

189 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Mark C. Christie, David Rosner,
Lindsay S. See and Judy W. Chang

Ketchup Caddy, LLC and Philip Mango

Docket No. IN23-14-000

ORDER ASSESSING CIVIL PENALTIES

(Issued December 5, 2024)

1. In this order, we find that Ketchup Caddy, LLC (Ketchup Caddy) and Philip Mango (Mango) (collectively Respondents) engaged in a scheme to register demand response resources with the Midcontinent Independent System Operator, Inc. (MISO) without those resources' knowledge or consent, thereby violating section 222(a) of the Federal Power Act (FPA)¹ and section 1c.2(a) of the Commission's regulations,² which prohibit energy market manipulation. We also find that Ketchup Caddy violated sections 69A.3.5 and 69A.7.1 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) by offering uncontracted resources into the annual Planning Resource Auctions (PRA) that MISO uses to procure capacity necessary to maintain reliability of the MISO grid. In light of the seriousness of these violations and the lack of effort by Respondents to remedy the violations, we find that it is appropriate to assess civil penalties pursuant to section 316A of the FPA³ in the following amounts: \$25,000,000 against Ketchup Caddy and \$1,500,000 against Mango. The Commission further directs Mango to disgorge unjust profits, plus applicable interest, pursuant to section 309 of the FPA,⁴ in the following amount: \$506,502.

¹ 16 U.S.C. § 824v.

² 18 C.F.R. § 1c.2 (2024).

³ 16 U.S.C. § 825o-1.

⁴ *Id.* § 825h.

I. Background

A. Relevant Entities

1. Mango

2. Mango has been involved in the energy industry in sales roles since 2006.⁵ From 2011 to 2015, Mango worked at Company B, an aggregator of demand response resources.⁶ From January 14, 2019, through the end of the Relevant Period,⁷ Mango was a 50% co-owner of Ketchup Caddy with Todd Meinershagen.⁸

2. Ketchup Caddy

3. Mango originally created Ketchup Caddy as an entity to sell a product unrelated to the energy industry.⁹ Beginning in 2018, however, Mango used Ketchup Caddy to house a new energy business focused on registering demand response resources and offering them into MISO's PRAs.¹⁰ Mango got the idea for Ketchup Caddy's new energy business after having lunch in January 2018 with two individuals he met while working at Company B.¹¹ Although those two individuals discussed starting the new energy business with Mango and Meinershagen, they ultimately did not join Ketchup Caddy.¹² Mango began collaborating with Meinershagen on Ketchup Caddy in early

⁵ Testimony of Philip Mango, Tr. 17:2-7 (Aug. 31, 2023) (Mango Tr.).

⁶ Mango Tr. 20:12-14; 35:14-16.

⁷ The Relevant Period is March 2019 through October 2021.

⁸ Meinershagen Tr. 39:3-15. Meinershagen is no longer a subject of this proceeding, having reached a December 2022 settlement with the Office of Enforcement (OE) under which he disgorged \$525,451.93, his complete share of Ketchup Caddy's unjust profits from the behavior at issue. *Todd Meinershagen*, 181 FERC ¶ 61,251 (2022) (Order Approving Stipulation and Consent Agreement).

⁹ Testimony of Todd Meinershagen, Tr. 29:2-22 (June 19, 2021) (Meinershagen Tr.).

¹⁰ *Id.*

¹¹ Mango Tr. 29:24-30:14; 32:9-19; 45:8-46:2

¹² Meinershagen Tr. 27:1-4; 27:16-28:15.

2018.¹³ Ketchup Caddy was accepted to participate in MISO's annual PRA in late February 2019.¹⁴ In the April 2019 PRA, Ketchup Caddy cleared 211.1 megawatts (MW) of capacity to begin performing on June 1, 2019.¹⁵ Ketchup Caddy began participating in MISO's capacity market on June 1, 2019.¹⁶

B. MISO's Demand Response Program

4. MISO's demand response program allows large energy users to participate in MISO's energy and capacity markets by providing physical load adjustment or interruption.¹⁷ Resources seeking to participate only in MISO's capacity market can register as Load Modifying Resources (LMR), which must clear their capacity in annual PRAs.¹⁸ A demand resource that registers as an LMR and clears capacity in PRAs receives capacity payments from MISO for being available to provide demand reduction in the event of an emergency dispatch, protecting the reliability of the MISO grid.¹⁹ To qualify as an LMR during the Relevant Period, a resource must have been able to achieve the target level demand reduction provided during registration or move to a specified firm service level by the designated hour, maintain the target level or firm service level for at least four continuous hours, and respond at least the first five times requested per year based on its physical availability.²⁰

5. To register a resource as an LMR, a Market Participant must submit a variety of information to MISO, including information about the resource's capacity, monthly

¹³ Meinershagen Tr. 18:4-10.

¹⁴ Mango Tr. 61:8-10.

¹⁵ Mango Tr. 72:20-23.

¹⁶ Mango Tr. 73:12-13.

¹⁷ MISO Business Practices Manual, Demand Response, Manual No. 026, § 2.2 (effective Oct. 1, 2024).

¹⁸ MISO Business Practices Manual, Demand Response, Manual No. 026, at pp. 15-16 (effective Oct. 1, 2024).

¹⁹ MISO Business Practices Manual, Demand Response, Manual No. 026, at pp. 15-16, 21 (effective Oct. 1, 2024).

²⁰ MISO Tariff § 69A.3.5c-e (effective date Feb. 20, 2019 through effective date Mar. 23, 2021).

availability, address, and meter number.²¹ Prior to the 2020/21 Planning Year, the MISO Tariff allowed Market Participants to demonstrate their demand reduction capability by “conducting a real power test or providing operational data, or by developing an alternative mechanism . . . by which the demand reduction capability can be demonstrated without requiring an actual demand reduction to occur, and by submitting the mock test results”²²

C. Procedural History

6. Staff in the Commission’s Office of Enforcement (OE Staff) opened a preliminary investigation of Ketchup Caddy’s conduct in MISO.²³ On October 6, 2022, OE Staff provided Respondents with a Preliminary Findings presentation (PF Presentation).²⁴ Respondents did not provide a response to the PF Presentation. On July 17, 2023, OE Staff provided notice to Respondents under section 1b.19 of the Commission’s regulations²⁵ of its intent to recommend the initiation of a public proceeding against Respondents (1b.19 Letter).²⁶ Respondents did not provide a response to the 1b.19 Letter.²⁷

7. On February 21, 2024, the Commission initiated the instant proceeding by issuing an order directing Respondents to show cause why they should not be found to have

²¹ MISO Business Practices Manual, Demand Response, Manual No. 026, at pp. 21-23, 28-29 (effective Oct. 1, 2024).

²² MISO Tariff § 69A.3.5j (effective Mar. 1, 2018).

²³ *Ketchup Caddy, LLC & Philip Mango*, 186 FERC ¶ 61,132, at app. A (Enforcement Staff Report and Recommendation) 3 (Staff Report) (2024) (Order to Show Cause). OE Staff’s investigation began after MISO forwarded to OE an anonymous tip that had been submitted to MISO’s Hotline alleging that two companies, Ketchup Caddy and Company A, had registered demand response customers without those customers’ agreement to participate in MISO’s demand response markets, and had profited by successfully submitting those unwitting customers’ resources into MISO’s annual PRA.

²⁴ Staff Report at 3.

²⁵ 18 C.F.R. § 1b.19 (2024).

²⁶ Staff Report at 4.

