kourouma argues, *inter alia*, that "because intent, or scienter, is a critical and necessary element of these charges that is lacking here, the recommendation by OE should be rejected and the investigation against Quntum Energy and Mr. Kourouma dismissed."¹⁴

For the reasons explained below, Enforcement staff recommends the Commission issue an Order to Show Cause why Mr. Kourouma did not violate 18 C.F.R. § 35.41(b) (2010) in connection with his deliberate submission of inaccurate and misleading information and his knowing omission of material facts regarding the true owner of Quntum in communications to the Commission and PJM, and why the Commission should not require Mr. Kourouma to pay a civil penalty of \$50,000.

II. BACKGROUND

Mr. Moussa I. Kourouma is a former employee of an energy marketing firm called Energy Endeavors. Before leaving Energy Endeavors, Mr. Kourouma set up a competing energy marketing firm called "Quntum Energy" and applied to the Commission for MBR authority. In its protests of Quntum's application, Energy Endeavors asserted that the true owner of Quntum (which it believed to be Moussa Kourouma) intentionally provided incomplete and inaccurate information regarding Quntum's ownership in an effort to mislead the Commission. Energy Endeavors also asserted that Mr. Kourouma provided the inaccurate information to avoid enforcement of a non-compete provision of an

¹² See August 5, 2009 Response, March 10, 2010 Response, and April 2, 2010 Response of Moussa I. Kourouma regarding the non-public investigation of Quntum Energy LLC (April 2, 2010 Response).

¹³ Mr. Kourouma has requested privileged treatment of certain information concerning his current financial condition and that information has been redacted from the 1b.19 response provided to the Commission with this Report.

¹⁴ September 17, 2010 Response of Moussa I. Kourouma to § 1b.19 Notice at 1-2 (Kourouma's 1b.19 Response).

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employment agreement Mr. Kourouma signed while employed with Energy Endeavors. Energy Endeavors provided evidence to suggest that Quntum's Managing Member, as listed on its application for MBR authority, was a one-year-old child. Energy Endeavors also provided the Commission with evidence that purported to show that Quntum improperly had engaged in transactions in markets administered by PJM during the period April 1, 2009 through April 24, 2009, a period during which Quntum did not have MBR authorization.

Initially Quntum, Moussa I. Kourouma, and two additional individuals (Imani F. Kalle a/k/a Imani Kalley and Deckonti Dennis) were considered subjects of the investigation. However, Mr. Kourouma admitted in his data responses and initial response to staff's preliminary findings letter that he was solely responsible for creating Quntum, that he was instrumental in preparing all filings and communications submitted to the Commission and PJM, and that he accepts full responsibility for the actions of Quntum.¹⁵ Thus, staff determined that only Moussa I. Kourouma should be pursued for any violations.

III. STAFF'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

On January 11, 2008, Mr. Kourouma signed an employment agreement with Energy Endeavors, pursuant to which Mr. Kourouma worked as an energy trader from January 14, 2008 until March 30, 2009, when he was terminated for cause.¹⁶ Mr. Kourouma was terminated because Energy Endeavors discovered that while employed for Energy Endeavors, Mr. Kourouma secretly formed the company Quntum Energy LLC, applied to be a member of PJM, and submitted filings to the Commission seeking MBR authority.¹⁷ Specifically, on March 13, 2009, Quntum filed with the Commission a petition to engage in wholesale sales of electric energy, capacity, and ancillary services.¹⁸ Effective April 1, 2009, PJM approved Quntum for a nine-month membership in the Other Supplier Sector.¹⁹ On April 17, 2009, Quntum filed an amended petition for MBR

¹⁵ See August 5, 2009 Response and March 10, 2010 Response.

¹⁶ See Energy Endeavors Protest and attached Affidavit of Shawn Sheehan.

¹⁷ *Id.*

¹⁸ Quntum Application for MBR.

