



## FERC Issues Landmark Enforcement Order in American Efficient

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On April 15, 2026, the Federal Energy Regulatory Commission (FERC or the Commission) issued one of the largest enforcement penalty orders in its history, finding that American Efficient, LLC (American Efficient) and its affiliates engaged in a decade-long fraudulent scheme involving offering energy efficiency resources (EERs) over which they had no contractual authority into the PJM Interconnection, L.L.C. (PJM) and Midcontinent Independent System Operator, Inc. (MISO) capacity markets.<sup>1</sup>

The Commission ordered American Efficient to pay a civil penalty of \$722 million and to disgorge approximately \$410 million in unjust profits (plus interest). The violations considered by FERC in *American Efficient* spanned more than a decade, and FERC imposed penalties and disgorgement covering the full period of misconduct. Thus, the order underscores FERC's willingness to look back many years, disgorge the full measure of unjust profits, and impose penalties at the upper end of its authority when conduct is found to be intentional and persistent.

Both Chairman Swett and Commissioner LaCerte issued concurrences emphasizing the seriousness of American Efficient's misconduct and underscoring the appropriateness—and necessity—of the Commission's action. Chairman Swett concurred to reject American Efficient's claim that the enforcement action reflected regulatory overreach, emphasizing that this case involved a straightforward application of clear tariff requirements to egregious misconduct. While reaffirming her long-standing commitment to reducing unnecessary regulation, she stressed that this was precisely the type of fraud Congress intended the

Commission's expanded enforcement authority to address. In her view, the case was legally simple despite the length of the order: American Efficient siphoned nearly half a billion dollars from ratepayers by claiming credit for energy efficiency gains produced by others, increasing consumer costs, distorting capacity markets and diverting payments during critical reliability events such as Winter Storm Elliott. Swett characterized the Commission's action as essential to protecting ratepayers, market integrity and grid reliability.

Commissioner LaCerte also concurred fully but called for additional steps, most notably a criminal referral to the Department of Justice. He framed American Efficient's conduct as a deliberate, large-scale fraud that betrayed the environmental and reliability premises underlying EERs. LaCerte emphasized the company's knowing misconduct: Selling modeled, hypothetical savings as real capacity, lacking control over any customer load reductions, providing no consumer incentives and aggressively expanding its market participant even after being disqualified in certain markets. He concluded that the extraordinary harm to ratepayers, massive financial gain, sophistication of the actor and evidence of willful conduct warranted criminal accountability in addition to civil penalties.

## **Background: Capacity Markets and Energy Efficiency Resources**

From 2009 until the 2025/2026 Delivery Year, the PJM tariff allowed EERs to submit sell offers associated with their commitment to reduce their energy consumption during periods of peak demand into PJM's Reliability Pricing Model (RPM)—PJM's forward capacity market. To be eligible to participate in the RPM as an EER, the EER was required to be "designed to achieve a continuous . . . reduction in electric energy consumption at the end-use customer's retail site that is not reflected in the peak load forecast prepared for the Delivery Year" and have "the contractual authority to control the . . . load reduction capability of [the EER]." If the EER cleared the PJM auction, it received both a capacity payment and a corresponding capacity obligation requiring it to reduce energy consumption when called upon by PJM.

MISO's tariff was revised in 2012 to allow EERs to offer to reduce their energy demand into the MISO Planning Resource Auction (PRA)—MISO's capacity market. Under the MISO tariff, a market participant could qualify to offer as an EER if it "possesse[d] ownership or equivalent contractual rights, from an end-use customer project (including the installation of more efficient devices or equipment or implementation of more efficient processes or systems) . . . designed to achieve a continuous reduction in electric energy consumption during On Peak

daylight hours.” If an EER cleared the PRA it would receive zonal resource credits and a corresponding obligation to reduce its demand when called upon by MISO.

## **American Efficient’s Business Model**

American Efficient cleared over 11 gigawatts of EER capacity in these markets for more than 11 years based on agreements it entered into with retailers, distributors and manufacturers of energy efficiency (EE) products for sales data for EE products sold to end-use customers. Under these agreements, American Efficient would provide its counterparties with “micropayments”—frequently amounting to pennies per product purchased—in exchange for sales data and the right to receive title to the “Environmental Attributes” of the product sold, by which American Efficient claimed to acquire “all rights to claim or receive capacity resource payments...related to energy savings.” In practice, American Efficient did not itself install any EE products at end-use sites and did not contract with any end-use customers who agreed to reduce their energy demand. Thus, American Efficient did not have any contractual relationship with any end-use customers that would allow it to ensure “a continuous reduction” in consumption during on-peak hours.

While American Efficient claimed, as an affirmative defense, that it had met with PJM on several occasions in 2017 to explain its business model and market participation plan, FERC determined that its representations to the regional transmission operator “did not comport with reality,” and instead amounted to material misrepresentations. For example, American Efficient initially may have explained that its retail program partners might reduce the price of an EE light bulb from \$3 to \$2, resulting in American Efficient paying the retailer \$1 per bulb (e.g., \$4 for a four-pack of bulbs). Over time, American Efficient began to remove language about reducing retail prices from its PJM submissions but it did not alert PJM that it was doing so.