²⁷ *Id.*

violated section 222 of the FPA,²⁸ along with section 1c.2 of the Commission's regulations and sections 69A.3.5 and 69A.7.1 of the MISO Tariff.²⁹ The alleged violations described in the Order to Show Cause arose out of the investigation conducted by OE Staff, which culminated in the Staff Report.³⁰

8. The allegations underlying the Order to Show Cause are that Respondents violated section 222 of the FPA and section 1c.2 of the Commission's regulations by engaging in a manipulative scheme to register demand response resources with MISO without those resources' knowledge or consent, and that Ketchup Caddy violated the MISO Tariff by offering uncontracted resources into the annual PRAs that MISO uses to procure capacity necessary to maintain the reliability of the MISO grid.³¹ The Commission additionally directed Ketchup Caddy and Mango to show cause why they should not be assessed civil penalties of \$25,000,000 and \$1,500,000, respectively, and why Mango should not disgorge \$506,502, plus interest, in unjust profits.³²

9. Also on February 21, 2024, the Commission issued a notice designating certain Commission staff as non-decisional in deliberations by the Commission in this docket.³³ On February 27, 2024, the Commission issued an update to the February 21, 2024 notice of the designation of non-decisional staff.

10. On April 10, 2024, OE Staff filed a motion for summary disposition.

11. On July 26, 2024, the Commission issued an order amending the answer deadline in the Order to Show Cause to require Respondents to respond to the Order to Show Cause by no later than 30 days after the date on which the Commission's Office of the Secretary (Secretary) serves the Order to Show Cause on Respondents.³⁴

12. On September 4, 2024, the Secretary issued a notice indicating that the Secretary served the Order to Show Cause on Respondents on July 26, 2024.

²⁸ 16 U.S.C. § 824v.

²⁹ 18 C.F.R. § 1c.2.

³⁰ Order to Show Cause, 186 FERC ¶ 61,132 at P 2.

³¹ *Id.* P 1.

³² *Id.*

³³ *See* 18 C.F.R §§ 385.2201-385.2202 (2024).

³⁴ *Ketchup Caddy, LLC & Philip Mango*, 188 FERC ¶ 61,081 (2024).

13. Respondents did not respond to the Order to Show Cause.

II. Discussion

A. Applicable Legal Standard

14. Section 222 of the FPA makes it “unlawful for any entity . . . directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy . . . any manipulative or deceptive device or contrivance . . . in contravention of such rules and regulations as the Commission may prescribe as necessary and appropriate in the public interest or for the protection of electric ratepayers.”³⁵ The Commission implemented this prohibition through Order No. 670, which promulgated the Anti-Manipulation Rule.³⁶ The Anti-Manipulation Rule, among other matters, prohibits any 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 the purchase, sale, or transmission of electric energy subject to the jurisdiction of the Commission.³⁷

15. Pursuant to section 316A(b) of the FPA, the Commission may assess a civil penalty of up to \$1 million³⁸ per day, per violation against any person who violates Part II of the FPA (including section 222) or any rule or order thereunder.³⁹ In determining the amount of a proposed penalty, section 316A(b) requires the Commission to consider “the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner.”⁴⁰

³⁵ 16 U.S.C. § 824v.

³⁶ *Prohibition of Energy Mkt. Manipulation*, Order No. 670, 114 FERC ¶ 61,047, at P 49 (2006), *reh’g denied*, 114 FERC ¶ 61,300 (2006).

³⁷ 18 C.F.R. § 1c.2; Order No. 670, 114 FERC ¶ 61,047 at P 49; *see also City Power Mktg., LLC*, 152 FERC ¶ 61,012, at P 39 (2015) (*City Power*); *Houlian Chen*, 151 FERC ¶ 61,179, at P 35 (2015) (*Chen*).

³⁸ As explained below, this amount is now annually adjusted for inflation.

³⁹ 16 U.S.C. § 825o-1(b). Under section 3 of the FPA, “‘person’ means an individual or a corporation.” *Id.* § 796(4).

⁴⁰ *Id.* § 825o-1(b).

16. As discussed below, we find that Respondents violated section 222 of the FPA and the Anti-Manipulation Rule by intentionally engaging in a scheme to register demand response resources with MISO without those resources' knowledge or consent and offering uncontracted resources into the annual PRAs. We assess civil penalties and require disgorgement pursuant to sections 31(d)(3)(A)⁴¹ and 309 of the FPA, as discussed below in section III.E.

B. Findings of Fact

17. As stated above, Respondents failed to respond to the Order to Show Cause. As such, the Commission accepts as true the undisputed material facts in the record,⁴² which are set forth below.

18. In 2011, Mango began working at Company B, an aggregator of demand response resources.⁴³ At Company B, he met the individuals who would go on to start Company A,⁴⁴ including Company A's CEO and Company A's President. Mango also met several individuals who would eventually work for Company A, including Company A Employee 1 and Company A Employee 2.⁴⁵ Mango left Company B in 2015.⁴⁶

19. In January 2018, Mango had lunch with Company A Employee 1 and Company A Employee 2, who were then with Company A.⁴⁷ Mango testified that, during lunch, Company A Employee 1 told him, "if I had some money right now, I would be getting into the MISO market."⁴⁸ According to Mango, Company A Employee 1 explained that: "[Company A] was making a killing in that market, that there were very few regulations,

⁴¹ 16 U.S.C. § 823b(d)(3)(A).

⁴² See 18 C.F.R. § 385.1507 (2024) ("If a person fails to file an answer within the 30-day time limit, all material facts stated in the Commission's notice will be deemed admitted").

⁴³ Staff Report at 4 (citing Mango Tr. 20:12-14).

⁴⁴ OE is separately conducting an investigation of Company A, which, pursuant to 18 C.F.R. § 1b.9, is being treated as nonpublic. *Id.* n.8.

⁴⁵ *Id.* at 4 (citing Mango Tr. 24:10-16; 27:23-22; 29:24-30:14; 32:9-19).

⁴⁶ *Id.* (citing Mango Tr. 25:14-16).

⁴⁷ *Id.* (citing Mango Tr. 45:8-46:2).

⁴⁸ *Id.* (citing Mango Tr. 45:9-10).

that it was like the wild, wild west. And that [Company A's CEO] had discovered a way to gain customers without having to do anything that we'd done previously."⁴⁹

20. To be specific, Mango testified that Company A Employee 1 told him:

[Company A's CEO] had created a scrape, a tool in which he was able to go into the Ameren⁵⁰ website, and this bot would put in the random Ameren account numbers and would spit out customer usage data, customer information. And it was all working behind the scenes compiling, that they could use to enroll in the MISO program.⁵¹

21. Mango further testified that Company A Employee 1 told him that this practice "was profitable because [Company A's CEO] was able to enroll these customers without fear of penalty, without having to pay them a dime and that there were no repercussions, only profit."⁵²

22. Mango testified that this discussion left him "very intrigued" and that he, Company A Employee 1, and Company A Employee 2 decided to "see if this is something we could do on our own."⁵³

23. Mango enlisted the help of his friend Meinershagen, a computer programmer who had never worked in the energy industry before joining Ketchup Caddy in 2018.⁵⁴ Meinershagen and Mango had been friends for several years, but were not professional colleagues, before their Ketchup Caddy collaboration.⁵⁵

24. Meinershagen participated in a video conference with Mango, Company A Employee 1, and Company A Employee 2.⁵⁶ Meinershagen told them that he could

⁴⁹ *Id.* (citing Mango Tr. 46:14-18).

⁵⁰ *Id.* Ameren Illinois Company (Ameren) is a retail power company in MISO.

⁵¹ *Id.* at 5 (citing Mango Tr. 46:20-47:1).

⁵² *Id.* (citing Mango Tr. 47:4-7).

⁵³ *Id.* (citing Mango Tr. 47:14-21).

⁵⁴ *Id.* (citing Meinershagen Tr. 15:2-13; 16:24-17:3).

⁵⁵ *Id.* (citing Mango Tr. 48:1-7).

⁵⁶ *Id.* at 6 (citing Meinershagen Tr. 24:7-25:1).