¹⁹ As defined in PJM's Operating Agreement, "Other Supplier" shall mean a Member that: (i) is engaged in buying, selling or transmitting electric energy, capacity, ancillary services, financial transmission rights or other services available under PJM's governing documents in or through the Interconnection or has a good faith intent to do so, and; (ii) does not qualify for the Generation Owner, Electric Distributor, Transmission Owner or End-Use Customer sectors.

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authority.²⁰

In a related civil action between Energy Endeavors and Moussa I. Kourouma, the Delaware Court of Chancery confirmed in an Order Granting Plaintiff's Motion for a Preliminary Injunction that Mr. Kourouma's formation, ownership and active involvement in Quntum was in direct breach of his employment agreement with Energy Endeavors.²¹ Pursuant to that injunction, Quntum withdrew its membership from PJM.²² On June 8, 2009, Quntum's application for MBR authority was rejected because Quntum failed to address the deficiencies in its initial and amended application.²³

A review of Quntum's filings and correspondence with the Commission under Docket No. ER09-805 and Quntum's correspondence with PJM between March 13, 2009, and August 31, 2009, revealed that Quntum variously changed the name of its Managing Member, Vice President and President—but did not identify Moussa I. Kourouma's affiliation with Quntum as its sole owner and manager. In the initial Quntum Application for MBR, only Imani Kalle is listed with the title Managing Member. In Quntum's Amended Application for MBR, Deckonti Dennis is added as the President, while Imani Kalle remains the Managing Member. In Quntum's filing seeking to cancel its application for MBR authority, Ms. Dennis is listed as the Vice President of Quntum and Imani Kalle's name has been removed.²⁴ Although Imani Kalle is listed as the Managing Member in filings with the Commission,²⁵ in Quntum's membership application to PJM, Deckonti Dennis is listed as the sole Managing Member of Quntum.²⁶ These filings and correspondence raised questions about who owned and managed Quntum and this uncertainty of true ownership was the basis for OEMR's issuance of its April 22, 2009 deficiency letter to Quntum regarding its application.²⁷

In its investigation, staff confirmed that Imani Kalle, who was listed as the

²⁰ Quntum Energy LLC April 17, 2009 Amended Application for MBR Authority, Docket No. ER09-805 (Quntum Amended Application for MBR).

²¹ See *Crane Energy, Inc. v. Kourouma*, No. 4512-VCS (Del. Ch. June 5, 2009) (order granting preliminary injunction).

²² On May 27, 2009, Quntum sought to cancel its MBR tariff. See Quntum Energy LLC Notice of Cancellation, Docket No. ER09-1205 (Quntum Notice of Cancellation). On June 29, 2009, that submittal was rejected as moot because Quntum's application for MBR authority had been rejected. See *supra* note 5 (Rejection Order).

²³ See Rejection Order.

²⁴ See Quntum Notice of Cancellation.

²⁵ See generally Quntum Energy LLC's filings in Docket No. ER09-805.

²⁶ See Quntum's March 17, 2009 Membership Application to PJM.

²⁷ See Deficiency Letter.

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Managing Member of Quntum, was Mr. Kourouma's then one-year-old child.²⁸ In addition, staff confirmed that Deckonti Dennis, who was listed as the President, Vice President and Manager of Quntum, was merely an acquaintance of Mr. Kourouma's wife, and Ms. Dennis was completely unfamiliar with Quntum's business and only signed her name or Imani Kalle's name to documents as instructed by Mr. Kourouma.²⁹ Staff also confirmed that the address listed as Quntum's mailing address in all correspondence with the Commission and PJM was not the address of any business, but merely the home address of Ms. Dennis.³⁰ As a result of its investigation, staff also found that Mr. Kourouma represented to PJM employees in emails and on phone calls that he was "Dennis" or "Mr. Deckonti Dennis" so as to conceal from Energy Endeavors his participation and involvement in the activities of Quntum.³¹

