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Another Shoe Drops as FERC Settles J.P. Morgan Investigation

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Only two weeks after the Federal Energy Regulatory Commission (FERC) assessed $453 million in civil penalties and $34.9 million in disgorgement against Barclays Bank PLC and four of its traders for market manipulation, FERC approved a settlement on July 30, 2013, with J.P. Morgan requiring it to pay $410 million in fines and to give up its claim to other payments. The bank will also be required to make annual reports concerning its U.S. power business to FERC for the next three years and must engage outside counsel approved by FERC to assess its U.S. power business policies and procedures.

Under the settlement, J.P. Morgan Ventures Energy Corp. (JPMVEC), a J.P. Morgan subsidiary, will pay a civil penalty of $285 million to the U.S. Treasury and disgorge $125 million in unjust profits to ratepayers in California and the Midwest. JPMVEC has also agreed to forego any claim for other payments in California under investigation – reported to be in excess of $250 million – which would make this settlement the costliest by far for a banking company caught by FERC's Office of Enforcement and alleged to be engaging in illegal activities.

Even though it cited only a single known tariff violation, FERC's enforcement staff determined that JPMVEC's power plant bidding practices in the California and Midwest markets between September 2010 and November 2012 violated FERC's Anti-Manipulation Rule and caused serious harm in FERC's jurisdictional markets. FERC said that JPMVEC implemented 12 bidding strategies with the intent to obtain above-market payments that JPMVEC collected over many months. According to FERC, JPMVEC's bidding was fraudulent because it knew that the California and Midwest ratepayers received no benefit from these trading schemes. FERC investigators also concluded that JPMVEC's bids displaced other generation and altered day ahead and real-time prices from the prices that would have resulted had JPMVEC not submitted the deceptive bids.

JPMVEC admitted the facts set out in the settlement but did not agree to any wrongdoing.

In setting the agreed-upon sanctions, FERC's enforcement office weighed a number of factors that included the large financial gains and losses that JPMVEC caused by its trading scheme, the involvement of high level personnel, and JPMVEC's size. FERC also emphasized that JPMVEC's conduct continued for more than 350 days.

What This Means to You

Following on the heels of the Barclays order, FERC's JP Morgan settlement confirms that it intends to crack down on market manipulation and that it construes its authority broadly. FERC emphasized that under its Anti-Manipulation Rule, fraud is a question of fact to be determined by all the circumstances of a case and not by a mechanical rule limiting illegal conduct to tariff violations alone. FERC said that “conduct, as opposed to a specific false oral or written statement,” is sufficient to establish prohibited activity. Companies operating under FERC’s eye should take note that J.P. Morgan’s failure to self-report its actions contributed to the size of its record-setting fine.

Contact Information

For additional information, please contact your Husch Blackwell attorney.

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