“gather the data that they needed,” and they provided him with a link to Ameren’s website along with Mango’s username and password for the site.⁵⁷ Meinershagen testified that the four of them planned to start a business together and that his role would be to “gather data” and Mango, Company A Employee 1, and Company A Employee 2 would “contact the customers and . . . do all the agreements.”⁵⁸ Neither Company A Employee 1 nor Company A Employee 2 ultimately joined Ketchup Caddy.⁵⁹ To house the new business, Mango decided to use an existing corporate entity, Ketchup Caddy, that he had created to sell a car accessory.⁶⁰

25. After meeting with Mango, Company A Employee 1, and Company A Employee 2, Meinershagen spent approximately the next year (from about May 2018 to March 2019) creating a tool to scrape and cull customer data from Ameren’s website.⁶¹ This process required Meinershagen to initially confirm on the Ameren website that he “ha[d] received permission from the account holder to view this data.”⁶² Though Meinershagen admitted that he had not personally obtained the requisite permission, he

⁵⁷ *Id.* (citing Meinershagen Tr. 25:13-21).

⁵⁸ *Id.* (citing Meinershagen Tr. 27:1-4).

⁵⁹ *Id.* (citing Meinershagen Tr. 27:16-28:15). The Staff Report further explains that it appears that Company A Employee 2 simply lost interest. *Id.* at 6 n.31 (citing Mango Tr. 52:17-22). In contrast, Company A Employee 1 sought to join Ketchup Caddy and materially assisted it by providing customer leads, but Mango and Meinershagen ultimately rejected his overtures because: (i) Company A Employee 1 worked as a Sales Director for Company A at the time, which gave rise to potential conflicts of interest and complications; and (ii) Ketchup Caddy’s revenue was less than expected in its first year of market participation. *Id.* (citing Meinershagen Tr. 40:6-41:10; Mango Tr. 60:14-613.66:18-68:1; Oct. 20, 2018-Apr. 22, 2020 Text Messages between Company A Employee 1 and Mango).

⁶⁰ *Id.* at 7 (citing Meinershagen Tr. 29:2-22).

⁶¹ *Id.* (citing Meinershagen Tr. 28:14-24; 70:1-13).

⁶² *Id.* (citing Meinershagen Tr. 65:14-24). Meinershagen explained that the subsequent scraping functionality bypassed the confirmation, but he admitted understanding that the acknowledgment requirement continued to apply to the scraping function. *Id.* n.35 (citing Meinershagen Tr. 61:18-22; 63:19-64:3; 66:7-19).

testified that he asked Mango about whether they had permission to view this data, and Mango said, “That’s fine. You know, all the other competitors do the same thing.”⁶³

26. Mango testified that, during this period in 2018-2019, while Meinershagen was culling customer data from the Ameren website, Company A Employee 1 and Mango discussed that they:

[W]ere not going to be able to get a hold of customers. We were not going to be able to actually talk to them and get them enrolled. . . one because there was no way we could get a hold of them and get them to agree to take zero percent and us to take 100 percent. And two, there was no time. We were accepted in late February and had 48 hours to load customers into the MISO program before it closed.⁶⁴

27. Mango testified that, before enrolling unwitting customers in the 2019 PRA, he never contacted *any* potential demand response customers.⁶⁵ Mango also testified that he never took any steps, such as preparing a draft contract, to formally enroll customers and was divided from the outset about whether to try to sign up customers and share revenue or to not even attempt to enroll actual customers.⁶⁶

28. Mango testified that, for Ketchup Caddy to participate in MISO’s capacity market, Mango had to “fill out a bunch of paperwork” and “post collateral to be able to put [MW] into the marketplace.”⁶⁷ Mango explained that Ketchup Caddy had “a goal of getting upward of 400 [MW] into the marketplace” which required posting “a letter of credit equaling 228 or \$229,000.”⁶⁸ On January 14, 2019, Meinershagen became a 50% co-owner of Ketchup Caddy with Mango.⁶⁹

⁶³ *Id.* (citing Meinershagen Tr. 65:23-24).

⁶⁴ *Id.* at 8 (citing Mango Tr. 60:22-61:10).

⁶⁵ *Id.* (citing Mango Tr. 72:24-73:1).

⁶⁶ *Id.* at 9 (citing Mango Tr. 61:24-63:5).

⁶⁷ *Id.* (citing Mango Tr. 56:14).

⁶⁸ *Id.* (citing Mango Tr. 56:16-19).

⁶⁹ *Id.* (citing Meinershagen Tr. 30:3).

29. In late February 2019, after obtaining the letter of credit, Ketchup Caddy was accepted to participate in MISO's annual PRA.⁷⁰ To register its purported customers to participate, Ketchup Caddy had to provide certain data about them to MISO. To obtain this data, Mango selected a set of customers from the data that Meinershagen's scraping tool had illicitly collected from Ameren's website. He then had Meinershagen create "curtailment plans" for these customers based on a Company A document provided to Ketchup Caddy by Company A Employee 1.⁷¹ To do this, Meinershagen reviewed the data from Ameren's website for instances in which a customer's energy usage dropped during a 1-2 hour period, and then provided Mango with two graphs consisting of "a week with the lowest hour of energy usage and one with the max hour of energy usage."⁷² Mango testified that these graphs reflected "mock test" information, "[i]n other words, not a real test of the facility but a graphical representation of a load drop that could be performed, if called upon."⁷³ Mango also testified that, despite submitting this "mock test" information to MISO, he knew that these customers would not perform if called upon.⁷⁴

30. MISO rejected certain attempted resource registrations that Ketchup Caddy submitted for approval that "were already enrolled through another market participant," but it approved many other registrations and, in the April 2019 PRA, Ketchup Caddy cleared 211.1 MW of capacity to begin performing on June 1, 2019.⁷⁵ On that date, Ketchup Caddy began participating in MISO's capacity market, and it received weekly capacity payments from MISO beginning shortly thereafter.⁷⁶ The following year, in the April 2020 PRA, Ketchup Caddy cleared 303.2 MW of customer capacity, and likewise

⁷⁰ *Id.* at 10 (citing Mango Tr. 61:8-10).

⁷¹ *Id.* (citing Mango Tr. 73:8-12). MISO's then-current Tariff accepted such curtailment plans to satisfy a "mock test" requirement illustrating a resource's hypothetical response to a curtailment event. MISO Tariff § 69A.3.4j (effective Mar. 1, 2018).

⁷² Staff Report at 10 (citing Meinershagen Response to FERC's Data Request No. 9). Meinershagen testified that he assumed Mango intended to use these graphs "as a discussion point with the customer in getting their agreement to that." Meinershagen Tr. 83:11-14.

⁷³ Staff Report at 10 (citing Mango Tr. 74:3-6).

⁷⁴ *Id.* (citing Mango Tr. 74:7-12).

⁷⁵ *Id.* (citing Mango Tr. 72:20-23).

⁷⁶ *Id.* (citing Mango Tr. 73:12-13).

received weekly capacity payments for that cleared volume. The year after that, in the April 2021 PRA, Ketchup Caddy cleared 372.3 MW, and received weekly capacity payments for that volume until MISO removed the company from its capacity market in October 2021 in response to MISO becoming aware of Ketchup Caddy's fraudulent registrations.

31. Throughout the Relevant Period, Ketchup Caddy regularly distributed funds received from MISO to Mango's and Meinershagen's personal bank accounts.⁷⁷ Mango and Meinershagen each personally received over \$500,000 from Ketchup Caddy.

