



OFFICE OF ENFORCEMENT AUDIT PROCESS

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The Division of Audits within the Office of Enforcement helps ensure compliance with the Commission’s statutes, rules, regulations, and orders by conducting a wide array of audits of jurisdictional entities. The following summarizes the typical audit process used by the division to conduct audits. Particular audits may differ from this process as necessary to achieve the audit objectives.

Planning, Preparation, and Execution Phase

The Audit Team

The audit team may be comprised of accountants, auditors, energy industry analysts, and others depending on the nature of the audit. This multi-disciplined audit team will vary, providing the appropriate skill sets to the type of audit being conducted by the Division of Audits.

Commencement Letter

The Director of the Office of Enforcement sends the company selected for audit a public commencement letter that describes the purpose and scope of the audit, and audit staff’s authority to conduct the audit. The commencement letter also identifies all audit team members and provides appropriate contact information. Further, the commencement letter identifies the names and contact numbers of OE leadership. Although the commencement letter is a public document which can be found in eLibrary, all other correspondence with the company under audit, with the exception of the final audit report and the company’s written response attached to the report, is non-public. Financial audits are identified by a docket number with a prefix of “FA.” Operational audits are identified by a docket number with a prefix of “PA.”

Data Collection

The audit team gathers a sufficient amount of evidence to document the work performed and to serve as the basis for the conclusions reached during the course of the audit. The information is gathered generally through:

Data Requests - The primary method of obtaining data is through data requests to the audited company. The data obtained through data requests could include financial and operational information, procedures manuals, organization charts, reports, email and voice mail records, and studies. Depending on the circumstances, the company will provide this data electronically or as paper documents.

Site Visits - Site visits help ensure the auditors correctly interpret information provided by the company, offer an opportunity to collect relevant materials on-site, observe processes, and offer an opportunity to conduct face-to-face interviews, among other things.

Interviews – The auditors conduct interviews in person and over the phone. Interviews enhance staff understanding of the data that the company has provided and the policies, processes, and procedures of the company.

Site Visit Opening Conference

At the start of each site visit, the audit team conducts a meeting with the company's management. The company selects whom from its staff it wishes to attend this meeting. The purpose of this meeting is to explain the audit process, identify what information is required during the site visit, and to discuss any issues or concerns that have arisen since the issuance of the commencement letter. The team will also explain to company management how they can discuss unresolved issues with OE management, and provide contact information for the audit manager, division director, deputy office director, and office director.

Site Visit Wrap-up Conference

At the conclusion of each site visit, the audit team conducts a conference with the company's management. The purpose of this meeting is to discuss any potential findings or areas of concern, identify audit work that the team needs to complete, clarify any outstanding data requests, and respond to any questions by company management. The team will again explain to the company's management how they can contact OE's leadership to discuss any issues or concerns regarding the audit.

Analysis

As data are collected from the company under audit, the team compiles and analyzes the data. The audit team analyzes information gathered from multiple sources, including FERC filings, as well as public records from other governmental agencies, state commissions, and the media. Advanced analysis may require the creation of complex spreadsheets and databases, and the use of sampling to test for potential non-compliance of Commission rules, regulations, and orders.

Documentation

The team documents all audit work in the form of non-public working papers. Working papers document the objective, scope, source, methodology, and results of each audit step, and reference all findings to the Commission's statutes, precedents, rules, regulations, and orders. More importantly, working papers support the audit staff's findings, conclusions, and recommendations. The standard for working papers is that they can be understood by an experienced auditor examining the same transactions and records.

Exit Conference

The purpose of an exit conference is to discuss the staff's preliminary findings and recommendations with the company. The exit conference may be conducted in person or through a conference call. Prior to conducting an exit conference, the audit staff receives OE leadership's approval of its preliminary findings and recommendations, and consults with other offices, as appropriate, including the Office of the General Counsel (OGC) and the Office of Energy Market Regulation (OEMR). If consultation with other office occurs, the audit staff informs the company that is the case. The audit staff also explains the process regarding the issuance of the draft and final audit reports and the fact that the company will have an opportunity to comment in writing on the draft report. Further, staff informs the company that other Commission offices (e.g. OGC and/or OEMR) and the Commission will see the company's response before issuance of any letter order containing significant, unique or contested audit matters.

Audit Report Phase

Issuance of Draft Audit Report

A draft audit report is a non-public document issued to the audited company. The draft report contains the audit staff's findings and recommendations for corrective action. If a draft audit report contains significant, unique or contested audit matters, audit staff will distribute it to senior staff of other Commission offices, as appropriate, for comments before submitting it to the audited company. OE leadership has final approval of the issuance of the draft audit report to the audited company.

The Audit staff customarily provides the company 15 days in which to work with audit staff to clarify findings and ensure that the team did not misinterpret information provided during the audit. The company may discuss the findings and

recommendations with the audit staff, submit additional information for the audit staff's consideration and otherwise seek to address factual errors, tone of language, or lack of clarity in the report. In addition, the company may propose, for audit staff's consideration, equivalent or superior recommendations to address the concerns of audit staff. The audit staff will take into consideration any additional information the company provides during this process before reaching its final conclusions.