Mr. Kourouma has admitted to staff that while employed with Energy Endeavors, he used his one-year-old daughter's name to hide his participation in the formation, ownership, and active involvement of Quntum and its activities with the Commission and PJM.³² Additionally, in response to staff's preliminary findings letter issued January 21, 2010, Mr. Kourouma admitted he "was the principal organizer of Quntum Energy" and again confirmed that "he organized Quntum Energy in a manner designed to cloak his continued energy trading from his former employer and thus avoid enforcement of a non-compete clause."³³

B. Conclusions of Law

1. Moussa I. Kourouma violated section 35.41(b) of the Commission's regulations.

Section 35.41(b) of the Commission's regulations, 18 C.F.R. § 35.41(b) (2010), titled "Market behavior rules," states in relevant part:

Communications. Seller³⁴ will provide accurate and factual information

²⁸ See August 5, 2009 Response and March 10, 2010 Response.

²⁹ See August 5, 2009 Response and May 21, 2009 Deposition transcript in *Crane Energy, Inc. v. Kourouma and Quntum Energy LLC*, C.A. No. 4512-VCS (Del. Ch. 2009).

³⁰ See August 5, 2009 Response.

³¹ See generally PJM emails with ddennis@quntumenergy.com.

³² See August 5, 2009 Response and March 10, 2010 Response.

³³ March 10, 2010 Response at 2 and 5; see also Kourouma's 1b.19 Response at 6.

³⁴ For purposes of Subpart H, § 35.36(1) provides that "Seller means any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act."

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and not submit false or misleading information, or omit material information, in any communication with the Commission . . . [or] Commission-approved regional transmission organizations . . . unless seller exercises due diligence to prevent such occurrences.

Quntum qualifies as a “Seller” under Subpart H, § 35.41(b) because it sought authorization from the Commission to engage in sales of electric energy, capacity and ancillary services at market-based rates.³⁵ Staff concludes that Mr. Kourouma may be held liable for any violations, because he has admitted it was under his direction that Quntum was created, that he was instrumental in preparing all filings and communications submitted to the Commission and PJM, and that he is solely responsible for the actions of Quntum.³⁶

Imani F. Kalle was listed in filings and correspondence with the Commission as the Managing Member of Quntum, but Ms. Kalle, then a one-year-old child, clearly had no actual management role in the company. Mr. Kourouma has acknowledged that he used his daughter’s name to conceal his own involvement in the company. Mr. Kourouma has also acknowledged that Quntum’s application for MBR authority failed to identify any owners of Quntum or Mr. Kourouma’s relationship to Ms. Kalle so as to prevent his current employer from discovering that he had started a competing business in breach of his employment agreement.

Deckonti Dennis was listed in filings and correspondence with PJM as the Managing Member of Quntum when Ms. Dennis had no actual management role in the company. Listing Deckonti Dennis as the Managing Member of Quntum in its Membership Application to PJM constitutes “false or misleading information” to a “Commission-approved regional transmission organization.” Mr. Kourouma corresponded by telephone and email with PJM and represented himself as Deckonti Dennis on behalf of Quntum. Mr. Kourouma’s impersonation of an individual purportedly affiliated with Quntum was misleading and part of the larger scheme to conceal his involvement with Quntum from Energy Endeavors.

Staff concludes that Mr. Kourouma’s listing of Deckonti Dennis and Imani Kalle as managers was false and was an attempt to mislead the Commission and PJM to believe

³⁵ See Quntum Application for MBR.

³⁶ See *T.E. Reserve Corp.*, 63 FERC ¶ 63,001, at 65,001 (1993) (finding an individual’s personal liability emanated from the fact that he was a central figure in the regulatory violations); *William Valentine & Sons, Inc.*, 46 FERC ¶ 61,252, at 61,749 (1989) (finding the Commission may appropriately disregard the corporate form and impose personal liability); *Town of Highlands*, 37 FERC ¶ 61,149, at 61,356 (1986) (finding an agency has broad authority to look beyond a subsidiary to its owner to achieve the agency’s statutory mandate and to assure that statutory purposes are not frustrated).