32. Mango made an important admission in his testimony, acknowledging that he had engaged in an illegal and deceptive scheme. He stated, "[u]pon further reflection, I realize the egregiousness and the error of my ways."⁷⁸

33. Mango also acknowledged that Ketchup Caddy's activities did not benefit the MISO market and stated that "a reasonable person with time to reflect at a minimum would come to the conclusions" that its activities were illegal.⁷⁹

34. Last, Mango acknowledged the deceptive nature of his conduct, admitting that he even kept his partner, Meinershagen, "in the dark" and created a "mirage" to make Meinershagen believe that Ketchup Caddy was formally engaging with its purported customers because, if Meinershagen had known Mango was not actually contacting customers, Mango thought "[Meinershagen] would have been vehemently against and uncomfortable with us proceeding in that manner."⁸⁰

35. OE Staff determined that Ketchup Caddy's uncontracted PRA offers caused \$17,639,142.07 in actual losses.⁸¹ According to OE Staff, these losses resulted from market distortion: Ketchup Caddy's fraudulent MW reduced capacity prices and cleared at the expense of other Market Participants' resources. OE Staff states that, to quantify actual losses, OE Staff requested that Potomac Economics, MISO's Independent Market Monitor, rerun each PRA from 2019/20 through 2021/22 by removing the MW Ketchup Caddy offered. The rerun yielded a higher auction clearing price for each zone than would have occurred but for Ketchup Caddy's fraudulent scheme. In other words, by

⁷⁷ *Id.* at 11 (citing Meinershagen Tr. 105:16-106:24).

⁷⁸ *Id.* (citing Mango Tr. 16:8-11).

⁷⁹ *Id.* (citing Mango Tr. 79:15-80:2).

⁸⁰ *Id.* (citing Mango Tr. 62:6-12; 85:23-15; 84:14-17).

⁸¹ *Id.* at 12.

removing the volume of uncontracted MW from the PRA offer curve, Potomac Economics identified what the auction clearing price would have been had Ketchup Caddy not offered uncontracted MW. The rerun results showed that Ketchup Caddy's uncontracted MW suppressed the zonal and system-wide capacity price in several Planning Years, which harmed suppliers and sent inaccurate price signals to the market. Using the rerun, OE Staff determined that other suppliers would have received \$17,639,142.07 in additional revenue had Ketchup Caddy not offered fraudulent MW in the PRA.⁸² The conduct also potentially risked the reliability of the MISO grid as MISO could not rely on Ketchup Caddy's fraudulent capacity in an emergency.

C. Determination of Violations

1. Fraudulent Device, Scheme or Artifice

36. The Anti-Manipulation Rule⁸³ states that:

It shall be unlawful for any entity, directly or indirectly, in connection with the purchase or sale of electric energy . . .

(1) To use or employ any device, scheme, or artifice to defraud, (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity.⁸⁴

37. Fraud is a question of fact that must be determined based on the particular circumstances of each case.⁸⁵ The Commission has explained that, under the Anti-

⁸² *Id.*

⁸³ The Commission approved the Anti-Manipulation Rule in Order No. 670, 114 FERC ¶ 61,047 at P 49; *see also* 16 U.S.C. § 824v (“It shall be unlawful for any entity . . . directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance . . . in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of electric ratepayers.”).

⁸⁴ 18 C.F.R. § 1c.2.

⁸⁵ Order No. 670, 114 FERC ¶ 61,047 at P 50.

Manipulation Rule, fraud includes, but is not limited to, “any action, transaction, or conspiracy for the purpose of impairing, obstructing, or defeating a well-functioning market.”⁸⁶ In light of the broad language of section 222 of the FPA and the Anti-Manipulation Rule, our use of the term “well-functioning market” is not limited just to consideration of price or economically efficient outcomes in a market.⁸⁷ Instead, we view the term to also broadly include consideration of “such rules and regulations as the Commission may prescribe as necessary or appropriate,”⁸⁸ which necessarily include the rates, terms, and conditions of service in a Commission-jurisdictional market, such as the MISO market at issue here.

38. An entity “need not violate a tariff, rule or regulation to commit fraud.”⁸⁹ The Commission has held that fraud under the Anti-Manipulation Rule can include open-market transactions, i.e., transactions occurring on public trading platforms or exchanges, executed with manipulative intent.⁹⁰

39. OE Staff alleges that, during the Relevant Period, Respondents engaged in a fraudulent scheme, in violation of section 222 of the FPA and the Commission’s Anti-Manipulation Rule, by registering demand response resources with MISO without those resources’ knowledge or consent and offering uncontracted resources into MISO’s annual PRAs.

a. Staff Report

40. OE Staff asserts that Respondents engaged in an act, practice, or course of business that operated as a fraudulent device, scheme, or artifice, made material misrepresentations, and engaged in an act, practice, or course of business that

⁸⁶ *Id.*

⁸⁷ *See City Power*, 152 FERC ¶ 61,012 at P 59; *Chen*, 151 FERC ¶ 61,179 at P 49.

⁸⁸ 16 U.S.C. § 824v(a).

⁸⁹ *Lincoln Paper & Tissue, LLC*, 144 FERC ¶ 61,162, at P 36 (2013) (*Lincoln Paper*) (“Nor does a finding of fraud require advance notice specifically prohibiting the conduct concerned.”); *see also In re Make-Whole Payments & Related Bidding Strategies*, 144 FERC ¶ 61,068, at P 83 (2013) (fraud is determined by all the circumstances of a case, “not by a mechanical rule limiting manipulation to tariff violations”).

⁹⁰ *See, e.g., Chen*, 151 FERC ¶ 61,179 at P 136 (rejecting argument that transactions cannot be fraudulent if executed in “an open, transparent manner”).

operated as a fraud in violation of section 222 of the FPA and the Commission's Anti-Manipulation Rule.⁹¹

41. To be specific, OE Staff alleges that during the Relevant Period Respondents engaged in fraud by obtaining Ameren customer data by deceptive means and using that misappropriated data in connection with jurisdictional transactions, registering LMRs to which Ketchup Caddy lacked contractual rights, and offering uncontracted LMRs into the PRA. OE Staff further alleges that Respondents made material misrepresentations to MISO by registering resources that were not capable of performing if dispatched and thereby deceiving MISO into believing that the resources were the product of legitimate, negotiated contracts between an aggregator and a demand response resource. In addition, OE Staff alleges that Respondents induced MISO to pay Ketchup Caddy capacity payments based on MISO's belief that the resources the company registered were real, contracted for demand response resources.⁹²

b. Commission Determination

42. We find, based on the totality of evidence presented, that Respondents engaged in a fraudulent device, scheme, or artifice to defraud the MISO market and market participants. As discussed in greater detail below, we find that there is sufficient evidence that Respondents' actions violated section 222 of the FPA and the Anti-Manipulation Rule. The record demonstrates that Respondents obtained customer data by deceptive means, used that data to register unwitting customers as LMRs in MISO's annual PRA for 2019, 2020, and 2021, offered those uncontracted LMRs into the MISO market, and received weekly payments for capacity that could not be provided.

43. From about May 2018 to March 2019, Respondents worked on creating a tool to scrape and cull customer data from Ameren's website.⁹³ Mango admitted that, during this period, Respondents knew that they "were not going to be able to get a hold of customers. We were not going to be able to actually talk to them and get them enrolled . . . because there was no way we could get a hold of them and get them to agree to take zero percent and us to take 100 percent. And two, there was no time."⁹⁴ Mango

⁹¹ Staff Report at 13.

⁹² *Id.* at 13-14.

⁹³ *Id.* (citing Meinershagen Tr. 28:14-24; 70:1-13).

⁹⁴ *Id.* at 8 (citing Mango Tr. 60:22-61:10).

admitted that he never took any steps, such as preparing a draft contract, to formally enroll customers.⁹⁵

44. Mango also admitted to submitting “mock test” information for customers to MISO in order to satisfy a registration requirement set forth in the Tariff, despite knowing that those customers would not perform if called upon.⁹⁶

45. Further, the evidence in the record shows that Mango acknowledged that he had engaged in an illegal and deceptive scheme. Mango acknowledged that Ketchup Caddy’s activities did not benefit the MISO market and stated that “a reasonable person with time to reflect at a minimum would come to the conclusions” that its activities were illegal.⁹⁷

46. As a result of Respondents’ unlawful conduct, Ketchup Caddy cleared 211.1 MW of capacity in in the April 2019 PRA,⁹⁸ 303.2 MW of capacity in the April 2020 PRA, and 372.3 MW of capacity in the April 2021 PRA. Ketchup Caddy received weekly capacity payments from June 1, 2019 until October 2021, when MISO removed the company from its capacity market in response to MISO becoming aware of Ketchup Caddy’s fraudulent registrations.

