

CLIENT ALERT

# Coaltrain Settles with FERC, \$4 Million in Disgorgement with No Civil Penalty

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## AUTHORS

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On October 11, 2022, the Federal Energy Regulatory Commission (“FERC”) approved a Stipulation and Consent Agreement (“Consent Agreement”) between the Office of Enforcement and Coaltrain Energy, L.P. (“Coaltrain”), resolving a federal lawsuit and FERC’s claims alleging that Coaltrain and a group of individually named Coaltrain employees violated section 222 of the Federal Power Act (“FPA”) and the Commission’s Anti-Manipulation Rule, 18 C.F.R. § 1c.2.<sup>1</sup> FERC also alleged that Coaltrain violated 18 C.F.R. § 35.41(b), by making false and misleading statements to Staff during the investigation.<sup>2</sup> Coaltrain settled the claims by agreeing to pay disgorgement in the amount of \$4,000,000 to PJM Interconnection, LLC (“PJM”), a very substantial discount from the originally assessed \$38,000,000 in civil penalties and approximately \$4,000,000 in disgorgement.<sup>3</sup> Coaltrain stipulated to the facts set forth in Section II of the Consent Agreement, but neither admitted nor denied the alleged violations set forth in Section III. The Consent Agreement resolved all claims against both Coaltrain and the individual Defendants.

## Factual and Procedural Background

During the summer of 2010, Coaltrain entered into Up To Congestion (“UTC”) trades in the PJM market.<sup>4</sup> After a five-year investigation into Coaltrain’s summer 2010 UTC-trading activity, FERC issued an Order to Show Cause to Coaltrain and

<sup>1</sup> *Coaltrain Energy, L.P., Peter Jones, Shawn Sheehan, Robert Jones, Jeff Miller, and Jack Wells*, 181 FERC ¶ 61,031 (2022) (“Order”).

<sup>2</sup> Order at P 6.

<sup>3</sup> Consent Agreement at P 7.

<sup>4</sup> Order at P 3.

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## Coaltrain Settles with FERC, \$4 Million in Disgorgement with No Civil Penalty

the five individual Defendants named in the action<sup>5</sup>. FERC then assessed civil penalties of \$26,000,000 against Coaltrain (jointly and severally with Defendants Peter Jones and Shawn Sheehan); \$5,000,000 against P. Jones; \$5,000,000 against Sheehan; \$1,000,000 against Robert Jones; \$500,000 against Jeff Miller; and \$500,000 against Jack Wells, with an additional \$4,121,894 in disgorgement to be paid, jointly and severally, by Coaltrain, P. Jones, and Sheehan<sup>6</sup>. In the Order Assessing Civil Penalties, FERC found that Coaltrain and the individual Defendants engaged in market manipulation, through fraudulent UTC transactions meant to result in excessive Marginal Loss Surplus Allocation payments, as well as violations of FERC's market behavior rules by making false and misleading statements and material omissions during the course of the investigation.<sup>7</sup>

Section 31(d) of the FPA outlines two procedural pathways for a respondent to challenge FERC's imposition of civil penalties for violations of the FPA's anti-manipulation provisions. A respondent may either: (1) have FERC's allegations adjudicated before an Administrative Law Judge; or (2) require FERC to "promptly" assess civil penalties and, in the event the civil penalty is not paid, file a complaint seeking *de novo* review in federal district court. Coaltrain and the individuals, like most other respondents, chose the *de novo* review option, resulting in the assessment of the civil penalties previously described and the subsequent filing of a complaint by FERC in the Southern District of Ohio seeking an order affirming the penalty assessment.<sup>8</sup>

In the more than six years since the complaint's filing, the litigation has taken numerous turns, including a rejected motion to dismiss, and most notably, a consequential ruling by the district court that it lacked jurisdiction to review the penalties related to joint and several liability and disgorgement.<sup>9</sup> In the 2021 Order, the court noted that the litigation was brought pursuant to FPA section 31(d) procedures, which, in the court's reading of the statute, address only the enforcement of civil penalty assessments, and not the imposition of other remedies such as joint and several liability or disgorgement. The court noted that FERC's authority to assess non-civil penalties stems from the broad "necessary and appropriate" authority found in section 309 of the FPA, and that orders arising under this authority may only be reviewed by federal courts of appeals, not district courts.<sup>10</sup> Consequently, the court held that the joint and several liability and disgorgement remedies were outside the scope of FPA section 31(d), and were therefore unreviewable by a district court.<sup>11</sup> As a practical matter, this meant that the court lacked the authority to impose such remedies. On March 3, 2022, the court

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<sup>5</sup> *Coaltrain Energy, L.P.*, 154 FERC ¶ 61,204, at P 1 (2016).

<sup>6</sup> *Coaltrain Energy, L.P.*, 155 FERC ¶ 61,204, at P 1 (2016).

<sup>7</sup> *Id.*

<sup>8</sup> Petition for an Order Affirming FERC's May 27, 2016 Order Assessing Civil Penalties at PP 50, 52, *FERC v. Coaltrain Energy, L.P.*, No. 2:16-cv732 (S.D. Ohio July 27, 2016) (the "Complaint").

<sup>9</sup> Opinion and Order, *FERC v. Coaltrain Energy, L.P.*, No. 2:16-cv-732 (S.D. Ohio Nov. 29, 2021) ("2021 Order"). This Order was discussed in a December 9, 2021 client alert by Willkie attorneys, available [here](#).

<sup>10</sup> See 16 U.S.C. § 825l.

<sup>11</sup> 2021 Order at 2.

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rejected FERC's motion to have the 2021 Order certified for interlocutory appeal.<sup>12</sup> This significant blow to FERC's case may have been a factor encouraging it to pursue judicial mediation with Coaltrain rather than to press on with a trial.

In the Settlement Agreement, Coaltrain only stipulated to the facts contained in Section II of the Consent Agreement, describing the procedural history of the matter. It did not stipulate to the facts in Section III, which described the alleged violations. The Consent Agreement excludes many of the penalties set forth in the initial civil penalty assessment, and instead imposes just a \$4,000,000 disgorgement to be paid to PJM by Coaltrain, a sharp contrast to the "disgorgement totaling \$4,121,894 and penalties totaling \$38 million relating to these determinations" that were originally assessed by FERC.<sup>13</sup>

### Conclusion

After six years of litigation in federal court, FERC settled the matter for a fraction of what it originally sought. One takeaway is that *de novo* review in federal court is a very lengthy and uncertain process. Another takeaway is that if a defendant has the resources and the will, forcing FERC to litigate the matter in district court may be worthwhile. Ultimately, the decision of whether to litigate or to settle belongs to the client, and *Coaltrain* provides another data point to be considered in making that decision. There is no guarantee that going to federal court will result in a favorable outcome, but the defendant will be in front of an impartial adjudicator who likely will subject FERC's legal theories and factual assertions to careful and exacting scrutiny.

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<sup>12</sup> Opinion and Order, *FERC v. Coaltrain Energy, L.P.*, No. 2:16-cv-732 (S.D. Ohio March 2, 2022).

<sup>13</sup> Consent Agreement at P 7-9.

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