140 FERC ¶ 61,178
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Deutsche Bank Energy Trading, LLC — Docket No. IN12-4-000

ORDER TO SHOW CAUSE AND NOTICE OF PROPOSED PENALTY

(Issued September 5, 2012)

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 Deutsche Bank Energy Trading, LLC (Deutsche Bank or Respondent) to show cause: (i) why it should not be found to have violated the Anti-Manipulation Rule, section 1c.2 of the Commission's regulations and section 222 of the Federal Power Act[4] and the parallel provision in the CAISO Tariff, section 37.7; (ii) why it should not be found to have violated the accuracy requirements of the Commission's regulations, section 35.41(b)[5] and the parallel provision in the CAISO Tariff, section 37.5, in connection with its physical energy trades and financial positions in the CAISO markets. Deutsche Bank is alleged to have engaged in manipulation and submitted false information in connection with its trading related to the 17 MW Silver Peak intertie in CAISO during the period from January 29, 2010 through March 24, 2010. The Commission further directs Respondent to show cause why it should not be assessed a civil penalty in the amount of $1,500,000 or a modification of that amount consistent with section 31(d)(4) of the Federal Power Act, and disgorge $123,198 of unjust profits plus interest as a result of its energy and Congestion Revenue Rights (CRR) transactions

[1] 18 C.F.R. § 385.209(a)(2) (2012).

[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. § 1c.2 (2012); 16 U.S.C. §824v(a) (2006).

[5] 18 C.F.R. § 35.41(b).

at Silver Peak.[6] Pursuant to Rule 213(a) of the Commission's Rules of Practice and Procedure,[7] the Commission directs Respondent to file an answer with the Commission within 30 days of the date of this order. Office of Enforcement staff may reply to Respondent's answer within 30 days of the filing of the answer.

2. In this case, Enforcement staff alleges violations of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2012), and the Commission's market behavior rule on accurate and factual communications, 18 C.F.R. § 35.41(b), as well as parallel provisions of the CAISO Tariff, sections 35.7 and 35.5. These allegations arose out of an investigation conducted by Enforcement staff and are described in the Enforcement Staff Report and Recommendation submitted to the Commission (Enforcement Staff Report).[8] In the report, Enforcement staff alleges that employees of Deutsche Bank, including senior level employees, conceived and executed a fraudulent scheme of scheduling physical transactions to benefit Deutsche Bank's financial CRR position. Specifically, Enforcement staff alleges that Deutsche Bank scheduled exports from CAISO at Silver Peak with the intent to eliminate import congestion and, thereby, benefit its CRR position at Silver Peak. Enforcement staff also alleges that Deutsche Bank falsely designated certain imports and exports as Wheeling-Through transactions, even though Deutsche Bank was not wheeling power and those schedules did not meet the tariff requirements for Wheeling-Through Transactions.

3. Based on the allegations contained in the Enforcement Staff Report, the Commission orders Respondent to respond to this order as set forth above.[9] This order also is the notice of proposed penalty required pursuant to section 31 of the Federal

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[6] We note that under section 31(d)(4) of the Federal Power Act, 16 U.S.C. 823b(d)(4), the Commission may "compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed . . . at any time prior to a final decision by the court of appeals . . . or by the district court."

[7] 18 C.F.R. § 385.213(a).

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

[9] Under 18 C.F.R. § 385.213(c) (2012), Respondent must file an answer that provides a clear and concise statement regarding any disputed factual issues and any law upon which it relies. Respondent must also, to the extent practicable, admit or deny, specifically and in detail, each material allegation contained in the Staff Report and set forth every defense relied upon. Failure to answer an order to show cause will be treated as a general denial, 18 C.F.R. § 385.213(e)(2), and may be a basis for summary disposition under Rule 217, 18 C.F.R. § 385.217.

Power Act.[10] In the answer to this order, Respondent may opt for 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 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 may review the matter *de novo*.[11]

4. The Commission authorizes Enforcement staff to disclose information obtained during the course of the investigation as necessary to advance this matter.

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, showing cause why it should not be found to have violated 18 C.F.R. § 1c.2, 18 C.F.R. § 35.41(b), 16 U.S.C. § 824v(a), and sections 37.7 and 37.5 of the CAISO Tariff with respect to Deutsche Bank's transactions at Silver Peak for the period January 29, 2010, through March 24, 2010.

(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, showing cause why its alleged violations should not warrant the assessment of civil penalties in the amount of $1,500,000 or a modification of that amount consistent with section 31(d)(4) of the Federal Power Act, and require it to disgorge $123,198 of unjust profits received as a result of its energy and Congestion Revenue Rights transactions at the Silver Peak intertie, plus interest.

(C) 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*.

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[10] 16 U.S.C. § 823b(d) (2006).

[11] Federal Power Act Section 31(d)(3)(B), 16 U.S.C. § 823b(d)(3)(B)(2006). *See also Process for Assessing Civil Penalties*, *supra* note 3.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX A

FEDERAL ENERGY REGULATORY COMMISSION

Deutsche Bank Energy Trading, LLC
Docket No. IN12-4-000

Enforcement Staff Report and Recommendation

Office of Enforcement
Division of Investigations

September 5, 2012

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I. EXECUTIVE SUMMARY

The Office of Enforcement (Enforcement or staff) reports to the Federal Energy Regulatory Commission (Commission) its findings of fact and conclusions of law regarding Deutsche Bank Energy Trading, LLC (Deutsche Bank).[1] In sum, staff concludes that for a two-month period Deutsche Bank violated the Federal Power Act and Commission regulations by falsely scheduling unprofitable physical exports (purchases) at the Silver Peak intertie with the intent to benefit its financial positions in the California Independent System Operator (CAISO) system.

Enforcement recommends that the Commission issue an Order to Show Cause and Notice of Proposed Penalty to Deutsche Bank requiring it to show cause: (i) why it did not violate the Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2012), section 222 of the Federal Power Act,[2] and the parallel provision in the CAISO Tariff section 37.7; (ii) why it did not violate the accuracy requirements of the Commission's regulations, 18 C.F.R. § 35.41(b), and the parallel provision in the CAISO Tariff, section 37.5, in connection with its physical energy trades and financial positions in the CAISO markets for the period January 29, 2010, through March 24, 2010; (iii) why it should not pay a civil penalty in the amount of $1,500,000; and (iv) why it should not disgorge $123,198 plus interest in unjust profits.

A. Deutsche Bank's CRR Business and Positions in 2010

In January 2009, a few months before the start of CAISO's Congestion Revenue Rights (CRR) market,[3] Deutsche Bank hired Federico Corteggiano to run its CAISO CRR business. Corteggiano was uniquely qualified for the job. Indeed, he had worked on creating the software the CAISO would use to optimize the CRR market and the allocation of CRR bids.

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[1] Deutsche Bank Energy Trading LLC is an indirect, wholly-owned subsidiary of Deutsche Bank AG.