47. Based on the totality of the evidence in the record, the Commission finds that Respondents’ actions in illicitly obtaining customer data and using that data to register and offer uncontracted LMRs into the MISO market in exchange for payments for capacity that could not be provided, constituted a fraudulent scheme to defraud.

2. Scienter

48. Scienter is the second element necessary to establish a violation of section 222 of the FPA and the Commission’s Anti-Manipulation Rule.⁹⁹ For purposes of establishing scienter, Order No. 670 requires reckless, knowing, or intentional actions taken in conjunction with a fraudulent scheme, material misrepresentation, or material omission.¹⁰⁰ The Commission has explained that fraudulent intent need not (and often is

⁹⁵ *Id.* at 9 (citing Mango Tr. 61:24-63:5).

⁹⁶ *Id.* (citing Mango Tr. 74:7-12).

⁹⁷ *Id.* (citing Mango Tr. 16:8-11; 79:15-80:2).

⁹⁸ *Id.* (citing Mango Tr. 72:20-23).

⁹⁹ Order No. 670, 114 FERC ¶ 61,047 at P 49.

¹⁰⁰ *Id.* PP 52-53.

not) established by direct proof, but rather can (and often must) be established by “legitimate inferences from circumstantial evidence” and that “[t]hese inferences are based on the common knowledge of the motives and intentions of [people] in like circumstances.”¹⁰¹

49. OE Staff alleges that the evidence shows that Respondents intentionally registered uncontracted LMRs that they knew could not perform if called upon¹⁰² in order to get “essentially free money”¹⁰³ through weekly capacity payments from MISO, and therefore Respondents acted with the requisite scienter in violation of section 222 and the Commission’s Anti-Manipulation Rule.

a. Staff Report

50. OE Staff points out that Mango admitted in his testimony that he had no intention of signing up actual customers, knew that the entities purported to be Ketchup Caddy’s customers would not perform if dispatched, and that any reasonable person would conclude that Ketchup Caddy’s activities were illegal.¹⁰⁴ OE Staff asserts that Mango’s scienter also is reflected in his admission that he kept Meinershagen “in the dark” and created a “mirage” to make Meinershagen believe that Ketchup Caddy was formally engaging with its purported customers.¹⁰⁵ OE Staff further asserts that Ketchup Caddy, acting through Mango, thus also had the requisite scienter to violate the Anti-Manipulation Rule.

b. Commission Determination

51. We find, based on the totality of the evidence presented, that Respondents acted with the requisite scienter in connection with their scheme to defraud. It is well-established that “[t]he presence of fraudulent intent is rarely susceptible of direct proof, and must instead be established by legitimate inferences from circumstantial evidence. These inferences are based on the common knowledge of the motives and intentions of

¹⁰¹ *Barclays Bank PLC*, 144 FERC ¶ 61,041, at P 75 (2013) (*Barclays*) (quoting *U.S. v. Sullivan*, 406 F.2d 180, 186 (2d Cir. 1969) (*Sullivan*)).

¹⁰² Staff Report at 10 (citing Mango Tr. 74:7-12).

¹⁰³ *Id.* at 9 (citing Mango Tr. 63:25-64:8).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

[people] in like circumstances.”¹⁰⁶ Indeed, the Commission has specifically recognized that “intent must often be inferred from the facts and circumstances presented.”¹⁰⁷

52. We find that the record demonstrates that Respondents, individually and together, knowingly and intentionally participated in a manipulative scheme to register, offer, and collect payments for capacity that Respondents had no intention of providing.

53. Mango admitted in his testimony that he had no intention of signing up actual customers, knew that the entities purported to be Ketchup Caddy’s customers would not perform if dispatched, and that any reasonable person would conclude Ketchup Caddy’s activities were illegal. Mango’s scienter also is reflected in his admission that he kept Meinershagen “in the dark” and created a “mirage” to make Meinershagen believe that their company was formally engaging with its purported customers.¹⁰⁸ Ketchup Caddy, acting through Mango, thus also had the requisite scienter to violate the Anti-Manipulation Rule. The evidence shows that Respondents acted with the requisite scienter in connection with their scheme to defraud.

3. In Connection with a Jurisdictional Transaction

54. The third element necessary to establish a violation of section 222 of the FPA and the Commission’s Anti-Manipulation Rule is determining whether the conduct in question was “in connection with” a transaction subject to the Commission’s jurisdiction.¹⁰⁹

55. The conduct in question is Ketchup Caddy’s participation in the PRA and offers of capacity to MISO.¹¹⁰ OE Staff explains that the Supreme Court has found that wholesale demand response programs have a direct effect on wholesale rates and that rules governing such programs are thus subject to Commission jurisdiction under section 205

¹⁰⁶ *Sullivan*, 406 F.2d at 186 (citing *Connolly v. Gishwiller*, 162 F.2d 428, 433 (7th Cir. 1947)); accord *Thomas v. Doyle*, 187 F.2d 207, 208 (D.C. Cir. 1950).

¹⁰⁷ *Investigation of Terms & Conditions of Public Util. Mkt.-Based Rate Authorizations*, 105 FERC ¶ 61,218, at P 43 (2003).

¹⁰⁸ Staff Report at 14 (citing Mango Tr. 62:6-12; 85:25).

¹⁰⁹ Order No. 670, 114 FERC ¶ 61,047 at P 49; 16 U.S.C. § 824v(a); 18 C.F.R. § 1c.2.

¹¹⁰ Staff Report at 14.

of the FPA.¹¹¹ OE Staff asserts that Mango's actions on behalf of Ketchup Caddy were thus also subject to the Commission's jurisdiction.

56. We find that the Commission has jurisdiction over Respondents' conduct, and specifically their offers of uncontracted resources in MISO's PRAs during the Relevant Period. Section 201(b)(1) of the FPA confers jurisdiction on the Commission over "the transmission of electric energy in interstate commerce and . . . the sale of electric energy at wholesale in interstate commerce . . ." ¹¹² The Supreme Court has found that rules governing wholesale demand response programs are subject to Commission jurisdiction under section 205 of the FPA. ¹¹³ The Commission also has a responsibility to ensure that rates and charges for transmission and wholesale power sales are just and reasonable and not unduly discriminatory or preferential. ¹¹⁴ Moreover, the Court of Appeals for the District of Columbia Circuit has affirmed in recent years that the Commission has "authority [under the FPA] to regulate the activity of traders who participate in energy markets."¹¹⁵ Further, the offers of uncontracted resources at issue were implemented under MISO's Commission-approved tariff. By virtue of offering resources into the PRAs, which operated under a Commission-approved tariff within MISO, a Commission-regulated independent system operator, we find the conduct at issue is under our jurisdictional purview.

¹¹¹ *Id.* (citing *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 278-79 (2016), as revised (Jan. 28, 2016) (noting that "[w]holesale demand response . . . is all about reducing wholesale rates" and finding that "rules governing wholesale demand response programs" are subject to the Commission's jurisdiction "with room to spare"))).

¹¹² 16 U.S.C. § 824(b)(1).

¹¹³ *FERC v. Elec. Power Supply Ass'n*, 577 U.S. at 278-79.

¹¹⁴ Section 205(a) of the FPA charges the Commission with ensuring that rates and charges for jurisdictional sales by public utilities and "all rules and regulations affecting or pertaining to such rates or charges are just and reasonable." *Id.* § 824d(a). Section 206(a) of the FPA gives the Commission authority over the rates and charges by public utilities for jurisdictional sales as well as "any rule, regulation, practice or contract affecting such rate[s] [or] charge[s]" to make sure they are just and reasonable and not unduly discriminatory or preferential. *Id.* § 824e(a).