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that these individuals had an active management and/or ownership role in Quntum when they did not. Similarly, staff finds Mr. Kourouma's failure to identify all direct owners of Quntum was a knowing omission of a material fact in the application to the Commission for MBR authority, and therefore, in violation of section 35.41(b).

2. Moussa I. Kourouma did not violate any tariffs or improperly engage in any sales that required authorization from the Commission.

Energy Endeavors provided staff with evidence that purported to show that Quntum improperly engaged in transactions in markets administered by PJM during the period April 1, 2009 through April 24, 2009, a period during which Quntum did not have MBR authorization. Although Quntum did engage in virtual transactions during that period, such transactions do not require MBR authorization from the Commission. Entities like Quntum that engage in the sales of FTRs and virtual trades sign a participation agreement with RTOs/ISOs which requires the entity to abide by Commission-approved market rules which ensure that no market power is exercised in such trades.³⁷ However, the Commission has determined that entities engaging only in FTRs and virtual transactions require no separate authorization under the Federal Power Act (FPA).³⁸ Staff concluded that Mr. Kourouma did not violate any tariffs or improperly engage in any sales that required authorization from the Commission.

C. Defenses Raised by Mr. Kourouma

Mr. Kourouma acknowledges that "he organized Quntum Energy in a manner designed to cloak his continued energy trading from his former employer and thus avoid enforcement of a non-compete clause."³⁹ Even with this acknowledgment, Mr. Kourouma describes his decisions as merely "improvident" and he raises several defenses.⁴⁰

First, Mr. Kourouma makes the argument that he was not advised by counsel when he submitted the application for MBR authority and that the filing process is difficult to understand.⁴¹ FERC's website, in addition to providing a Sample Initial Application,

³⁷ See *Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 921 (2007).

³⁸ *Id.*

³⁹ March 10, 2010 Response at 2; see also Kourouma's 1b.19 Response at 6.

⁴⁰ See generally March 10, 2010 Response and Kourouma's 1b.19 Response.

⁴¹ March 10, 2010 Response at 8-10; see also Kourouma's 1b.19 Response at 13 and 15.

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provides detailed information on how to apply for MBR authorization and contact information for OEMR and the Office of the General Counsel to answer any technical or legal questions about the application process.⁴² The website’s instructions specifically state that “an application should include the . . . contact information for the filing entity (including phone number).” Mr. Kourouma did not list his name, his phone number or an accurate business address to assist the Commission in contacting Quntum—and he knowingly listed contact information for individuals who had no management role or ownership in Quntum. Additionally, Mr. Kourouma has a Master of Sciences degree in Technology Management from the University of Pennsylvania, a Master of Sciences degree in Electrical Power Engineering from Drexel University, and he has worked in the industry for approximately fifteen years.⁴³ Given Mr. Kourouma’s education and experience in the industry, staff does not find persuasive the defense that he submitted false and misleading information to the Commission and PJM because he did not understand the filing process.⁴⁴

Second, Mr. Kourouma makes the argument that because the application for MBR authority was never perfected, there should be no basis to find the submission violated the Commission’s Market Behavior Rules.⁴⁵ Staff finds this defense without merit. Mr. Kourouma’s March 10, 2010 Response states that he sought to withdraw Quntum’s pending application at the Commission because of questions raised by Commission staff and also because of state court proceedings to enforce a non-compete provision. Moreover, the state court order specifically directed Mr. Kourouma and Quntum to “terminate their accounts and/or membership with any and all ISOs, including PJM, and withdraw any and all applications pending before FERC.”⁴⁶ Mr. Kourouma’s 1b.19 Response acknowledges that the court-ordered injunction *required* Mr. Kourouma to withdraw the FERC filing.⁴⁷ It is disingenuous for Mr. Kourouma to suggest that he attempted to withdraw the FERC filing *of his own volition*.⁴⁸ Thus, staff finds that Mr.