[2] 18 C.F.R. § 1c.2 (2012); 16 U.S.C. §824v(a) (2006).

[3] CAISO's CRR market became active on April 1, 2009 and Deutsche Bank participated in the market since its inception. Like financial swaps, CRRs expose the holder to the difference between pricing two points and can be used either as a hedge against transmission costs or as a speculative investment. CAISO administers annual auctions for quarterly and monthly CRR positions as well as monthly auctions to adjust those positions. CRRs in CAISO are synonymous with Financial Transmission Rights (FTRs) in other organized markets.

Once at Deutsche Bank, Corteggiano focused exclusively on trading CRRs and FTRs. Huber Salas, an analyst, assisted Corteggiano (together, the CRR traders). The CRR traders did not trade physical power. Their trading of CRRs in CAISO yielded Deutsche Bank almost $5 million in profits for the nine months in 2009 that the new CRR market was active.

As part of their CRR positions for 2010, Corteggiano and Salas determined that Silver Peak had been historically congested in the export direction and then obtained and built up a CRR position that would benefit Deutsche Bank if export congestion occurred at Silver Peak. This CRR position put Deutsche Bank at risk if import congestion occurred at Silver Peak.

For most of January 2010, no import congestion occurred at Silver Peak and Deutsche Bank's CRR position there was profitable.

B. A Derate Decreased the Value of Deutsche Bank's CRR Position

Beginning on January 19, 2010, an unexpected event occurred that conflicted with Corteggiano's and Salas's initial expectations: CAISO derated the Silver Peak intertie and limited net scheduled flows. The derate caused import congestion at Silver Peak. Deutsche Bank's CRR position immediately (i.e., that very day) lost value. Corteggiano emailed the CAISO questioning the CAISO's process for accepting bids at Silver Peak. A CAISO customer service representative wrote in response that "the results are correct" and explained the process that set prices at Silver Peak. Corteggiano and Salas disagreed, arguing that CAISO should not have continued accepting bids at Silver Peak given the derate.

C. To Restore the Value of Their CRR Position, the Traders Conceived the Export Strategy

Unable to convince CAISO to change its process, and unwilling to accept the consequences of a position that did not go their way, Corteggiano and Salas resorted to self-help: they conceived and executed a scheme, which they called the "Export Strategy," to restore the value of their CRR position at Silver Peak. The Export Strategy entailed scheduling exports at Silver Peak to eliminate the import congestion at Silver Peak. The Export Strategy paired the export (purchase) at Silver Peak with an import (sale) at Summit of the same quantity.

Initially, some import and export pairs were scheduled independently; beginning on February 18, 2010, Deutsche Bank scheduled all imports and exports as Wheeling-Through transactions, which linked the imports and exports.

With a Wheeling-Through transaction, a Scheduling Coordinator tells the CAISO that it is wheeling power through California from the linked import point (Summit) to the linked export point (Silver Peak). But Deutsche Bank falsely submitted the Wheeling-Through transactions. In fact, Deutsche Bank was not wheeling power and its transactions did not have a resource or a Load outside the CAISO, as required by the Tariff. Instead, outside the CAISO on the Sierra Pacific Power (SPPC) system, Corteggiano and Salas scheduled power from Silver Peak to Summit, thus creating a circular schedule in which no power flowed to or from California.

D. The Traders Succeeded in Altering the Value of Their CRR Position

The Export Strategy worked for Deutsche Bank: it increased the value of its CRR position. By exporting physical power at Silver Peak, Corteggiano and Salas eliminated the import congestion that had decreased the value of their CRR position. Having figured out how to avoid the consequences of their losing CRR position through false Wheeling-Through transactions, Corteggiano and Salas then sought to capitalize on this strategy beyond avoiding losses on previously-purchased CRR positions. They *increased* their CRR position for Silver Peak during the auction for March CRRs. The physical transactions at Silver Peak and Summit lost money each day, but the benefit to their CRR position outweighed this loss.

E. After CAISO's Inquiries, Deutsche Bank Ended the Export Strategy

Corteggiano and Salas continued the Export Strategy until a CAISO customer service representative called on March 18, 2010 to ask about Deutsche Bank's scheduling at Silver Peak. In response, on March 20, 2010, the CRR traders reduced exports at Silver Peak to 3 MW. When the CAISO Department of Market Monitoring (DMM) followed up with a phone call on March 23, 2010, Deutsche Bank ended the Export Strategy altogether, stopping the scheduling of exports at Silver Peak.

F. Violations

Following its investigation, staff determined that Deutsche Bank violated the Anti-Manipulation Rule, 18 C.F.R. § 1c.2, and the parallel section 37.7 of the CAISO Tariff, because it traded in one product (exports at Silver Peak) with the intent to benefit a second product (its CAISO CRR position at Silver Peak). The scheme was fraudulent because Deutsche Bank's exports (purchases) at Silver Peak were entered into without regard to their economics or supply and demand fundamentals. Rather, Deutsche Bank entered into the exports solely to increase the value of Silver Peak CRRs by altering congestion at Silver Peak.

The scheme was also fraudulent because Deutsche Bank falsely submitted import-export transactions to the CAISO as Wheeling-Through transactions even though

Deutsche Bank was not wheeling power through the CAISO and its transactions failed to meet the tariff requirements for a Wheeling-Through transaction.

Staff also concluded that the Export Strategy violated the accuracy requirements of the Commission's regulations, 18 C.F.R. § 35.41(b) and the parallel section 37.5 of the CAISO Tariff because Deutsche Bank's Wheeling Through transactions failed to meet the tariff requirement that the transaction have a resource and a Load outside the CAISO.

II. BACKGROUND

Staff began its investigation of Deutsche Bank after CAISO's DMM referred the matter. Staff conducted depositions and issued data requests. Staff informed Deutsche Bank of its preliminary findings, and invited Deutsche Bank to inform staff of any errors, any alternate views, or defenses. Staff fully considered the arguments and defenses Deutsche Bank made in response.

Staff has engaged Deutsche Bank in settlement negotiations, but has been unable to reach an agreement. On February 9, 2012, staff provided Deutsche Bank written notice, pursuant to 18 C.F.R. § 1b.19, of staff's intent to recommend that the Commission issue an Order to Show Cause. Deutsche Bank responded on March 19, 2012; that response is being provided to the Commission with this Report.

Staff sets forth in further detail its factual findings regarding Deutsche Bank's conduct in Section III. Based on those findings, staff explains in Section IV how Deutsche Bank's conduct violated the Anti-Manipulation Rule and the accuracy requirements of the Commission's regulations. In section V, staff recommends sanctions, including a civil penalty of $1,500,000 and a disgorgement amount of $123,198 plus interest.