¹¹⁵ *Kourouma v. FERC*, 723 F.3d 274, 276 (D.C. Cir. 2013).

4. Tariff Violations

a. Staff Report

57. OE Staff explains that, to qualify as an LMR, a resource must be able to achieve the target demand reduction level provided during registration, maintain the target level for four continuous hours, and be able to respond at least five times per year.¹¹⁶ OE Staff asserts that Ketchup Caddy's resources could not meet these requirements because it had no contractual relationships with these resources and thus it had no reasonable expectation that these resources would have performed if called upon. OE Staff therefore asserts that Ketchup Caddy's registration of these resources as LMRs and offering them into the PRA violated two MISO Tariff provisions.

58. OE Staff states that from 2016 through February 2021, MISO Tariff section 69A.3.5 provided in relevant part:

A Market Participant that possesses ownership or equivalent contractual rights in a Demand Resource can request accreditation for a Demand Resource by registering such resource with the Transmission Provider as documented in the BPM for Resource Adequacy and by meeting the following requirements.¹¹⁷

59. OE Staff argues that Ketchup Caddy is a Market Participant that did not possess ownership or equivalent contractual rights in LMRs it registered.¹¹⁸

60. OE Staff states that, during the Relevant Period, the MISO Tariff precluded Market Participants from offering uncontracted LMRs into the PRA. OE Staff states that MISO Tariff section 69A.7.1(a) provides:

Participating [Zonal Resource Credits] in the PRA: All Market Participants that *own or have contractual rights* to the Planning Resources that are represented within an [Local Resource Zone] or [External Resource Zone] and have converted Unforced Capacity to [Zonal Resource Credits], will have an option to (consistent with withholding

¹¹⁶ Staff Report at 15.

¹¹⁷ MISO Tariff § 69A.3.5 (effective Mar. 1, 2015). This section was superseded numerous times during the Relevant Period, but the cited language remained unchanged.

¹¹⁸ Staff Report at 15.

provisions) submit offers into the PRA for such [Zonal Resource Credits], to the extent that the Market Participant has not opted out of the PRA by submitting a [Fixed Resource Adequacy Plan], as described in Section 69A.9.¹¹⁹

61. OE Staff argues that Ketchup Caddy violated this provision. OE Staff alleges that, in the 2019/20, 2020/21, and 2021/22 PRAs, Ketchup Caddy was a Market Participant and offered uncontracted Zonal Resource Credits in the PRA despite not “owning or having contractual rights” to them. OE Staff thus asserts that the MISO Tariff prohibited Ketchup Caddy from offering such resources in the PRA.¹²⁰

b. Commission Determination

62. As a preliminary matter, the Commission has the authority under the FPA to impose sanctions for violations of MISO’s Tariff. Section 316A(b) of the FPA gives the Commission the authority to impose penalties for “any violation of Part II of the FPA and any rule or order thereunder,”¹²¹ and MISO’s Tariff was approved by Commission order. Though the Commission does not take enforcement action against every tariff violation, particularly violations that are minor, the Commission believes that it is especially important to act when tariff violations are, among other things, intentional and result in substantial financial harm to the market and its participants, especially when that harm will ultimately be borne by ratepayers.¹²² Here, Ketchup Caddy knowingly registered

¹¹⁹ MISO Tariff § 69A.7.1 (emphasis added by OE Staff).

¹²⁰ Staff Report at 15-16.

¹²¹ 16 U.S.C. § 825o-1(b). *See* Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216 at P 175 (“[T]he Commission has the authority to enforce Commission-approved tariff provisions.”); *Cal. ex rel. Lockyer*, 375 F.3d at 839 (9th Cir. 2004) (“Once filed with a federal agency, such tariffs are the ‘equivalent of federal regulation.’” (quoting *Cahnmann v. Sprint Corp.*, 133 F.3d 484, 488 (7th Cir. 1998))); *id.* at 853 (“Under the filed rate doctrine, the terms of the filed tariff are considered to be the law and to therefore conclusively and exclusively enumerate the rights and liabilities of the contracting parties.”) (internal quotations and citations omitted); *see also Wheelabrator Claremont Co., L.P.*, 164 FERC ¶ 61,237, at PP 1, 8 (2018) (*Wheelabrator*); *PSEG Energy Res. & Trade, LLC*, 163 FERC ¶ 61,056, at PP 1, 8 (2018).

¹²² OE regularly investigates potential violations of Commission-approved tariffs and operating agreements and, where appropriate, recommends that the Commission assess civil penalties and other remedies for such violations. These investigations, however, are often resolved through settlement. *See, e.g., Terra-Gen, LLC*, 176 FERC ¶ 61,071 (2021); *Alliance NYGT LLC*, 174 FERC ¶ 61,086 (2021); *NRG Power Mktg.*,

and offered uncontracted LMRs into the PRA that were not capable of performing if dispatched, and induced MISO to pay Ketchup Caddy capacity payments based on MISO's belief that the resources the company registered were real, contracted for demand response resources. Thus, it is appropriate for the Commission to exercise its discretion to sanction such violations.¹²³

63. Pursuant to this authority, we find that Ketchup Caddy violated sections 69A.3.5 and 69A.7.1(a) of the MISO Tariff during the Relevant Period.

D. Remedies and Sanctions

64. Having found that Respondents violated section 222 of the FPA and section 1c.2 of our regulations, we now must determine the appropriate remedies. OE Staff recommends that civil penalties be assessed against Respondents and that Mango be required to disgorge his unjust profits. After assessing the legal and factual issues and taking into consideration the seriousness of the violations and the efforts to remedy them in a timely manner, we agree with OE Staff's recommendation to assess penalties and require disgorgement.¹²⁴

65. Section 222 provides that "[i]t shall be unlawful for any entity . . . directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy . . . subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance."¹²⁵ Pursuant to section 316A(b) of the FPA, the Commission may assess a civil penalty of up to \$1 million per day, per violation against any person who violates Part II of the FPA (including section 222) or any rule thereunder.¹²⁶ In determining the

LLC, 174 FERC ¶ 61,016 (2021); *Algonquin Power Windsor Locks LLC*, 174 FERC ¶ 61,001 (2021); *Exelon Generation Co., LLC*, 170 FERC ¶ 61,008 (2020); *Wheelabrator*, 164 FERC ¶ 61,237; *Entergy Nuclear Power Mktg, LLC*, 164 FERC ¶ 61,051 (2018).

¹²³ We note that the civil penalties and disgorgement ordered assessed herein (*see infra* section D (Remedies and Sanctions)) are not solely based on Ketchup Caddy's inducement of MISO to pay Ketchup Caddy capacity payments. The assessed amounts are primarily driven by the manipulative scheme Ketchup Caddy engaged in and the magnitude of the market harm this fraud caused. Ketchup Caddy's tariff violations are only a subset of the conduct considered in assessing the penalties and disgorgement below.

¹²⁴ 16 U.S.C. § 825o-1(b).

¹²⁵ *Id.* § 824v(a).