⁴² <http://www.ferc.gov/industries/electric/gen-info/mbr/authorization.asp>.

⁴³ See Kourouma’s 1b.19 Response at 5.

⁴⁴ Moussa I. Kourouma worked as a transmission engineer for GPU Energy from 1996 to 1999, a transmission planning engineer for PJM from 1999 to 2001, a transmission analyst for NRG Power Marketing from 2001 to 2002, and a senior transmission analyst and trader for Conectiv Energy, a subsidiary of Pepco Holdings, Inc. from 2002 to 2007.

⁴⁵ March 10, 2010 Response at 10-11; *see also* Kourouma’s 1b.19 Response at 14.

⁴⁶ *See Crane Energy, Inc. v. Kourouma*, No. 4512-VCS (Del. Ch. June 5, 2009) (order granting preliminary injunction).

⁴⁷ Kourouma’s 1b.19 Response at 4.

⁴⁸ *See id.* (“the application was no longer necessary for independent reasons”); *see also id.* at 2 (“Had it not been for independent events that made the application for market-based rates no longer practicable for Quntum Energy to pursue, the filing could have been corrected.”).

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Kourouma's decision to withdraw Quntum's application to the Commission before it could be perfected was not an act designed to correct material omissions or misrepresentations, but rather an action taken to comply with a court ordered injunction in a related civil litigation matter.⁴⁹ Moreover, withdrawal of the application does not alter the fact that the application deliberately contained misleading information.

Third, Mr. Kourouma asserts that if there were a "technical violation," it could have been cured, with no impact on the markets, had the application process been perfected prior to a final Commission ruling on the merits of the application.⁵⁰ In Kourouma's 1b.19 Response, Mr. Kourouma asserts that the omission was "an oversight that readily could have been corrected as part of the application process."⁵¹ Mr. Kourouma's use of Deckonti Dennis's and Imani Kalle's names in his application for MBR authority was a knowing use of inaccurate information and a direct attempt to cause the Commission and PJM to believe that these individuals had an active management and/or ownership role in Quntum when they did not. Staff does not consider the act of providing false and misleading information to the Commission to be a "technical violation" or "an oversight." Moreover, Mr. Kourouma knew the process for submitting corrected applications as evidenced by his April 17, 2009 submission of an amended application for MBR authority. It is worth noting that Mr. Kourouma amended his initial application to include more inaccurate and misleading information.⁵² And finally, Mr. Kourouma had an opportunity to correct the application and "identify all owners of Quntum" when OEMR issued a deficiency letter to obtain more information.⁵³ Mr. Kourouma failed to respond, negating his argument that he did not have the opportunity to correct "technical violations" or "an oversight" in his application before a Commission decision on the merits.

Fourth, Mr. Kourouma states repeatedly in his responses to staff's findings that the reason for his submission of inaccurate and misleading information and his omission of material information was not to deceive the Commission or PJM, but only to avoid the enforcement of a non-compete provision of Mr. Kourouma's employment contract with

⁴⁹ In Kourouma's 1b.19 Response, Mr. Kourouma argues that OE's assertion of a violation is discriminatory to the extent that Mr. Kourouma sought to withdraw the application rather than correct it. As the investigation revealed, Mr. Kourouma was given an opportunity to correct his application and refused to do so, apparently because he wanted to continue to hide his involvement in the formation and management of Quntum.

⁵⁰ March 10, 2010 Response at 15.

⁵¹ Kourouma's 1b.19 Response at 14.

⁵² In the Amended Application for MBR, Mr. Kourouma added Deckonti Dennis as the President of Quntum. Staff's investigation determined that Ms. Dennis had no management or ownership role in Quntum.

⁵³ See Deficiency Letter at 1.