III. FACTUAL FINDINGS[4]

A. Deutsche Bank

Deutsche Bank purchases and sells energy as well as CRRs and other financial transmission rights in the organized markets including the CAISO markets.[5] Deutsche

[4] Citations in this Report are to documents, sworn data responses, and sworn testimony in Enforcement's nonpublic investigation. Citations to most documents supplied by Deutsche Bank refer to the electronic bates stamp (e.g., Bates # 004392) and deposition transcript references refer to the last name of the deponent, page, and line of the relevant deposition transcript (e.g., Salas Dep. 23:20-24:14). All cited documents and transcripts are available for Commission review.

[5] Salas Dep. 23:20-24:14, November 17, 2010.

Bank has market-based rate authority.[6] In 2009 and 2010, Deutsche Bank was one of the largest participants in the CAISO CRR auction markets.[7] In 2009, Deutsche Bank made profits of $4,843,635 on its CRR holdings; in 2010, it had losses of $743,847.

As relevant here, Deutsche Bank grouped its Houston-based power trading personnel into two desks: an FTR desk whose personnel exclusively traded financial transmission positions including CRRs in CAISO[8] and a Power Scheduling desk whose personnel engaged in scheduling Day-Ahead and Hour-Ahead physical energy trades.[9] On the FTR desk, Federico Corteggiano, a director in charge of FTR and CRR trading, was solely responsible for establishing Deutsche Bank's CRR positions at Silver Peak.[10] Prior to working for Deutsche Bank, Corteggiano had worked at Nexant, Inc., to create the software that CAISO would use to optimize the CRR market and the allocation of CRR bids.[11] At Deutsche Bank, Corteggiano used the same CRR software that he had created at Nexant.[12] Huber Salas, an analyst, assisted Mr. Corteggiano in developing Deutsche Bank's scheduling practices related to its CRR positions at Silver Peak.

B. Deutsche Bank's CRR Position at Silver Peak

Deutsche Bank established its CRR positions through an annual auction, which it could adjust monthly. For the first quarter of 2010, Deutsche Bank had a long CRR position (i.e., positions that sink at Silver Peak) of 40.6 MW during on-peak hours and 48.5 MW during off-peak hours in the export direction at Silver Peak.[13] This long position benefitted Deutsche Bank when export congestion occurred at Silver Peak and harmed Deutsche Bank when import congestion occurred.[14] Deutsche Bank took a long position at Silver Peak because it determined that Silver Peak historically had been congested in the export direction.[15]

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[6] *DB Energy Trading, LLC*, 109 FERC ¶ 61,125 (2004).

[7] *See, e.g.*, Data Response No. 1-26, Bates # 004392 (largest market participant in CAISO for month of August 2010).

[8] Data Response No. 1-3; Salas Dep. 25:6-25.

[9] Data Response No. 1-3.

[10] Corteggiano Dep. 72:12-24, November 16, 2010.

[11] *Id.* at 21: 12-15.

[12] *Id.* at 22:16-18.

[13] Data Response No. 1-4.

[14] Corteggiano Dep. 41:9-18.

[15] Data Response No. 1-13. *See also* Corteggiano Dep. 76:9-77:6.

In the monthly auction for January 2010, Deutsche Bank increased its long position at Silver Peak. As a result of the auction, Deutsche Bank held a long CRR position of 49.8 MW On-Peak and 51.0 MW Off-Peak for January 2010.

On January 15, 2010, the CAISO announced a derate, effective January 19, 2010, of the Silver Peak intertie for maintenance on a substation. The derate limited net scheduled flows to 0 MW in the import direction and 13 MW in the export direction.[16] Nonetheless, the CAISO permitted scheduling in both directions.[17] For the January 19 transaction date, congestion in the import direction occurred. This import congestion caused Deutsche Bank's Silver Peak CRRs to lose value.[18]

C. Import Congestion at Silver Peak

Deutsche Bank's FTR traders observed the import congestion at Silver Peak when the Day-Ahead Market results were published on January 18, and recognized that the import congestion decreased the value of Deutsche Bank's Silver Peak CRRs.[19] Unsure of why the import congestion occurred, Mr. Corteggiano sent an email to a CAISO customer service representative, observing that there was "some congestion in [Silver Peak] when the import limit of the interface was set to zero" and asking, "Is this OK given that there is no way to schedule power on an interface when its limit is zero[?]"[20] The CAISO customer service representative responded that "the results are correct" and explained the process that set prices at Silver Peak.[21]

Corteggiano and Salas disagreed with the CAISO process. On January 25, Salas argued in an email to CAISO that "the results are not correct" and discussed the process that set prices at Silver Peak, citing to section 30.8 of the CAISO Tariff.[22] In another

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[16] *Id.* at 80:14-84:20.

[17] *See* Data Response No. 1-11, Bates #002181.

[18] Corteggiano Dep. 85:8-14.

[19] *Id.* at 85:25-86:3.

[20] Data Response No. 1-11, Bates #002175 (January 19, 2010).

[21] Data Response No. 1-11, Bates #002174 (January 25, 2010).

[22] Data Response No. 1-11, Bates #002187 (January 25, 2010). Section 30.8 states: "Scheduling Coordinators shall not submit any Bids or ETC Self-Schedules at Scheduling Points using a transmission path for any Settlement Period for which the Operating Transfer Capability for that path is zero (0) MW." CAISO Fourth Replacement Tariff (Tariff), § 30.8, Bids on Out-Of-Service Paths at Scheduling Points Prohibited. The CAISO applies this section when the Operating Transfer Capability of a point is zero (0) MW in both directions. Therefore, CAISO continued to accept bids at Silver Peak.

email to CAISO on the same day, Corteggiano contended that the CAISO Tariff prohibited the submission of the import bids that caused the import congestion at Silver Peak.[23] Corteggiano testified that he interpreted section 30.8 of the CAISO Tariff as prohibiting CAISO from accepting any import bids at Silver Peak.[24] If CAISO had not accepted import bids at Silver Peak, no import congestion would have resulted and the value of Deutsche Bank's Silver Peak CRRs would not have declined.

In response to the traders, the CAISO customer service representative stated again that section 30.8 only applied "when both sides are zero. In this case of Silverpeak only the import direction is zero." Salas acknowledged that "This clarif[ies] it."[25]

D. Deutsche Bank Devised a Scheme to Eliminate CRR Losses

Unable to convince CAISO to change its process, Corteggiano and Salas conceived and executed a scheme, the Export Strategy, to restore the value of their CRR position at Silver Peak. They concluded that the CAISO's process – which allowed import bids at Silver Peak and the resulting import congestion – was "unfair" because, in their view, it incorrectly interpreted section 30.8 of the CAISO Tariff.[26] Instead of seeking to address its grievance through means provided in the CAISO tariff, Commission regulations or the Federal Power Act,[27] Corteggiano and Salas resorted to

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[23] Data Response No. 1-11, Bates #002174.

[24] Corteggiano Dep. 88:20-90:24. *See* CAISO Fourth Replacement Tariff (Tariff), § 30.8, Bids on Out-Of-Service Paths at Scheduling Points Prohibited.