¹²⁶ *Id.* § 825o1-(b). This penalty authority is adjusted annually to reflect inflation.

appropriate penalty amount, section 316A(b) of the FPA requires the Commission to consider “the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner.”¹²⁷

66. The Commission has adopted Penalty Guidelines to guide this statutory penalty analysis and provide a civil penalty range for violations by companies, such as Ketchup Caddy.¹²⁸ The 2008 Revised Policy Statement on Enforcement and 2005 Policy Statement on Enforcement also inform the Commission’s analysis.¹²⁹ The Penalty Guidelines use two sets of factors to establish penalties. First, the Penalty Guidelines calculate a Base Penalty amount based on factors specifically tailored to the seriousness of the violation, including the harm caused by the violation. Second, the Penalty Guidelines consider several culpability factors, including efforts to remedy violations, which lead to minimum and maximum multipliers of the Base Penalty amount. The Penalty Guidelines then combine these sets of factors to arrive at the penalty range. After establishing a penalty range, the Commission examines the specific facts of each case to determine where the penalty should fall, and in appropriate cases, whether a penalty should be outside the range.¹³⁰

67. The Penalty Guidelines do not apply to individuals such as Mango. Instead, the Commission determines penalties for individuals based on the facts and circumstances as applied to five factors, pursuant to section 316A of the FPA: (1) seriousness of the

The Staff Report cites to the adjusted amount that became effective in January 2023, which was \$1,496,035 per violation, per day to reflect inflation. *See* Staff Report at 16 (citing *Civil Monetary Penalty Inflation Adjustments*, Order No. 886, 182 FERC ¶ 61,002, at P 8 (2023)).

¹²⁷ 16 U.S.C. § 82501-(b).

¹²⁸ *See* FERC Penalty Guidelines § 1C2.5. *See generally* *Enf’t of Statutes, Orders, Rules, & Reguls.*, 132 FERC ¶ 61,216 (2010) (Revised Policy Statement on Penalty Guidelines); *Enforcement of Statutes, Orders, Rules, Reguls.*, 130 FERC ¶ 61,220 (2010) (Initial Policy Statement on Penalty Guidelines). The FERC Penalty Guidelines are appended to the Revised Policy Statement on Penalty Guidelines.

¹²⁹ *Enf’t of Statutes, Orders, Rules, & Reguls.*, 123 FERC ¶ 61,156 (2008) (Revised Policy Statement on Enforcement); *Enf’t of Statutes, Orders, Rules & Reguls.*, 113 FERC ¶ 61,068 (2005) (Policy Statement on Enforcement).

¹³⁰ Initial Policy Statement on Penalty Guidelines, 130 FERC ¶ 61,220 at P 32 (“We do not intend to depart from the Penalty Guidelines regularly, but neither will we always adhere to a rigid application of them.”).

violation; (2) commitment to compliance; (3) self-reporting; (4) cooperation; and (5) reliance on OE Staff guidance.¹³¹

1. Assessment of Civil Penalty Against Ketchup Caddy

a. Staff Report

68. OE Staff recommends a civil penalty for Ketchup Caddy of \$25,000,000. OE Staff states that, under the Penalty Guidelines, the base penalty in this case is the pecuniary loss from the violation.¹³² OE Staff calculates that the pecuniary losses total \$17,639,142.07 due to market distortion—that is, Ketchup Caddy’s fraudulent MW reduced capacity prices and cleared MISO’s PRAs at the expense of other Market Participants’ resources.¹³³ OE Staff states that the Commission’s Penalty Guidelines, as well as Commission precedent, hold that a “reasonable estimate” of loss is sufficient for assessing penalties.¹³⁴

b. Commission Determination

i. Seriousness of the Violation

69. The Commission’s Revised Policy Statement on Enforcement identifies several factors to consider in our analysis of the seriousness of the violations under the FPA.¹³⁵ We discuss these factors below to the extent that they are relevant to Respondents’ conduct.

70. *Harm Caused by the Violations.* The Penalty Guidelines measure a violation’s seriousness by examining the loss caused.¹³⁶ Commentary Application Note 2A to

¹³¹ See Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 at PP 54-71; *City Power*, 152 FERC ¶ 61,012 at P 229; *Maxim Power Corp.*, 151 FERC ¶ 61,094, at P 107 (2015) (*Maxim Power*).

¹³² Staff Report at 17.

¹³³ *Id.*

¹³⁴ *Id.* (citing FERC Penalty Guidelines § 2B1.1, Commentary Application Note 2(C) (in calculating penalty, the “Commission need only make a reasonable estimate of the loss”); *ETRACOM*, 155 FERC ¶ 61,284, at P 177 n.345 (2016)).

¹³⁵ See Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 at PP 55-56.

¹³⁶ FERC Penalty Guidelines § 2B1.1(b)(1).

Penalty Guidelines § 2B1.1 specifies that “loss” is the greater of the “actual loss or intended loss.” Commentary Application Note 2A defines “actual loss” as “the reasonably foreseeable pecuniary harm that resulted from the violation.” Here, Respondents caused \$17,639,142.07 in market harm due to market distortion – that is, Ketchup Caddy’s fraudulent MW reduced capacity prices and cleared MISO’s PRAs in 2019, 2020, and 2021 at the expense of other Market Participants’ resources.

71. *Manipulation, Deceit, Fraud, and Recklessness or Indifference to Results of Actions.* As noted above, Respondents’ manipulative trades operated as a fraud and deceit on the MISO market and MISO market participants. To be specific, Ketchup Caddy engaged in fraud by registering demand response resources with MISO without those resources’ knowledge or consent and offering uncontracted resources into the annual PRA.

72. *Willful Action or in Concert with Others.* Respondents’ conduct was willful. Respondents understood that they were registering uncontracted LMRs and offering their capacity into MISO’s PRAs, despite not having authority from those customers to do so, and knowing that those customers would not perform if called upon.¹³⁷

ii. Aggravating and Mitigating Culpability Factors

73. The Penalty Guidelines rely on minimum and maximum multipliers of the Base Penalty to arrive at a penalty range.¹³⁸ The multipliers are based on a culpability score, which starts with a base of 5 points.¹³⁹ This base culpability score may be adjusted upwards or downwards based on several aggravating and mitigating culpability factors.

74. *Cooperation.* We agree with OE Staff’s subtraction of one point from the culpability score in recognition of Ketchup Caddy’s cooperation with the investigation.

75. We find that Ketchup Caddy’s culpability score is 4 points. A culpability score of 4 indicates a multiplier of 0.8 to 1.6, which is then applied to the base penalty of \$17,639,142.07 to produce a penalty range of \$14,111,313.66 to \$28,222,627.31 under the Penalty Guidelines.

¹³⁷ Staff Report at 10 (citing Mango Tr. 74:7-12); *id.* at 15.

¹³⁸ FERC Penalty Guidelines § 1C2.4.

¹³⁹ *Id.* § 1C2.3(a).

iii. Appropriate Penalty

76. We find that Ketchup Caddy’s manipulative conduct was serious and intentional. Based on our assessment above and the Staff Report, we find that there is a critical need to discourage and deter unlawful conduct similar to Ketchup Caddy’s. Taking into consideration Ketchup Caddy’s cooperation with this investigation, as well as the other factors described above, we find it appropriate to assess a civil penalty of \$25,000,000 for Ketchup Caddy’s conduct and we find this sum to be fair and reasonable. Should Ketchup Caddy’s ability to pay the stated civil penalty be a concern, we will allow Ketchup Caddy to pay the penalty pursuant to a payment plan negotiated with OE Staff, subject to Commission approval. Ketchup Caddy and OE Staff should submit any such payment plan to the Commission for approval within 30 days of the date of this Order.

2. Assessment of Civil Penalty and Disgorgement Against Mango

77. The Commission determines penalties “for natural persons based on the facts and circumstances of the violation but will look to [the Penalty Guidelines] for guidance in setting those penalties.”¹⁴⁰ Consistent with the Revised Policy Statement on Enforcement, we determine civil penalties for individuals based on the facts and circumstances as applied to five factors: (1) seriousness of the violation; (2) commitment to compliance; (3) self-reporting; (4) cooperation; and (5) reliance on OE Staff guidance.¹⁴¹

a. Staff Report

78. OE Staff recommends a civil penalty of \$1,500,000 against Mango.¹⁴² OE Staff explains that its recommended penalty is based on the statutory factors discussed above and the factors set out in the Commission’s Revised Policy Statement on Enforcement.¹⁴³

¹⁴⁰ *Id.* § 1A1.1, Commentary Application Note 1.

