

CLIENT ALERT

There Is No Second Bite from the Apple: FERC Settles With Ethanol Producer Over Alleged Cross-Market Manipulation

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On June 13, 2025, the Federal Energy Regulatory Commission (the “Commission” or “FERC”) issued an order approving a Stipulation and Consent Agreement (“Consent Agreement”) between the Office of Enforcement (“OE”) and Green Plains Inc. (“Green Plains”).¹ The Consent Agreement resolved OE’s investigation of allegations that Green Plains committed market manipulation, when Green Plains engaged in natural gas bidweek trading during four months in 2023 while holding leveraged short financial positions that settled off the Platts Inside FERC (“IFERC”) MichCon Index. As part of the Consent Agreement, Green Plains agreed to (1) pay a civil monetary penalty of \$927,990, (2) pay \$19,069 in restitution, (3) implement enhancements to its compliance program, and (4) be subject to certain trading restrictions. Green Plains stipulated to the facts but neither admitted nor denied the alleged violations of the Natural Gas Act and FERC’s Anti-Manipulation Rule, 18 C.F.R. § 1c.1.

¹ *Green Plains*, 191 FERC ¶ 61,200 (2025).

The conduct at issue involved an example of what FERC describes as cross-market manipulation—i.e., uneconomic trading of a physical product that benefits a related financial position that settles off of physical prices. The twist here, however, is that OE’s Division of Analytics and Surveillance (“DAS”) had flagged similar bidweek trading in 2021, after which Green Plains agreed to implement compliance enhancements. But, as noted by the Commission, Green Plains failed to strictly implement the compliance enhancements. The moral of the story may be that it is important for any entity trading in FERC’s markets to have robust internal compliance procedures that monitor and flag potentially anomalous trading activity—and especially so if the entity has told FERC that it is putting in place compliance enhancements.

Factual Background

Green Plains is a large ethanol fuel producer headquartered in Omaha, Nebraska. As part of its business, Green Plains holds six billion cubic feet of natural gas storage rights at MichCon, a major physical gas storage hub, and trades monthly gas at fixed price and at physical basis.² During bidweek (the last three business days of the month preceding the delivery month) for four months in 2023 (January, February, March, and April), Green Plains traded large amounts of physical gas at a loss or for negligible profit while simultaneously holding leveraged short financial positions that settled off the IFERC MichCon Index, a Platts index based on the volume weighted average price of reported transactions at MichCon.³ Green Plains’ transactions accounted for 32.70%, 25.86%, 30.04%, and 36.17%, respectively, of volumes reported to the Platts IFERC MichCon index, though Green Plains does not independently report its transactions to Platts. The Consent Agreement alleges that Green Plains entered into such trades not as legitimate hedges for the gas it held in storage but as part of a scheme to manipulate the price of the IFERC MichCon Index and to benefit its short positions.⁴ Green Plains, according to OE, profited an additional \$19,069.⁵

Importantly, this was not the first time that OE had examined Green Plains’ trading during bidweek. In 2021, Green Plains engaged in substantively similar MichCon bidweek trading and was the subject of an OE DAS inquiry. In response to the DAS inquiry, Green Plains agreed to implement compliance enhancements to prevent this type of speculative trading; however, Green Plains failed to fully comply with the enhanced compliance procedures.⁶

OE’s Alleged Violations, Remedies, and Sanctions

Under the Consent Agreement, OE concluded that Green Plains engaged in a manipulative scheme in which it sold gas at a loss or negligible profit in order to benefit its short financial positions. OE determined this behavior

² *Id.* PP 5–6.

³ *Id.* PP 7–9.

⁴ *Id.* P 11.

⁵ *Id.* P 12.

⁶ *Id.* P 10.

constituted a violation of section 4A of the Natural Gas Act, 15 U.S.C. § 717c-1 (prohibition of market manipulation), and FERC's Anti-Manipulation Rule, 18 C.F.R. § 1c.1.

Pursuant to the Consent Agreement, Green Plains agreed to pay a civil monetary penalty of \$927,990 (divided into three yearly installments), as well as \$19,069 in restitution.⁷ Green Plains also agreed to continue implementing a number of compliance measures it first began implementing in 2023, including: tracking and reviewing its natural gas market concentration, physical positions, and financial positions; conducting annual trading compliance training; holding quarterly compliance meetings; and enforcing the compliance measures detailed in its FERC-filed compliance program.⁸ As part of the Consent Agreement, Green Plains is required to submit ongoing annual compliance monitoring reports to OE for at least three years. Further, the Consent Agreement prohibits Green Plains from trading monthly fixed price and physical basis at MichCon during bidweek if Green Plains holds a related financial position that settles on the IFERC MichCon index.⁹

Conclusion

This enforcement action demonstrates not only the importance of having a robust compliance program but actually following it. Per the Consent Agreement, Green Plains had previously engaged in substantially similar trading activity for which it was the subject of an OE inquiry and agreed to implement additional compliance safeguards. Despite those measures, Green Plains engaged in nearly the same conduct two years later. The factual disclosures in the Consent Agreement make clear that the Commission viewed Green Plains' failure to implement its enhanced compliance procedures as a major concern which likely, it is reasonable to infer, played an important role in the Commission seeking nearly a million dollars in monetary penalties compared to only \$19,060 in disgorgement—a ratio of penalty-to-disgorgement of more than 50 to 1. This case should serve as a reminder to regulated entities that while having robust compliance policies and procedures are necessary, those measures must actually be followed. Moreover, it also seems clear that while the Commission may give a regulated entity one bite from the proverbial apple, the entity should not expect a second if it has failed to follow through on its commitments to the Commission.

⁷ *Id.* P 15–16.

⁸ *Id.* P 21.

⁹ *Id.* P 27.

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