[25] Data Response No. 1-11, Bates #002195 (January 27, 2010).

[26] Corteggiano Dep. 91:12-92:13; Salas Dep. 76:17-77:4. Salas sent an email to the CAISO customer service representative stating that the "the CAISO should clarify the tariff to say that the OTC has to be zero in both directions…." Data Response No. 1-11, Bates #002195 (January 27, 2010).

[27] Deutsche Bank had several ways to raise any concerns about the CAISO's application of the Tariff and to obtain guidance on compliance with the Tariff including contacting the CAISO Legal Department; contacting Office of Enforcement staff, including through the Commission's Enforcement Hotline, 18 C.F.R. § 1b.21; contacting the Commission's compliance help desk, *Obtaining Guidance on Regulatory Requirements,* 123 FERC ¶ 61,157 (2008); requesting a No-Action Letter, *Interpretive Order Modifying No-Action Letter Process,* 117 FERC ¶ 61,069 (2006); requesting a Declaratory Order, 18 C.F.R. § 385.207(a)(2); or filing a complaint under section 206 of the Federal Power Act, *see* 18 C.F.R. § 385.206.

self-help by deciding to "mitigate" the import congestion on their own.[28] Corteggiano explained that they engaged in the Export Strategy at Silver Peak because CAISO's "behavior was inexplicable for us, and the explanation CAISO gave us was not enough…."[29] Salas described the situation similarly: "We thought they're not going to change the way they interpret the tariff so we had to mitigate the congestion in order for us to deal with the phantom congestion [i.e., import congestion]."[30]

Initially, the CRR traders reduced Deutsche Bank's exposure to the import congestion through an avenue provided for in the Tariff, the monthly CRR auction.[31] As a result of the auction, Deutsche Bank reduced its CRR position at Silver Peak for the month of February from 40.6 MW on-peak to 31.4 MW on-peak and from 48.5 MW off-peak to 39.1 MW off-peak.[32] Deutsche Bank noted on an internal spreadsheet that it obtained these February CRRs in order to "offset unexpected import congestion on SILVERPK_BG."[33]

This offset still left Deutsche Bank exposed to import congestion at Silver Peak. Deutsche Bank determined it could offset this remaining exposure by exporting (purchasing) power at Silver Peak which would reduce the import congestion. Deutsche Bank explained: "[t]he most economic manner in which to conduct this export was to: export at Silver Peak; obtain transmission from Sierra Pacific Power (SPPC); transport the power on the SPPC system to Summit; and sell the power at a point in the CAISO market (Export Strategy)."[34] This scheduling, which Deutsche Bank called its Export Strategy, was designed to eliminate the import congestion at Silver Peak.[35] Prior to the derate, Deutsche Bank had not scheduled power at Silver Peak.

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[28] Salas Dep. 134:25-135:5; Corteggiano Dep. 88:12-19. In energy markets, congestion may signal a need for transmission or generation. *See Promoting a Competitive Market for Capacity Reassignments*, 131 FERC ¶ 61,081 at P 26 (2010) (noting that "areas with congestion tend to have higher prices and thus signal the need for investment").

[29] Corteggiano Dep. 95:9-19.

[30] Salas Dep. 135:2-5.

[31] Data Response No. 1-4. *See also* Corteggiano Dep. 102:7-22.

[32] Data Response No. 1-4.

[33] Data Response No. 1-12.

[34] Data Response No. 1-4.

[35] Data Response No. 1-4; Corteggiano Dep. 94:19-23.

In testimony, both of Deutsche Bank's CRR traders confirmed that they decided to schedule exports at Silver Peak for the purpose of eliminating import congestion there to benefit Deutsche Bank's CRR position. As Corteggiano explained: "We discussed a way to try to mitigate this phantom congestion, and I think the way to do that was to add some export flow into the intertie to avoid [this] phantom behavior [i.e., import congestion on Silver Peak]."[36] Salas also confirmed that scheduling at Silver Peak "was designed to mitigate the import congestion" at Silver Peak and was successful in doing so.[37] Further, a spreadsheet produced by Deutsche Bank listing each of its physical power flows from Silver Peak to Summit states that the intent of each transaction was to "[m]itigate Congestion at Silver Peak."[38]

From January 29, 2010 through March 24, 2010, Deutsche Bank's Export Strategy relied on transmission outside the CAISO to link its exports and its imports. Deutsche Bank "obtain[ed] transmission from Sierra Pacific Power (SPPC); [and] transport[ed] the power on the SPPC system to Summit."[39] Deutsche Bank did not use a resource outside the CAISO to supply its imports nor did it have Load outside the CAISO as a destination for its exports. Thus, inside the CAISO, Deutsche Bank scheduled energy from Summit to Silver Peak as Wheeling-Through transactions and, outside the CAISO, Deutsche Bank scheduled energy from Silver Peak to Summit. These schedules created a circular schedule and resulted in no net power flow to or from the CAISO.

Corteggiano and Salas discussed the Export Strategy with their supervisors in upper management, Tom May and Lloyd Will.[40] The Deutsche Bank Compliance Handbook section on "Market Manipulation" stated that employees should "take particular care and seek heightened review by a compliance officer or legal counsel in advance of… engaging in physical trading designed to benefit financial transactions."[41] Although the Export Strategy involved engaging in a physical transaction to benefit a financial position, neither Corteggiano and Salas nor their supervisors May and Will

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[36] *Id.* at 93:6-9.

[37] Salas Dep. 81:14-82:2.

[38] Excerpt from "DBET Data Request 1-24 ALL NERC TAGS.xls," produced in response to Data Request No. 1-24.

[39] Data Response No. 1-4.

[40] *Id.* Tom May was the Director of Power Trading; Lloyd Will was the Director of Power Analytics and FTR Trading.

[41] Data Response No. 1-28, U.S. Electric Power and Natural Gas Compliance Handbook at Bates No. 00892-93; Corteggiano Dep. 164:5-9.

discussed the Export Strategy with legal counsel or a compliance officer. At the time, Deutsche Bank did not even have a compliance officer at its Houston office.[42]

E. Deutsche Bank Implemented its Scheme to Mitigate CRR Losses

Salas directed Deutsche Bank's scheduler, Joe Chou, to schedule the exports at Silver Peak as self-schedules, so that they would be awarded regardless of price. He initiated the Export Strategy on January 28 for the trade date January 29, 2010. Not until the next day did Salas inquire as to the costs of the transactions. On January 29, 2010, Salas sent an IM to a member of Deutsche Bank's invoice settlement staff, Regina Dungy, to ask about the charges applicable to the transactions: "Regina, I have asked [J]oe to schedule 5 MW from Summit to Silverpeak on DA and I want to know what are the charges and credits [that] we will have."[43] When Dungy responded that she could not get the cost information until the next week, Salas responded: "no rush, I kinda guessed it will take some time to figure out…."[44]

Deutsche Bank initiated the Export Strategy on January 29, 2010, by scheduling 5 MW of exports (purchases) at Silver Peak for several on-peak hours.[45] Its scheduling eliminated the import congestion for those hours.[46]

Deutsche Bank used its Export Strategy at the Silver Peak point as a means to benefit its CRR position. Whether the Export Strategy physical transactions were profitable in their own right was irrelevant to Deutsche Bank, which submitted them as price-taking, self-scheduled transactions. Thus, Deutsche Bank's exports (purchases) at Silver Peak were not undertaken as a result of supply and demand fundamentals and they were not undertaken to make a profit. Rather, they were undertaken solely to affect the value of the Silver Peak CRRs by affecting congestion at Silver Peak.[47] From Corteggiano's perspective, the Export Strategy "avoided… artificial congestion and avoided an unfair loss on the CRR."[48]

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[42] Data Response No. 2-3.