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Energy Endeavors. Staff rejects Mr. Kourouma's defense that he only intended to deceive Energy Endeavors, another market participant, when in fact he knowingly submitted inaccurate and misleading information to the Commission and he knowingly omitted his role as sole owner and manager of Quntum. Particularly troubling is Mr. Kourouma's failure to acknowledge that submitting false or misleading information to the Commission is wrong under any circumstance.

On April 2, 2010, Mr. Kourouma submitted a supplemental response to staff's preliminary findings letter. The April 2, 2010 Response did not raise any additional formal defenses, but instead asserted that the PJM documents on which staff relies merely show "that Quntum Energy sought to comply throughout this process with PJM's requirements for new members."⁵⁴ Even if the materials appeared on their face to comply with PJM's membership requirements, the supplemental response states that "Mr. Kourouma's name is not mentioned in the [PJM] subject emails or documents,"⁵⁵ which confirms his communications to PJM were misleading. The use of Deckonti Dennis's name and the material omission of Mr. Kourouma's name so as to keep hidden his involvement as the principal organizer and manager of Quntum was misleading and violates section 35.41(b).

In Kourouma's 1b.19 Response, Mr. Kourouma argues that "[i]ntent is a necessary element of a violation of section 35.41(b) of the Commission's regulations"⁵⁶ and "as applied in the circumstances of this case, the Commission's Market Behavior Rules are unconstitutionally vague."⁵⁷ These defenses are also without merit.

First, section 35.41(b) does not contain a scienter requirement.⁵⁸ Even if it did, the facts of this case clearly establish scienter. On its face, the rule states:

Seller will provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission . . . [or] Commission-approved regional transmission organizations . . . unless seller exercises due diligence to prevent such occurrences.

⁵⁴ See April 2, 2010 Response at 4. See also Kourouma's 1b.19 Response "Quntum's dealings with PJM . . . were conducted in a professional and business-like manner consistent with PJM's requirements."

⁵⁵ See April 2, 2010 Response at 4.

⁵⁶ Kourouma's 1b.19 Response at 10.

⁵⁷ *Id.* at 15.

⁵⁸ See *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216, at P 176 (2010) (Revised Policy Statement on Penalty Guidelines) ("section 35.41(b) does not contain a scienter requirement").

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In both Quntum's initial application and amended application for MBR authority, Mr. Kourouma submitted information that he knew to be inaccurate. Similarly, Mr. Kourouma's omission of material information about his sole ownership of Quntum was not inadvertent. Mr. Kourouma admits his intent was to keep his involvement in Quntum hidden from another market participant so as to avoid a non-compete agreement. Mr. Kourouma's stated intent negates any argument that he exercised due diligence to prevent the submission of this inaccurate information from misleading the Commission or PJM. In addition, Mr. Kourouma knowingly misled PJM by pretending he was "Mr. Deckonti Dennis" when he communicated with PJM. These communications with the Commission and PJM were completely inaccurate and misleading and a clear violation of 35.41(b).

In his 1b.19 Response, Mr. Kourouma also argues that the rules are unconstitutionally vague because it is unclear that Mr. Kourouma might be found in violation of the Market Behavior Rules for failing to identify his involvement in Quntum.⁵⁹ Mr. Kourouma's argument that he "did not have 'fair warning'"⁶⁰ is untenable given the plain, non-technical language of section 35.41(b). Mr. Kourouma is not new to the industry or its regulations and the words employed in section 35.41(b) are clear. There is no uncertainty about the meaning of "accurate" or "misleading."⁶¹ There is also no uncertainty about what qualifies as a communication with the Commission or RTO. Because the words employed in section 35.41 have a well-settled common law meaning such that individuals would not generally disagree about their meaning, Mr. Kourouma had fair warning that his inaccurate submissions and knowing material omissions were misleading and therefore violative of the Commission's Market Behavior Rules.⁶²

⁵⁹ Kourouma's 1b.19 Response at 16.

