

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Active Power Investments LLC

Docket No. ER26-1457

Protest of Public Citizen, Inc.

Active Power Investments' February 20 application for market-based rate authority identifies its upstream owners as Arie Kapulkin and Michael Rosenberg.¹ The application omits that these two individuals were the subject of a Commission enforcement order assessing civil penalties for their role in manipulating power markets. Market based rates are an incentive, and can only be granted to applicants that do not engage in fraud, deception or misrepresentation.² The Commission's sanction of the applicants for market manipulation clearly disallows their ability to be granted MBR authority. The Commission must therefore reject the application.

On June 17, 2016 the Commission issued an *Order Assessing Civil Penalties* against ETRACOM LLC and Michael Rosenberg, determining they had violated the Federal Power Act by manipulating U.S. power markets, assessing civil penalties of \$2.4 million against ETRACOM and \$100,000 against Rosenberg. At the time, Arie Kapulkin was co-owner of ETRACOM.³ ETRACOM, Rosenberg and the Commission then entered into mediation, with the Commission issuing an *Order Approving Stipulation and Consent Agreement* on April 10, 2018 where ETRACOM agreed to make payments totaling \$1.9 million.⁴

Section 201 of the Federal Power Act declares "that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public

¹ At page 3, https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20260220-5100

² See prior Public Citizen comments on MBR rates

https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20190318-5100

³ 155 FERC ¶ 61,284, Docket No. IN16-2, www.ferc.gov/sites/default/files/2020-05/155FERC61284.pdf

⁴ 163 FERC ¶ 61,022, Docket No. IN16-2,

https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20180410-3060

interest.”⁵ Courts have consistently determined that the primary aim of the Federal Power Act is to uphold the public interest⁶ and protect consumers from harm.⁷

For decades, the Commission has stipulated that its market based rate authorities under Section 205 of the FPA are conditioned on an applicant’s conduct, determining that MBR applicants “will not engage in fraud, deception or misrepresentation. The provision of false, misleading or inaccurate information undermines the integrity of the FERC decision-making process, the smooth operation of markets and FERC’s ability to ensure just and reasonable rates for customers.”⁸ Applicants who have been sanctioned by the Commission for market manipulation should not be granted market based rate authority.

The Commission revoked Enron’s MBR authority for market manipulation and failure to report material information.⁹ The Commission suspended JP Morgan’s MBR authority for six months as punishment for the bank’s failure to adhere to the Commission’s standards of conduct.¹⁰ The same authority to revoke MBR authority for conduct includes the authority to deny a MBR application for conduct. Applicant’s decision to agree to an enforcement action involving their manipulation of electric power markets is clear justification to deny an application for MBR authority.

Respectfully submitted,



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⁵ 16 USC § 824(a).

⁶ *NAACP v. FPC*, 425 U.S. 662.

⁷ *Pennsylvania Power Co. v. FPC*, 343 U.S. 414 (1952).

⁸ *FERC Votes to Suspend JP Morgan Ventures Energy Corp.’s Market-Based Rate Authority*, https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20121115-3000

⁹ 103 FERC ¶61,343, Docket No. EL03-77, https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20030625-0277

¹⁰ *Order Suspending Market-Based Rate Authority*, 141 FERC ¶ 61,131, Docket No. EL12-103, https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20121114-3047