[43] Data Response 1-26, Bates No. 002205 (Jan. 29, 2010).

[44] *Id.*

[45] *Id.*

[46] Corteggiano Dep. 111:3-8.

[47] *See, e.g.,* Data Response No. 1-4.

[48] Corteggiano Dep. 172:7-8.

Deutsche Bank's physical trading at Silver Peak and Summit altered the results of the CRR market,[49] as acknowledged by Salas at deposition:

> "Q: [Y]our scheduling at Silver Peak was designed to address congestion at Silver Peak: correct?
>
> Salas: Was designed to mitigate the import congestion.
>
> Q: Did it do so?
>
> Salas: Yes. The hours when we were scheduling, it seemed that the import congestion disappeared completely every hour. Regardless of the amount of megawatts, it would just disappear.
>
> Q: So it worked.
>
> Salas: It worked, yes.[50]

In February 2010, Deutsche Bank continued scheduling imports and exports. The scheduling continued to eliminate the import congestion and continued to benefit Deutsche Bank's CRR position. As February progressed, Deutsche Bank increased the number of hours and megawatts it scheduled to export (purchase) at the Silver Peak intertie.[51] For two hours on February 22, Deutsche Bank scheduled 13 MW as an export, the limit of the intertie. Scheduling exports at Silver Peak reduced the import congestion and benefitted Deutsche Bank's CRR position. At that time, Deutsche Bank decided to implement the Export Strategy "around-the-clock."[52] Deutsche Bank subsequently realized that it could eliminate the import congestion at Silver Peak by scheduling an export at Silver Peak in any amount.[53]

In light of the success it had achieved through its Export Strategy, Deutsche Bank switched its CRR position for the March auction. Rather than reducing its CRR exposure, Deutsche Bank increased its CRR exposure at Silver Peak for the month of March from 40.6 MW on-peak to 45.3 MW on-peak and from 48.5 MW off-peak to 50.2 MW off-peak. The Export Strategy continued to eliminate import congestion at Silver Peak and Deutsche Bank's now larger CRR position continued to increase in value.

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[49] Referral at 13-15; Supplemental Referral at 6-7.

[50] Salas Dep. 81:14-82:2.

[51] Data Response No. 1-4.

[52] *Id.*

[53] Data Response No. 1-4; Corteggiano Dep. 114:22-115:6.

Deutsche Bank started scheduling exports at the 10 MW level and then at the 13 MW limit in an attempt to cover the costs of SPPC transmission.[54]

Nonetheless, the physical transactions that Deutsche Bank used to eliminate import congestion continued to be unprofitable. In fact, Deutsche Bank lost money on the paired exports (purchase) and imports (sales) for every one of the forty-four days in which it scheduled them. The transmission charges alone outside the CAISO exceeded Deutsche Bank's revenue from the physical transactions on each of these days. Adding in the CAISO's export charges made Deutsche Bank's transactions even more unprofitable.

Deutsche Bank lost money on each day it engaged in the export strategy. Staff finds that Deutsche Bank lost between $11.75 per day and $8,716 per day, for a total loss of approximately $67,000.[55] Because the Export Strategy changed the price at Silver Peak, it contracted any spread between Silver Peak and Summit. In February and March, as Salas acknowledged, the Export Strategy contracted the spread between Silver Peak and Summit, contributing to the loss on the transactions, particularly because Deutsche Bank was submitting the bids as price-taking bids.[56]

On March 18, 2010, a CAISO customer service representative asked Deutsche Bank to provide more information on its bids at Silver Peak and their relation to its CRR holdings. After this request, Deutsche Bank decreased the quantity of exports scheduled at Silver Peak on March 20, 2010 from approximately 13 MW to 3 MW. On March 23, 2010, the CAISO's DMM held a call with Deutsche Bank to discuss bidding at Silver Peak. After that call, Deutsche Bank stopped scheduling exports at Silver Peak effective the trading date of March 25, 2010, and ended the Export Strategy.[57]

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[54] Data Response No. 1-4.

[55] Deutsche Bank paid $61,003.96 for transmission in SPPC, Data Response No. 2-1, and paid $49,322 to CAISO in export charges, Supplemental Referral at 14, for total costs of approximately $110,326. Deutsche Bank received approximately $42,000 from CAISO for its schedules.

[56] Salas Dep. 85:8-15.

[57] Supplemental Referral at 19.

F. Deutsche Bank Unjustly Profited from its Scheme and Impacted Other Market Participants

CAISO's DMM estimated, and staff confirmed, that Deutsche Bank had unjust profits of $123,198 as a result of its Export Strategy.[58] CAISO's DMM estimated, and staff confirmed, that Deutsche Bank caused $186,790 in harm to other market participants who held CRRs at Silver Peak that lost value because Deutsche Bank's export schedules changed energy prices at Silver Peak.[59] Deutsche Bank's violations occurred from January 29, 2010 through March 25, 2010.[60]

IV. STAFF'S CONCLUSIONS OF LAW

Staff concludes that Deutsche Bank's conduct at Silver Peak: (A) violated the Anti-Manipulation Rule, 18 C.F.R. § 1c.2, section 222 of the Federal Power Act,[61] and the parallel provision in the CAISO Tariff, section 37.7; and, (ii) violated the accuracy requirements of the Commission's regulations, 18 C.F.R. § 35.41(b), and the parallel provision in the CAISO Tariff, section 37.5.

A. Deutsche Bank Violated the Anti-Manipulation Rule

Deutsche Bank violated the Anti-Manipulation Rule, section 222 of the Federal Power Act,[62] and the CAISO Tariff by trading in one product (exports at Silver Peak) in order to benefit a second product (its CAISO CRR position at Silver Peak). As stated by the Commission, "intentional manipulation of market prices for the purpose of benefitting other instruments in the actor's portfolio is actionable."[63]

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[58] Supplemental Referral at 15. For purposes of the Penalty Guidelines, a pecuniary gain "can result from either additional revenue or cost savings." *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216, at FERC Penalty Guidelines § 1A1.1, Application Note 3(g) (2010).