⁶⁰ *Id.*

⁶¹ The Merriam-Webster Dictionary defines accurate as "free from error especially as the result of care" or "conforming exactly to truth or to a standard." <http://www.merriam-webster.com/dictionary/accurate>. To mislead is defined as "to lead in a wrong direction or into a mistaken action or belief often by deliberate deceit" and "to lead astray: give wrong impression." <http://www.merriam-webster.com/dictionary/misleading>.

⁶² See *U.S. v. Powell*, 423 U.S. 87, 93 (1975) (upholding the challenged language of 18 U.S.C. § 1715 after finding "it intelligibly forbids a definite course of conduct"); *Sproles v. Binford*, 286 U.S. 374, 393 (1932) (finding a statute which provides that certain oversized or heavy loads must be transported by the "shortest practicable route" is not unconstitutionally vague); *Connally v. General Construction Co.*, 269 U.S. 385, 390 (1926) (finding courts should uphold statutes when they employ words or phrases having . . . a well-settled common law meaning).

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IV. SANCTIONS

Staff's investigation revealed that Moussa I. Kourouma was solely responsible for the misleading filings and misrepresentations submitted to the Commission and PJM. In determining the appropriate civil penalty, staff refers to the Commission's Revised Policy Statement on Enforcement issued in 2008.⁶³ As a result of Mr. Kourouma's violation, the Commission may order disgorgement of any profits and civil penalties of up to \$1 million per day per violation.⁶⁴ Staff considered factors such as the seriousness of the violation, the circumstances giving rise to the violation, the effect the violation had on other entities and the market, and Mr. Kourouma's cooperation with staff during the investigation.⁶⁵

Staff concludes that Mr. Kourouma's violation resulted in harm to the integrity of the regulatory process,⁶⁶ which is of importance to the Commission. In its Order adopting 18 C.F.R. § 35.41, the Commission made clear that entities must "act honestly and in good faith when interacting with the Commission or organizations and entities tasked by the Commission with the responsibility of carrying out non-discriminatory transmission access and wholesale electric market administration."⁶⁷ The Commission further stated that "the integrity of the processes established by the Commission for open competitive markets rely on the openness and honesty of market participant communications."⁶⁸ Moussa I. Kourouma was neither open nor honest in his communications to the Commission and PJM.

Mr. Kourouma readily acknowledges the circumstances giving rise to the violation: he wished to "cloak his continued energy trading from his former employer and thus avoid enforcement of a non-compete clause."⁶⁹ While Mr. Kourouma's actions

⁶³ *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156 (2008) (Revised Policy Statement on Enforcement). While the Penalty Guidelines do not apply to natural persons, the Commission will look to these Guidelines for guidance in setting penalties. (See § 1A1.1, *Application Note 1* of the Revised Policy Statement on Penalty Guidelines, *supra* note 58). The Penalty Guidelines also do not apply because staff and Moussa Kourouma had already entered into settlement negotiations before the revised Penalty Guidelines were issued. See *id.* at n.2.

⁶⁴ Revised Policy Statement on Enforcement, *supra* note 63, at P 42-43, 50.

⁶⁵ See *id.* at P 54-56 & 65-68.

⁶⁶ Staff found no substantial harm to third parties. Energy Endeavors understandably contends that it was harmed by Mr. Kourouma's actions. However, Energy Endeavors pursued and received equitable and legal relief through civil litigation.

⁶⁷ Order Amending Market-Based Rate Tariffs and Authorizations, 105 FERC ¶ 61,218, at P 107 (2003).

⁶⁸ *Id.*

⁶⁹ March 10, 2010 Response at 2 and 5.

