FERC APPROVES ENFORCEMENT'S SETTLEMENTS WITH TWO DEMAND RESPONSE PROVIDERS

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On 22 May 2023, the Federal Energy Regulatory Commission (FERC) issued two orders approving stipulation and consent agreements that resolve enforcement investigations by FERC's Office of Enforcement (FERC Enforcement) of two demand response providers, Leapfrog Power, Inc. (Leapfrog) and OhmConnect, Inc. (OhmConnect), regarding their participation in the California Independent System Operator (CAISO) market.[1] FERC Enforcement's focus in both cases concerned whether the companies violated a provision of the CAISO tariff requiring market participants to have a reasonable expectation that they could fulfill the bids they submitted.

BACKGROUND

Demand response providers contract with end-use customers who agree, when requested, to reduce the amount of electric power they would otherwise typically consume. In California, demand response providers aggregate demand response pursuant to a Demand Response Auction Mechanism (DRAM) pilot program administered by the California Public Utility Commission, the state's utility regulator. Through the DRAM program, demand response providers contract with load-serving utilities for agreed quantities of demand response, reflecting the aggregated reductions of end-use customers. The utilities integrate that demand response capability into their resource supply plans, and those resource supply plans are then submitted to CAISO to meet resource adequacy requirements.

As required by the DRAM program, demand response providers submit their aggregated demand response commitments into the CAISO day-ahead energy market. CAISO's tariff requires that market participants like Leapfrog and OhmConnect submit bids comprising “resources that are reasonably expected to be available and capable of performing at levels specified” in the bid, “and to remain available and capable of so performing based on all information” that is known or should have been known at the time of bid submission.[2]

Both investigations were resolved by settlement, with each demand response provider agreeing to the facts, but not admitting or denying alleged violations. The Leapfrog settlement indicates that the substantial majority of Leapfrog's day-ahead bids from February to August 2019 exceeded the registered metered loads of its customers, with shortfalls ranging from 54% to 98% of Leapfrog's average day-ahead bid. OhmConnect's settlement similarly reports that the substantial majority of OhmConnect's bids made during the first six months of 2018 exceeded the registered metered loads of its customers, with shortfalls ranging from 32% to 63% of OhmConnect's average day-ahead bid.

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FERC'S DECISIONS

The FERC orders report that both companies submitted bids into the CAISO day-ahead market that each could not have reasonably expected to fulfill with the registered metered loads of its customers. Each settlement provides for civil penalties and disgorgement: Leapfrog will pay a civil penalty of US$73,880 and disgorgement of US$46,120; OhmConnect will pay a civil penalty of US$141,094 and disgorgement of US$8,906. CAISO is directed to distribute disgorgement funds to network load on a *pro rata* basis.

Both companies have agreed to submit at least one annual compliance monitoring report to FERC Enforcement, with a second and third compliance report directed at FERC Enforcement's discretion. Leapfrog and OhmConnect must describe in those reports (1) all compliance measures and procedures related to compliance with the CAISO tariff and FERC regulations that each company instituted or modified during the reporting period; and (2) all FERC-related compliance training administered by each company, including the subject of training, the dates of training, and the procedures used to document attendance. Each company is also required to identify and report known CAISO tariff violations or violations of FERC regulations and describe mitigating actions taken.

TAKE-AWAYS AND LESSONS LEARNED

These settlements may reinforce that FERC Enforcement continues to focus attention on demand response providers' representations about their capability to curtail in compliance with tariff requirements. Demand response providers may want to keep the following in mind:

First, FERC Enforcement takes seriously a demand response provider's representations to the market about its ability to curtail load. The Leapfrog and OhmConnect settlements are similar to other demand response-related settlements FERC Enforcement reached in 2022.[3] FERC is likely to continue focusing on these issues as reliability assessments more frequently identify resource shortages and extreme weather events that increase risks to grid reliability.

Second, effective compliance programs continue to be a key priority. Both settlements include comprehensive monitoring requirements that reflect FERC's policy to encourage market participants to develop and maintain robust compliance programs.

Third, if a demand response provider is not able to meet its obligations, it must take proactive steps to address such obligations. The FERC Penalty Guidelines, last revised in 2010, permit reductions in culpability scores through favorable factors, including self-reporting and robust compliance.[4] Although not discussed in these orders, self-reporting by market participants continues to be a path forward. In 2022, for example, a New England demand response aggregator self-reported to FERC Enforcement that its demand response offers for a month would be less than its capacity commitments. Because the aggregator self-reported the issue, the error was inadvertent, the aggregator sought guidance from ISO New England Inc. regarding the error, and the aggregator took steps to improve its internal processes, FERC Enforcement closed the self-report without further action.

FOOTNOTES

[1] *Leapfrog Power, Inc.*, 183 FERC ¶ 61,137 (2023) (*Leapfrog Enforcement Order*); *OhmConnect, Inc.*, 183 FERC

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¶ 61,136 (2023) (*OhmConnect Enforcement Order*).

[2] Leapfrog Enforcement Order at P 9 & OhmConnect Enforcement Order at P 9 (quoting CAISO tariff, section 37.3.1.1).

[3] *See, e.g.*, *Enerwise Global Technologies d/b/a* CPower, 180 FERC ¶ 61,126 (2022) (settlement of allegations regarding demand response bids into ISO New England, Inc. markets); *Todd Meinershagen*, 181 FERC ¶ 61,251 (2022) (settlement of allegations regarding demand response bids into the Midcontinent ISO, Inc. markets).

[4] *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010).

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