[59] Supplemental Referral at 16.

[60] Supplemental Referral at 17-19.

[61] 16 U.S.C. §824v(a) (2006).

[62] 18 C.F.R. § 1c.2 (2012); 16 U.S.C. §824v(a) (2006).

[63] *Amaranth Advisors L.L.C.*, 124 FERC ¶ 61,050, at P 65 (2008) (citing *Markowski v. SEC*, 274 F.3d 525, 527-28 (D.C. Cir. 2001)); *see also Brian Hunter*, 135 FERC ¶ 61,054 at P 53 (2011), *reh'g denied*, 137 FERC ¶ 61,146 (2011) (finding manipulation where "[t]he success of the manipulative scheme [] depended upon the interplay of trading activities in two separate markets.")

Section 222 of the Federal Power Act prohibits the use of deceptive or manipulative devices in connection with the purchase or sale of electric energy or the transmission of electric energy subject to the Commission's jurisdiction.[64] Order No. 670 implemented this prohibition, adopting the Anti-Manipulation Rule, 18 C.F.R. § 1c.2, which prohibits an entity from: (1) using a fraudulent device, scheme or artifice, or making a material misrepresentation or a material omission as to which there is a duty to speak under a Commission-filed tariff, Commission order, rule or regulation, or engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity; (2) with the requisite scienter; (3) in connection with a transaction subject to the jurisdiction of the Commission.[65]

B. Deutsche Bank's Fraud and Deceit

Fraud is a "question of fact that is to be determined by all the circumstances of a case."[66] The circumstances of Deutsche Bank's trading at Silver Peak meet the first element of the Commission's prohibition on market manipulation[67] because its trading "operate[d]… as a fraud or deceit."[68] Deutsche Bank undertook its "Export Strategy" to avoid the losses from its losing CRR position. It scheduled power to alter the pricing at Silver Peak to benefit that CRR position and not because of any supply and demand fundamentals. Deutsche Bank scheduled at Silver Peak to eliminate the congestion in the import direction that had resulted from actual supply and demand as constrained by the limits of the transmission tie. Deutsche Bank's export transactions altered the price of energy at Silver Peak and affected the value of CRRs at Silver Peak. By submitting bids at Silver Peak to alter the value of its CRRs, Deutsche Bank injected false and deceptive information into the marketplace. Like the trades in *Constellation*, Deutsche Bank's trades here "were entered into without regard to their economics or market fundamentals and were instead entered into solely with the intent to [impact energy prices to benefit its

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[64] 16 U.S.C. § 824v(a) (2006).

[65] *See Prohibition of Energy Market Manipulation*, Order No. 670, 71 Fed. Reg. 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202, 114 FERC ¶ 61,047 (Jan. 19, 2006) (Order No. 670).

[66] *Id.* at P 50. *See also Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006) (rescinding Market Behavior Rule No. 2 in light of promulgation of Anti-Manipulation Rule) ("[W]e recognize that fraud is a very fact-specific violation, the permutations of which are limited only by the imagination of the perpetrator.")

[67] 18 CFR § 1c.2; *see* Order No. 670 at P 48-54.

[68] Order No. 670 at P 49.

related financial positions]"[69] and satisfy the first element of a manipulation violation. Further, Deutsche Bank's exports were not intended to provide any supply or demand at Silver Peak because the schedules were circular.

Staff found that when the CRR traders started the Export Strategy, they were indifferent to whether the physical transactions would be profitable. Further, even after having the information to show that the transactions were not profitable, the CRR traders continued them. While Salas testified that an objective of Deutsche Bank's physical transactions at Silver Peak and Summit was to make them economic, he also asserted that the "main purpose" of the schedules was to eliminate congestion and increase the value of Deutsche Bank's CRR position at Silver Peak.[70] Staff did not find credible Salas's testimony that the CRR traders sought to make a profit on the physical transactions. The CRR traders did not trade physical power until they became concerned about the value of the CRR position.[71] The traders submitted price-taking self-schedules which would clear regardless of whether the resulting revenues would be great enough to cover costs. Deutsche Bank scheduled only 3 MW at Silver Peak initially, and never more than 13 MW, even though Corteggiano testified that "with low volume, the revenue will not cover costs."[72] Corteggiano's testimony supported the conclusion that the physical transactions were entered into to eliminate import congestion and increase the value of the CRR position.[73]

The CRR traders did not attempt to ascertain the publicly available transmission charges and CAISO charges for its physical transactions until after starting them.[74] Even after Deutsche Bank received invoices showing the costs of the physical transactions,[75] it continued to make the uneconomic physical transactions consistently without regard to

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[69] *Constellation Energy Commodities Group, Inc.*, 138 FERC ¶ 61,168 at P 20 (2012). *See also Brian Hunter*, 135 FERC ¶ 61,054 at P 53 (finding manipulation where trades were "not in accordance with the normal interplay of supply and demand.")

[70] Salas Dep. 97:7-24.

[71] Salas Dep. 54:7-19.

[72] Corteggiano Dep. 167:16-18.

[73] Corteggiano Dep. 96:24-97:10.

[74] *See* Data Response No. 1-26, Bates No. 002205 (Jan. 29, 2010).

[75] On February 9, 2010, Deutsche Bank received its first bi-monthly billing statement from the CAISO after implementing the Export Strategy. Data Response No. 1-24, Bates No. 002807. Deutsche Bank also received billing statements monthly from SPPC detailing transmission charges. NV Energy, Inc. OATT at Section 7.1.

those costs.[76] Staff found that Deutsche Bank lost money on the physical transactions for each of the forty-four days it traded at Silver Peak, for a total loss of approximately $67,000.[77] These facts show that Deutsche Bank's trading at Silver Peak was undertaken without regard to economics or market fundamentals, but was undertaken to benefit its CRR position.

Furthermore, Deutsche Bank's designation of its trades at Silver Peak as Wheeling-Through transactions to facilitate its circular scheduling operated as a fraud or deceit on the CAISO because the transactions were falsely designated. Deutsche Bank was not wheeling power and its trades failed to meet the tariff requirements for Wheeling-Through transactions, a point discussed below.

In Order No. 670, the Commission explained that fraud is defined generally to include "any action, transaction, or conspiracy for the purpose of impairing, obstructing or defeating a well-functioning market."[78] By engaging in the Export Strategy at Silver Peak, Deutsche Bank impaired the functioning of the Day-Ahead energy market at Silver Peak and, by altering the value of Silver Peak CRRs, the CRR market.

C. Deutsche Bank's Scienter

Deutsche Bank's conduct meets the second element of the Anti-Manipulation Rule – that the Deutsche Bank traders initiated the trading with the requisite scienter – because Deutsche Bank intended its trading at Silver Peak to benefit its CRR position. Deutsche Bank conceded that this was its intent, in data responses and through the testimony of its traders.