Upon completion of the review period, the company shall submit a written response to the draft report, as amended by audit staff during the review process. The written response the company provides to the draft report should state whether the company agrees or disagrees with each finding and recommendation. The company should also indicate any corrective actions already undertaken that are not reflected in the draft report and, to the extent practicable, when it expects to complete the remaining recommended corrective actions. If the company disagrees with a recommendation, the company is requested to provide an alternate resolution.

Issuance of Final Report

The audit staff will circulate to other Commission offices, as appropriate, the proposed final audit report with the company's response, including any finding or recommendation with which the company has taken issue.

The Commission may issue the audit report as a Commission order or the Director of OE may issue it as a letter order under delegated authority (see [18 C.F.R. § 375.311\(j\)](#) (2014)). The order will state that the company has agreed to certain findings and recommendations for corrective action. Further, the order will approve and direct the recommended corrective action, and will constitute final agency action, except for disputed matters. The order will identify disputed audit issues, and will state that it does not constitute final agency action on these matters.

Disposition of Contested Audit Matters

If a company undergoing an audit disagrees with a finding, the procedures set forth in Parts 41, 158, 286 or 349 of the Commission's regulations will govern. (Procedures for Disposition of Contested Audit Matters, [Order No. 675](#), FERC Stats. & Regs. ¶ 31,209 (2006), *order on reh'g*, [Order No. 675-A](#), FERC Stats. & Regs. ¶ 31,217(2006)) Following completion of the audit process, the Commission will issue an order on the merits with respect to non-disputed audit matters contained in a notice of deficiency, audit report, or similar document, and will notice, without making any findings on the merits, any disputed audit matters. The

company may then elect a shortened procedure or a trial-type procedure to challenge the disputed audit matters. The Commission would honor this election unless the Commission determines that there are no material facts in dispute which require a trial-type proceeding. In instances in which the company and the audit staff are unable to agree upon the findings and proposed remedies contained in a draft report, the following steps occur:

- The company may provide in writing to the audit staff a response to the draft audit report indicating any and all findings or proposed remedies, or both, in any combination, with which the company disagrees.
- The audit staff communicates this response to the Commission along with the proposed final audit report. At this point, the Commission may direct the audit staff to undertake further analysis, obtain further information from the company, or take other action. The company's response indicating disputed findings or proposed remedies becomes public when the audit report becomes public, *i.e.*, at the time the Commission issues an order on the merits of the final audit report.
- The Commission may make determinations on the merits in a public order with respect to the findings and proposed remedies contained in the audit report that are not in dispute and will publicly notice the disputed items. The order will not constitute final agency action with respect to the disputed items and will provide the company notice that it has the opportunity to elect in writing the shortened procedure (submission of briefs) or the trial-type hearing within 30 days.
- If the company does not respond within 30 days to the notice, the Commission may issue an order on the merits regarding the noticed items. Alternatively, the company may timely respond to the notice in a public filing by electing in writing the shortened procedure or the trial-type hearing.
- If the company notifies the Commission that it seeks to challenge one or more audit findings, or proposed remedies, or both in any combination, by the shortened procedure, the Commission shall issue a notice setting a schedule for the filing of memoranda.
- The company electing the use of the shortened procedure, and any other interested entities, including the Commission staff, shall file, within 45 days of the notice, an initial memorandum that addresses the relevant facts and applicable law that support the position or positions taken regarding the matters at issue.

- Reply memoranda shall be filed within 20 days of the date by which the initial memoranda are due to be filed. Only participants who filed initial memoranda may file reply memoranda. [Subpart T of Part 385](#) of the Commission's regulations shall apply to all filings.
- Within 20 days after the last date that reply memoranda under the shortened procedure may be timely filed, the company who elected the shortened procedure may file a motion with the Commission requesting a trial-type hearing if new issues are raised by a party. To prevail in such a motion, the company must show that a party to the shortened procedure raised one or more new issues of material fact relevant to resolution of a matter in the shortened procedure such that fundamental fairness requires a trial-type hearing to resolve the new issue or issues so raised. Parties to the shortened procedure and the Commission staff may file responses to the motion. In ruling upon the motion, the Commission may determine that some or all of the issues be litigated in a trial-type hearing.
- Except when there are no material facts in dispute, when a company does not consent to the shortened procedure, the Commission will assign the proceeding for hearing as provided by [subpart E of Part 385](#) of the Commission's regulations. Notwithstanding a company's not giving consent to the shortened procedure, and instead seeking assignment for hearing as provided for by [subpart E of Part 385](#), the Commission will not assign the proceeding for a hearing when no material facts are in dispute. The Commission may also, in its discretion, at any stage in the proceeding, set the proceeding for hearing.