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# FEDERAL ENERGY REGULATORY COMMISSION



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## NEWS RELEASE

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### FOR IMMEDIATE RELEASE

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### COMMISSION IMPOSES FIRST PENALTIES UNDER EPACT AUTHORITY

The Federal Energy Regulatory Commission today approved five settlements of enforcement matters, assessing civil penalties totaling \$22.5 million. The settlements mark the first time the Commission has acted under its expanded civil penalty authority provided by Congress in the Energy Policy Act of 2005.

The Energy Policy Act of 2005 gave the Commission additional civil penalty authority under the Federal Power Act, the Natural Gas Act and the Natural Gas Policy Act, and authorized the Commission to assess civil penalties of up to \$1 million per day per violation for violations of rules, regulations and orders pursuant to these statutes.

Commission Chairman Joseph T. Kelliher said, "In the past, the Commission lacked the enforcement power it needed to prevent market manipulation and uphold its tariffs and market rules. We asked Congress to give us the right regulatory tools to do our job. Congress agreed, and gave FERC new enforcement powers and significant civil penalty authority. Today we exercise that power for the first time. We are committed to firm but fair enforcement and our actions today make that plain."

The civil penalties will be paid pursuant to the settlements the Commission accepted with SCANA Corp., PacifiCorp, Entergy Corp., Northwestern Energy Corp. and NRG Energy Inc. Four of the settlements involved self-reporting of violations of tariffs, rules and standards of conduct, while the fifth involved violations of the company's tariff and the Commission's Business Practice Standards.

"PacifiCorp, SCANA, Entergy and NRG are to be commended for self-reporting their violations," Chairman Kelliher said. "Given the nature of the violations, the penalties for the conduct in question would have been substantially higher had the companies not done so."

The Commission has received more than 40 self-reports since August 8, 2005, the date the Energy Policy Act took effect, mostly for violations that did not merit civil penalties.

Chairman Kelliher noted that the Commission is committed to fashioning remedies and sanctions on a case-by-case basis, with a view to matching the enforcement sought to the severity of the violations involved. The overarching principles to be applied, as mandated by statute, are the seriousness of the violations and the company's efforts to remedy them in a timely manner, Chairman Kelliher said. He noted that "we value highly a company's commitment to rectifying inappropriate conduct by self-reporting its violations and cooperating in staff's investigations."

"Our actions today are guided by and consistent with the Enforcement Policy Statement the

Commission issued last year. None of the settlements today imposes maximum penalties, but all of the settlements involve some level of penalties. That does not mean the Commission will not impose maximum penalties. The penalty levels were determined through application of the factors identified in the Policy Statement. We will seek maximum penalties when they are called for by application of these factors, such as when the harm caused by the violation is very significant, where there is complicity of senior corporate management, or the company obstructed our investigation. None of these factors exist in the settlements we approve today. Future settlements may involve greater or lesser amounts, depending on the facts of the case. While the facts may change, we will continue to consistently apply the factors in the Enforcement Policy Statement the Commission issued last year,” said Chairman Kelliher.

#### **SCANA CORP.**

SCANA agreed to pay a \$9 million civil penalty and to disgorge \$1.4 million in profits to resolve an investigation into violations of the utility’s open-access transmission tariff (OATT). The company further agreed to credit \$400,000 in foregone point-to-point transmission revenues to retail customers, and to undertake a compliance program including quarterly filings to allow the Commission to ascertain the company’s continuing compliance with the network service provisions of its OATT.

Specifically, staff identified 1,109 transactions during a four-year period in which South Carolina Electric & Gas, a SCANA subsidiary, improperly used network transmission to facilitate off-system wholesale power sales in violation of its OATT. Forty-nine of the violations occurred after August 8, 2005, the date the Commission obtained its expanded penalty authority.

#### **PACIFICORP**

PacifiCorp agreed to pay a \$10 million civil penalty to settle violations of the utility’s OATT and Standards of Conduct. Staff’s investigation found that PacifiCorp engaged in hundreds of OATT violations granting undue preference to its merchant power function, and engaged in numerous and significant Standards of Conduct violations.

Specifically, PacifiCorp self-reported, following its acquisition by MidAmerican Energy Co., having used network transmission service for transactions that should have employed point-to-point transmission service. Staff identified 1,096 violations since April 2003, representing 174,639 megawatts of total transmission service. Of that amount, 329 violations, representing 41,025 megawatts of transmission service, occurred after August 8, 2005, the date the Energy Policy Act took effect. “The violations occurred under PacifiCorp’s prior ownership,” Chairman Kelliher noted, “PacifiCorp’s new owner, MidAmerican Energy Holdings Company, has taken steps to ensure the violations will not reoccur.”

The investigation also found that PacifiCorp voluntarily disgorged \$884,000 to certain network transmission customers, representing money these customers would have received had PacifiCorp used point-to-point instead of network service. PacifiCorp also agreed to retain an independent auditor to review and report on PacifiCorp’s compliance with its OATT.

#### **ENTERGY CORP.**

Entergy agreed to pay a \$2 million civil penalty and to contribute \$1 million to a hurricane relief fund to settle three separate self-reported matters: (1) Employees of Entergy lost, in violation of the Federal Power Act, all hourly Alternative Flowgate Capability (AFC) data files from the start of the AFC system in April 2004 through January 2005; (2) Entergy’s AFC system responded in error to nearly 2,000

requests for transmission service between April 2004 and January 2006; and (3) Entergy on multiple occasions failed to post information on its open-access same-time information system (OASIS) in violation of the Commission's OASIS posting requirements.

In addition to the civil penalty and the contribution to the Nike/Entergy Green Schools for New Orleans Partnership to further the use of energy efficient and alternative fuel technologies in connection with the rebuilding of schools damaged by Hurricane Katrina, Entergy agreed to a substantial compliance plan tied to the new Independent Coordinator of Transmission approach to Entergy's transmission system operations. The plan includes a number of reporting, auditing and training elements.

### **NORTHWESTERN ENERGY**

Northwestern agreed to pay a \$1 million civil penalty to settle 83 instances in which the utility violated its OATT, including failure to act on requests for firm monthly and yearly point-to-point transmission service within 30 days, as required by the Commission's Business Practice Standards. Thirty-nine of the violations occurred after August 8, 2005. Staff's investigation found minimal harm from the violations.

Northwestern will pay the civil penalty in three yearly installments, and agreed to undertake a compliance program including reporting to staff every six months for two years on the status of its actions on firm monthly and yearly transmission requests.

### **NRG ENERGY**

NRG agreed to pay a \$500,000 civil penalty to settle violations of Commission Market Behavior Rules that resulted from the misrepresentation of a reliability-must-run generation facility in ISO-New England. Staff found that NRG intentionally misrepresented that the generating plant was available, when it was not. The misrepresentation resulted from the actions of a single employee and did not involve NRG senior management, the staff investigation concluded. NRG took immediate corrective action, including reporting the incident to the Commission and ISO-New England.

In addition to the civil penalty, NRG agreed to undertake a compliance program involving semi-annual filings for one year containing the results of an audit of plant outages for the previous six-month period.

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