In its data responses, Deutsche Bank admitted that the electric energy transactions "at, near, or relating to the Silver Peak transmission intertie for January 2010 through March 2010 were related to its CRR positions."[79] Deutsche Bank further explained that its export at Silver Peak would reduce import congestion at Silver Peak and, thereby,

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[76] *See* Data Response No. 1-4.

[77] *See* Supplemental Referral at 1; Data Response No. 2-1. Staff confirmed the calculations set forth in CAISO's referral and supplemental referral.

[78] Order No. 670 at P 50 (*citing Dennis v. United States*, 384 U.S. 855, 861 (1966) (noting that fraud within the meaning of a statute need not be confined to the common law definition of fraud: any false statement, misrepresentation or deceit)).

[79] Data Response No. 1-4.

offset its exposure to this import congestion in its CRR positions.[80] Corteggiano and Salas also highlighted their intent that the exports scheduled at Silver Peak affect Deutsche Bank's CRR position and acknowledged that the Export Strategy successfully eliminated day-ahead import congestion.[81] A spreadsheet produced by Deutsche Bank containing each of its physical power flows from Silver Peak to Summit during the Referral Period confirmed this intent to "[m]itigate Congestion at Silver Peak."[82] Such "mitigation" increased the value of Deutsche Bank's CRR position.

Several other facts show that Deutsche Bank acted with the requisite scienter: that it intended its trading at Silver Peak to affect its CRR positions. First, Corteggiano and Salas, who initiated the trading, were responsible for Deutsche Bank's CRR trading, not its physical trading.[83] This fact indicates that their involvement in trading at Silver Peak resulted from, and was motivated by, their responsibility for Deutsche Bank's CRRs. Second, Deutsche Bank did not engage in physical trading at Silver Peak or Summit prior to the derate that affected its CRR position.[84] In fact, Corteggiano and Salas did not engage in physical transactions in the CAISO until they became concerned with the value of their CRR position. This deviation from its prior trading practices, when considered in the context of other facts, is additional evidence of Deutsche Bank's intent to manipulate.[85]

Third, the switch in Deutsche Bank's monthly bidding strategy in the CRR monthly auctions from February to March indicates that Deutsche Bank recognized that its Export Strategy worked as intended to improve its CRR position. In the monthly auction for February CRRs, Deutsche Bank reduced its exposure to import congestion at

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[80] *Id.* ("The most economic manner in which to conduct this export was to: export at Silver Peak; obtain transmission from Sierra Pacific Power (SPPC); transport the power on the SPPC system to Summit; and sell the power at a point in the CAISO market (Export Strategy).")

[81] Corteggiano Dep. 96:25-97:10; 111:6-8; Salas Dep. 76:19-77:3.

[82] Excerpt from "DBET Data Request 1-24 ALL NERC TAGS.xls," produced in response to Data Request No. 1-24.

[83] *See, e.g.,* Salas Dep. 56:14-16.

[84] *Id.* at 54:7-19.

[85] *See Brian Hunter,* 135 FERC ¶ 61,054 at P 88-89 ("Hunter's trading pattern during the three at-issue months departed significantly from his prior practice. Here, when considered in the context of the entire record, that departure is additional evidence of an intent to manipulate.").

Silver Peak in order to "offset unexpected import congestion" at Silver Peak.[86] For the March auction, after the Export Strategy served to erase the risk from import congestion, Deutsche Bank increased its exposure to import congestion at Silver Peak. This change shows that Deutsche Bank knew that the scheduling under the Export Strategy benefitted its Silver Peak CRRs. Deutsche Bank realized that the Export Strategy eliminated the risk that import congestion would occur and devalue its CRR position.

Finally, Salas testified that the "main purpose" of the trades at Silver Peak was to eliminate import congestion and increase the value of Deutsche Bank's CRR position at Silver Peak.[87] Corteggiano's testimony supported the conclusion that the physical transactions were entered into to eliminate congestion and increase the value of the CRR position.[88] In summary, Deutsche Bank intended to move the price at Silver Peak, which in turn, benefitted its CRR position. For these reasons, staff concluded that Deutsche Bank had the requisite scienter; it intended its physical trades to benefit its financial CRR positions.

D. Connection with a Jurisdictional Transaction

Deutsche Bank scheduled flows of power and traded CRRs in CAISO, a FERC-jurisdictional market.[89] The scheduling of exports (purchases) at Silver Peak and imports (sales) at Summit, as well as the CRR positions affected, were jurisdictional transactions and thus were "in connection with the purchase or sale of … electric energy or … transmission of electric energy subject to the jurisdiction of the Commission,"[90] meeting the third element of the Anti-Manipulation Rule.

E. Deutsche Bank Violated Accuracy Provisions

Section 35.41(b) of the Commission's regulations applies to Deutsche Bank as a market-based rate seller.[91] This section requires Deutsche Bank to "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with … Commission-approved independent system

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[86] Data Request No. 1-12.

[87] Salas Dep. 97:7-24.

[88] Corteggiano Dep. 96:24-97:10.

[89] *See California Independent System Operator Corp.*, 116 FERC ¶ 61,274 (2006) (MRTU Order), *order on reh'g*, 119 FERC ¶ 61,076 (2007).

[90] Order No. 670 at P 49.

[91] 18 CFR § 35.41 (2009); Order Amending Market-Based Rate Tariffs and Authorizations, 105 FERC ¶ 61,218 at P 107 (2003) (adopting regulation).

operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences."[92] Section 37.5 of the CAISO Tariff is identical.[93] The Commission has found that "section 35.41(b) does not include an intent requirement."[94]

In scheduling at Silver Peak as part of its Export Strategy, Deutsche Bank submitted two types of self-scheduled transactions that paired Silver Peak as an export point and Summit as an import point: Wheeling-Through transactions and non-Wheeling-Through transactions. The CAISO market software treats Wheeling-Through transactions as an import and export that are directly linked by transmission through the CAISO. The designation affects how CAISO performs its reliability functions as a Balancing Authority. An export that is part of a Wheeling-Through transaction does not need to be backed up with reserves; by contrast, the CAISO obtains reserves to support an export that is not part of a Wheeling-Through transaction as required by the Reliability Standards.[95]

Deutsche Bank submitted Wheeling-Through transactions for 825 hours, which was approximately 86% of the hours during which it implemented its Export Strategy.[96] By doing so, Deutsche Bank submitted a false statement because Deutsche Bank was not wheeling power; those schedules did not qualify as Wheeling-Through Transactions scheduled under the Tariff. The Tariff defines a "Wheeling-Through Transaction" as "the use of the CAISO Controlled Grid for the transmission of Energy from a resource located outside the CAISO Controlled Grid to serve a Load located outside the transmission and Distribution System."[97] When it submitted its purported Wheeling-Through schedules, Deutsche Bank had neither a resource outside the CAISO nor Load outside the CAISO. Instead, it brought power to the import point by scheduling power outside the CAISO from the export point.[98] Because Deutsche Bank submitted transactions as Wheeling-Through transactions when it was not wheeling power, Deutsche Bank violated the Commission's accuracy requirement and identical CAISO Tariff provision.