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are not a repeat offense before the Commission, staff's review of the evidence shows that Mr. Kourouma has submitted false or misleading information to a federal government agency on at least two prior occasions. Specifically, staff reviewed a September 2008 Tax Court Opinion in the matter of *Moussa I. Kourouma v. Commissioner of Internal Revenue*, Docket No. 20515-06S, where the court found that Mr. Kourouma was liable for a section 6662(a) penalty for underpayment of taxes in the years 2003 and 2004. The tax court held that Mr. Kourouma's evidence was not credible and he did not act in good faith when he filed various tax deductions.⁷⁰ Thus, staff concludes that Mr. Kourouma's misleading representations to the federal government are a recurring problem.⁷¹

Staff also considered that Mr. Kourouma did not earn any unjust profits as a result of his misrepresentations to the Commission and PJM and that he has taken steps to shut Quntum down.⁷² While Mr. Kourouma did earn approximately \$12,000 for virtual transactions Quntum made during the April 2009 time period, he had to pay \$3,750 for nine months of a membership fee to PJM and other transaction costs for trading with PJM, such that the benefit of starting Quntum was of little financial gain to Mr. Kourouma. Quntum's assets were limited to the \$95,000 in financial collateral that Mr. Kourouma posted in Quntum's Credit Application for Membership to PJM. Although Quntum received approximately \$94,300 back from PJM in August 2009, Mr. Kourouma has stated that any remaining Quntum funds were used to take care of his related civil litigation expenses and family living expenses while he remained unemployed in 2009.⁷³ A review of Mr. Kourouma's financial disclosures reveals that Mr. Kourouma has limited assets.

Staff notes that Mr. Kourouma has been cooperative with staff throughout the 1b investigation. Based on the totality of facts, staff concludes that a civil monetary penalty is necessary to address the knowing misrepresentations made to the Commission and PJM.

⁷⁰ See *Kourouma v. Comm'r*, 2008 T.C. 120 (2008).

⁷¹ In Kourouma's 1b.19 Response, Mr. Kourouma asserts that remedial action is not necessary to advance the Commission's policy objectives because the unique circumstances of this case are unlikely to recur. Staff disagrees because Mr. Kourouma refuses to acknowledge that misleading another market participant, an RTO, or the Commission is wrong under any circumstance.

⁷² See March 10, 2010 e-mail response to staff's data request where Mr. Kourouma confirmed that Quntum energy "no longer conducts any business" and April 28, 2010 response to staff's data request enclosing Quntum's Certificate of Cancellation submitted to the Delaware Secretary of State.

⁷³ See March 10, 2010 e-mail response to staff's data request.

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V. RECOMMENDED ACTION

Based on the above conclusions of law and fact, Enforcement recommends the Commission issue Mr. Kourouma an Order to Show Cause why he did not violate 18 C.F.R. § 35.41(b) (2010) in connection with his deliberate submission of misleading information and knowing omission of material facts regarding the true owner of Quntum in communications to the Commission and PJM, and why the Commission should not require Mr. Kourouma to pay a civil penalty of \$50,000.⁷⁴

Staff recommends the Commission make Enforcement Staff's Report and Recommendation, unredacted and unedited, public pursuant to 18 C.F.R. § 1b.20, thereby affording Mr. Kourouma the opportunity to respond to staff's findings of fact and conclusions of law.

In accordance with 18 C.F.R. § 385.213 (2010), staff recommends the Commission direct:

- (a) Mr. Kourouma, within 30 days of the date of an Order to Show Cause, be required to file an answer showing why he should not be found to have violated 18 C.F.R. § 35.41(b) with respect to Quntum's application for market based rate authority in Docket No. ER09-805 and Quntum's communications with PJM.
- (b) Mr. Kourouma to show cause, no later than 30 days from the date of an Order to Show Cause, why the Commission should not issue a notice of proposed penalty pursuant to the Commission's authority under Section 316A of the Federal Power Act (16 U.S.C. 825o-1) in the amount of \$50,000.

⁷⁴ As noted earlier, the Penalty Guidelines do not apply. *See supra* note 63.

Document Content(s)

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