¹⁴¹ See Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 at PP 54-71; *City Power*, 152 FERC ¶ 61,012 at P 229; *Maxim Power*, 151 FERC ¶ 61,094 at P 107.

¹⁴² Staff Report at 19.

¹⁴³ *Id.*

79. OE Staff contends that both the Commission and the courts that have considered the issue have determined that individuals are “entities” within the meaning of section 222 of the FPA.¹⁴⁴

80. The court in *Coaltrain* made clear that an individual may be held liable as a primary violator under section 222(a) if he partakes in the decision to execute the manipulative scheme.¹⁴⁵ Based on the evidence in the record, we find that Mango’s conduct satisfies this standard.

81. OE Staff asserts that Mango carried out a brazenly fraudulent scheme that had no purpose other than to mislead MISO and enrich Mango and Ketchup Caddy’s co-owner.¹⁴⁶ OE Staff further states that Mango’s scheme, by introducing fictitious resources into MISO’s capacity market, potentially risked the reliability of the MISO grid. OE Staff also claims that Mango operated Ketchup Caddy as a fraudulent enterprise with no legitimate purpose and no compliance function and that Mango did not self-report the violation. OE Staff further notes the scheme was highly profitable for Mango in that he personally gained over \$500,000, and that the harm he caused—more than \$17 million in losses—is substantially larger.¹⁴⁷ Based on these factors, OE Staff asserts that \$1,500,000 is an appropriate penalty given the serious, deliberate, and multi-year duration of the fraud that Mango designed and perpetuated.

82. OE Staff recommends that the Commission require Mango to disgorge \$506,502, plus interest, in unjust profits.¹⁴⁸ OE Staff states that Ketchup Caddy acted as a passthrough entity, with all income it earned from MISO being distributed to its co-owners, Mango and Meinershagen. The \$506,502 figure is half the \$1,013,004 in capacity payments paid to Ketchup Caddy by MISO during the Relevant Period. The Commission previously issued an Order Approving Stipulation and Consent Agreement between Staff and Meinershagen requiring Meinershagen to pay the other half of the

¹⁴⁴ *Id.* at 12-13 (citing *FERC v. City Power Mktg., LLC*, 199 F. Supp. 3d 218, 240-41 (D.D.C. 2016); *FERC v. Maxim Power Corp.*, 196 F. Supp. 3d 181, 200-01 (D. Mass. 2016); *FERC v. Silkman*, 177 F. Supp. 3d 683, 709-11 (D. Mass. 2016); *FERC v. Barclays Bank PLC*, 105 F. Supp. 3d 1121, 1145-46 (E.D. Cal. 2015).

¹⁴⁵ *FERC v. Coaltrain Energy, L.P.*, No. 2:16-cv-732, 2018 WL 7892222, at *20 (S.D. Ohio Mar. 30, 2018).

¹⁴⁶ Staff Report at 19.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 19-20.

capacity payments paid to Ketchup Caddy (\$525,451.93, inclusive of interest) in disgorgement.

b. Commission Determination

i. Seriousness of the Violation

83. *Harm Caused by the Violation.* Mango's manipulative conduct caused market harm by creating market distortions in MISO due to Ketchup Caddy's fraudulent MW reducing capacity prices and clearing at the expense of other Market Participants' resources.¹⁴⁹ As discussed above, this manipulative conduct caused \$17,639,142.07 in market harm. Mango persisted in his scheme until Ketchup Caddy's false registrations and offers came to light through OE Staff's investigation.

84. *Manipulation, Deceit, Fraud, and Recklessness or Indifference to Results of Actions.* As described above, Mango's scheme operated as a fraud and deceit on the MISO market and MISO market participants.

85. *Willful Action or in Concert with Others.* Mango conceived of the manipulative scheme and involved Ketchup Caddy's co-owner, Meinershagen, in order to carry it out.

ii. Aggravating and Mitigating Culpability Factors

86. *Commitment to Compliance, Self-Reporting, Cooperation, and Reliance on OE Staff Guidance.* Only one factor, cooperation, serves to mitigate Mango's violations. Mango did not self-report the violations and did not seek guidance from OE Staff.

iii. Appropriate Penalty

87. We find that Mango's manipulative conduct was serious and intentional. Based on our assessment above and the Staff Report, we find that there is a critical need to discourage and deter unlawful conduct similar to Mango's. Taking into consideration Mango's cooperation with this investigation, as well as the other factors described above, we find it appropriate to assess a civil penalty of \$1,500,000 for Mango's conduct and we find this sum to be fair and reasonable. Should Mango's ability to pay the stated civil penalty be a concern, we will allow Mango to pay the penalty pursuant to a payment plan negotiated with OE Staff, subject to Commission approval. Mango and OE Staff should submit any such payment plan to the Commission for approval within 30 days of the date of this order.

¹⁴⁹ *Id.*

88. We also find that Mango is required to disgorge all of his profits from the manipulative scheme. It is long-standing Commission practice to require disgorgement of unjust profits as an equitable remedy for manipulation.¹⁵⁰ In cases where pecuniary gain results from a violation, “the Commission enters a disgorgement order for the full amount of the gain plus interest.”¹⁵¹

89. The disgorgement amount “need only be a reasonable approximation of profits causally connected to the violation”¹⁵² and we find that OE Staff’s recommended approach meets this standard. OE Staff calculates the disgorgement amount to be half the \$1,013,004 in capacity payments paid to Ketchup Caddy by MISO during the Relevant Period.

90. Therefore, in addition to the civil penalties, we direct a disgorgement payment, plus applicable interest, of \$506,502. Mango shall make \$506,502 in disgorgement payments as restitution to MISO. Such payments shall be made within 60 days of the date of this order. We require the interest to be calculated in accordance with 18 C.F.R. § 35.19a from the date Mango received payment of the unjust profits.

E. Rehearing

91. In accordance with section 313(a) of FPA and Rule 713 of the Commission’s Rules of Practice and Procedure, Respondents may request rehearing no later than 30 days after the issuance of this order assessing the penalty.¹⁵³ Given Respondents’ failure to make a timely election under section 31(d)(1) of the FPA, the procedures of section 31(d)(2) of the FPA apply.¹⁵⁴ If a person fails to make a timely election under section 31(d)(1) of the FPA, the statute provides that the Commission shall assess a civil penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing before an administrative law judge.¹⁵⁵

¹⁵⁰ Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 at P 43.

¹⁵¹ FERC Penalty Guidelines § 1B1.1(a).

¹⁵² *SEC v. Whittemore*, 659 F.3d 1, 7 (D.C. Cir. 2011) (citation omitted).

¹⁵³ *See Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317, at P 5 (2006)

¹⁵⁴ Order to Show Cause, 186 FERC ¶ 61,132 at ordering para. (E).

¹⁵⁵ 16 U.S.C. § 823b(d)(2)(A).

The Commission orders:

(A) Ketchup Caddy is hereby directed to pay the United States Treasury by wire transfer a civil penalty in the sum of \$25,000,000 within 60 days of the issuance of this order, or to submit a proposed payment plan for approval within 30 days of the issuance of this order, as discussed in the body of this order. If Ketchup Caddy fails to make this civil penalty payment within the stated time period, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19a from the date that payment is due.

(B) Mr. Mango is hereby directed to pay the United States Treasury by wire transfer a civil penalty in the sum of \$1,500,000 within 60 days of the issuance of this order, or to submit a proposed payment plan for approval within 30 days of the issuance of this order, as discussed in the body of this order. If Mr. Mango fails to make this civil penalty payment within the stated time period, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19a from the date that payment is due.

(C) Mr. Mango is hereby directed to disgorge \$506,502 as restitution to MISO. Such payments shall be made within 60 days of the issuance of this order, and with applicable interest, as discussed in the body of this order.

By the Commission.

(S E A L)

Carlos D. Clay,
Acting Deputy Secretary.