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[92] 18 CFR § 35.41(b).

[93] CAISO Fourth Replacement Tariff, § 37.5.1, Accurate Information Generally.

[94] *See Moussa I. Kourouma d/b/a/ Quntum Energy LLC*, 135 FERC ¶ 61,245, at P 20-22 (2011).

[95] The Reliability Standard, WECC-BAL-002-0, R4, requires that a Balancing Authority, such as the CAISO, maintain a certain amount of reserves.

[96] *See* Referral at Appendix A (CAISO Source Data).

[97] *Id.* at Appendix A.

[98] Salas Dep. 84:18-85:7; 88:21-89:5.

V. SANCTIONS

A. Civil Penalty

Deutsche Bank's violations fall under the Penalty Guidelines' Chapter Two category guideline for tariff and regulation violations (§ 2B1.1).[99]

The Penalty Guidelines consider the gain to the organization or the loss caused by the violation, and either the amount of energy involved in the violation or the duration of the violation, whichever is greater. The following findings relating to the seriousness of Deutsche Bank's violation guided staff's application of the Chapter Two guidelines.

Staff finds that Deutsche Bank's violation caused $186,790 in harm to other market participants who held CRRs at Silver Peak that lost value because Deutsche Bank's export schedules changed energy prices at Silver Peak.[100] Deutsche Bank engaged in its manipulative trading at Silver Peak on 44 days during a 56 day period.

The Penalty Guidelines consider a variety of factors to derive a culpability score. Staff made several findings related to Deutsche Bank's culpability. Staff finds that Deutsche Bank's senior management personnel, Tom May and Lloyd Will, participated in and condoned the violation by approving the Export Strategy.

Staff finds Deutsche Bank's compliance program inadequate. Corteggiano and Salas demonstrated little familiarity with Deutsche Bank's compliance requirements. Although the Deutsche Bank Compliance Handbook instructed employees to "take particular care and seek heightened review by a compliance officer or legal counsel in advance of… engaging in physical trading designed to benefit financial transactions,"[101] neither the traders, Corteggiano and Salas, nor their supervisors, May and Will, sought such review. Deutsche Bank did not have a compliance officer at its Houston office at

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[99] *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 (2010) (Penalty Guidelines). In Order No. 670, the Commission stated that it "will not seek duplicative sanctions for the same conduct in the event the conduct violates both the Market Behavior Rules and this Final Rule [18 C.F.R. § 1c]." Therefore, while staff determined that Deutsche Bank's conduct violates both 35.41(b), which is a Market Behavior Rule, and section 1c.2, staff is not seeking duplicative civil penalties for these violations.

[100] *See* Supplemental Referral at 16.

[101] Data Response No. 1-28, U.S. Electric Power and Natural Gas Compliance Handbook at Bates No. 00892-93.

the time of the relevant trading. This reveals that Deutsche Bank lacked an effective compliance program.

Staff concludes that Deutsche Bank cooperated with staff during the investigation and that Deutsche Bank Energy Trading, LLC had approximately 155 employees at the time of the conduct at issue.[102] Staff also finds that the Commission has not previously sanctioned Deutsche Bank for any violation of its regulations or orders; further, no other enforcement agency has sanctioned Deutsche Bank for similar misconduct in the last ten years.

Based on the Penalty Guidelines, staff recommends a civil penalty of $1,500,000 for Deutsche Bank. Deutsche Bank's conduct was particularly problematic because Deutsche Bank only stopped the Export Strategy when confronted by the CAISO DMM. Further, when Deutsche Bank determined that the Export Strategy successfully increased the value of its CRR position, it increased that CRR position in March 2010, thereby, increasing the payoff from the Export Strategy. Deutsche Bank knowingly engaged in the violation until learning of CAISO's concern regarding Deutsche Bank's scheduling at Silver Peak. Under these circumstances, Enforcement believes that a civil penalty within the Penalty Guidelines' range is appropriate.

B. Disgorgement

By eliminating import congestion at Silver Peak, Deutsche Bank benefitted by avoiding losses on its annual CRR position at Silver Peak and by receiving payments on its CRRs attributable to its Export Strategy.[103] Deutsche Bank had unjust profits of $123,198 as a result of its Export Strategy. Therefore, Enforcement recommends disgorgement of this amount, plus interest, to CAISO for distribution to market participants affected by Deutsche Bank's violations.

VI. RECOMMENDED ACTION

Based on the above conclusions of law and fact, Enforcement recommends the Commission issue Deutsche Bank an Order to Show Cause and Notice of Proposed Penalty requiring it to show cause (i) why it did not violate the Anti-Manipulation Rule, 18 C.F.R. § 1c.2, section 222 of the Federal Power Act,[104] and the parallel provision in the CAISO Tariff section 37.7; (ii) why it did not violate the accuracy requirements of the Commission's regulations, 18 C.F.R. § 35.41(b), and the parallel provision in the CAISO

[102] Data Response No. 2-2.

[103] Corteggiano Dep. 168:5-169:24.

[104] 16 U.S.C. §824v(a) (2006).

Tariff, section 37.5, in connection with its physical energy trades and financial positions in the CAISO markets for the period January 29, 2010, through March 24, 2010; (iii) why it should not pay a civil penalty in the amount of $1,500,000; and (iv) why it should not disgorge $123,198 plus interest in unjust profits. Enforcement also recommends the Commission make this report public pursuant to 18 C.F.R. § 1b.20, afford Deutsche Bank the opportunity to respond to staff's findings, and provide staff with an opportunity to answer the response.

In accordance with 18 C.F.R. § 385.213, Enforcement recommends that the Commission direct:

(a) Deutsche Bank, within 30 days of the date of an Order to Show Cause, be required to file an answer showing why it did not violate the Anti-Manipulation Rule, 18 C.F.R. § 1c.2, section 222 of the Federal Power Act, and the accuracy requirements of the Commission's regulations, 18 C.F.R. § 35.41(b), as well as the parallel provisions of the CAISO Tariff, sections 37.7 and 37.5, in connection with its physical energy transactions and CRR positions relating to the Silver Peak intertie for the period January 29, 2010, through March 24, 2010.

(b) Deutsche Bank, within 30 days of the date of an Order to Show Cause, be required to file an answer showing why the Commission should not issue a notice of proposed penalty pursuant to the Commission's authority under § 316A of the Federal Power Act (16 U.S.C. 825o-1) in the amount of $1,500,000, or a modification of that amount consistent with section 31(d)(4) of the Federal Power Act, and require it to disgorge all unjust profits received as a result of its actions relating to the Silver Peak intertie for the period January 29, 2010, through March 24, 2010.

(c) Enforcement, within 30 days of the date of Deutsche Bank's answer, be required to file a reply to Deutsche Bank's answer.

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