## **Core Findings of the Commission**

### ***1. American Efficient’s Strategy Was Inconsistent with the Tariff***

The Commission found that American Efficient violated the PJM and MISO tariffs because it never owned, nor had the requisite contractual authority to control, the load-reduction capability of the EERs for which it claimed capacity payments. Under both tariffs, load reduction arises only from end-use customer projects—the installation and operation of

efficient equipment at retail customer sites—and control over that load reduction rests initially with the end-use customer. American Efficient had no contractual relationships with end-use customers and therefore could not acquire control over load-reduction capability through its agreements with retailers or manufacturers, which themselves did not possess that control. As a result, the resources offered by American Efficient were not tied to qualifying end-use customer projects and did not meet the tariff definitions of eligible capacity resources.

Separately, the Commission concluded that American Efficient’s program failed the tariffs’ requirement that an energy efficiency resource be “designed to achieve” energy reductions that would not otherwise have occurred. FERC explained that this is a purpose-based requirement focused on how a program is structured, not a retrospective inquiry into whether some reductions happened to occur. The record showed that American Efficient’s program was designed to aggregate and monetize existing sales of efficient products, rather than to bring about new or incremental reductions in energy use through incentives or behavioral change. This conclusion was confirmed by American Efficient’s own repeated admissions, the absence of meaningful consumer- or retailer-facing incentives, the lack of any effort to measure whether the program influenced behavior, and the company’s practice of claiming capacity for “historicals”—products sold before any program agreements existed—demonstrating that the program captured value from pre-existing energy savings rather than producing new reductions as required by the PJM and MISO tariffs.

## ***2. Broad View of Market Manipulation***

FERC found that American Efficient’s conduct amounted to a pervasive “money-for-nothing” scheme that violates Section 222(a) of the Federal Power Act and FERC’s Anti-Manipulation Rule. The Commission emphasized that its manipulation finding did not rest on conventional trading strategies, artificial price signals or false bidding behavior, but instead on American Efficient’s fraudulent qualification and sale of ineligible capacity resources. American Efficient held itself out to PJM and MISO as a legitimate capacity seller despite knowing that it lacked the authority to ensure load reduction as required under the tariff. By offering resources that did not meet tariff eligibility requirements and repeatedly affirming that it satisfied applicable tariff requirements, American Efficient collected capacity payments for reductions it neither owned nor controlled.

FERC further explained that, under the Anti-Manipulation Rule, open-market transactions may be fraudulent when they create the appearance of legitimate participation while concealing a

deceptive or manipulative purpose. In FERC's view, American Efficient's participation in the capacity markets fit squarely within that framework: Its conduct created the illusion of bona fide capacity provision while masking a scheme designed to extract payments without delivering qualifying capacity or reliability value. FERC found that presenting ineligible resources to market operators distorts market outcomes, compromises the integrity of capacity procurement and harms ratepayers regardless of whether prices are directly affected.

### **3. Omission and Partial Disclosure Can Be Deceptive**

FERC also faulted American Efficient for failing to disclose material facts, including disqualification from MISO's capacity market and concerns raised by ISO New England Inc. (ISO-NE) regarding the legitimacy of its business model. These developments were directly relevant to American Efficient's qualification in the capacity markets and were known internally to raise the risk that PJM might audit the company or otherwise reevaluate American Efficient's participation in the RPM. Internal communications showed that American Efficient affirmatively chose not to inform PJM of these actions out of concern that doing so would "poke the bear" and jeopardize its position in PJM's capacity market. FERC viewed the MISO and ISO-NE actions as material because they were based on substantially similar tariff language and raised the same core concerns about eligibility, load control and additionality. The Commission treated these omissions to PJM as part of the manipulative conduct.

The compliance implication of this finding is that utilities should ensure that representations made to one market operator are consistent with experiences in other markets and that material setbacks or eligibility issues in other markets are evaluated for disclosure obligations.

## **Looking Ahead**

This term, the U.S. Supreme Court is hearing two cases regarding disgorgement and civil penalty powers of agencies, both of which could be used as a basis for arguments if American Efficient appeals the decision. In *Sripetch v. SEC*, the Supreme Court is considering whether the U.S. Securities and Exchange Commission (SEC) may seek equitable disgorgement without showing investors suffered pecuniary harm. In *FCC v. AT&T*, the Supreme Court is considering whether the Federal Communications Commission's (FCC) civil penalty provisions related to assessment and enforcement are consistent with the Seventh Amendment and Article III of the Constitution. In light of last year's ruling in *SEC v. Jarkesy*, which concerned administrative enforcement actions, both cases will be closely watched at FERC and may influence further arguments raised against American Efficient's penalty.

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