



# FEDERAL ENERGY REGULATORY COMMISSION

NEWS

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## **FERC Enforcement Reforms Provide Clarity, Emphasize Strong Compliance Programs**

The Federal Energy Regulatory Commission (FERC) took final action today on three measures that will help strengthen and clarify the agency's enforcement program.

The three measures – a policy statement on compliance with statutes, regulations and orders, a revised standards of conduct for transmission providers and a new rule clarifying off-the-record contacts and separation of functions – form a package of reforms aimed at providing clear rules and emphasizing strong compliance programs by regulated companies.

“The central object of the FERC enforcement program is achieving compliance with our regulatory requirements, and it is in the public interest to promote strong compliance programs by regulated companies and others,” FERC Chairman Joseph T. Kelliher said. “Today, FERC provides guidance in the Compliance Policy Statement on what constitutes model corporate compliance, and encourages companies and others to develop such programs through penalty credits for non-serious violations. At the same time, our action to reform the Standards of Conduct rule demonstrates that FERC is committed to facilitating compliance, by reforming a rule that posed compliance challenges and establishing a rule that not only better achieves its public purpose, but also is easier to enforce and easier to comply with.”

### **Compliance with Statutes, Regulations and Orders** (PL09-1-000)

This policy statement provides additional guidance to the public on the importance of effective compliance with FERC's governing statutes, regulations and orders. It supplements the Revised Policy Statement on Enforcement issued May 15, 2008 (PL08-3-000).

The statement identifies four hallmarks of effective compliance practices: active engagement and leadership by senior management; preventive measures appropriate to the circumstances of the company that are effective in practice; prompt detection of problems, cessation of misconduct, and reporting of a violation; and remediation of the misconduct. FERC urges entities subject to Commission regulatory requirements to be more active in developing compliance programs, but recognizes that there is no one model for compliance and that such entities are in the best position to assess their risks and devise appropriate compliance practices. The policy statement emphasizes that entities will receive credit for good compliance practices, and notes that for violations that are not serious – that do not involve significant harm, risk of significant harm, or damage to the integrity of the Commission's regulatory program, and where the company has demonstrated all four elements of effective compliance practices – FERC may reduce the penalty that otherwise would apply, or even eliminate the penalty.

### **Standards of Conduct** (RM07-1-000)

This order is a final rule that revises the FERC Standards of Conduct for natural gas and electric





transmission providers by eliminating certain provisions of its Order No. 2004, which were difficult to enforce and apply. Order No. 2004 had added the concept of energy affiliates to the Standards and adopted a corporate separation approach to prohibited interactions among a transmission provider's transmission and marketing employees. The rule also addresses concerns raised by the U.S. Court of Appeals for the District of Columbia Circuit, which in 2006 disapproved the expansion of the standards of conduct to include energy affiliates and vacated Order No. 2004 as it applied to the gas industry.

The final rule adopts the employee functional approach used in the Order No. 497, the Standards of Conduct for the gas industry, and in Order No. 889, the Standards of Conduct established for the electric industry. This approach had been advanced in the proposed rule and received overwhelming support from commenters. The final rule builds on the proposed rule by:

- Separately defining marketing functions for electric and gas companies;
- Removing “bids to buy” from the definition of marketing functions to ensure that only sales, not purchases, are included;
- Clarifying that the term “transmission functions” refers to day-to-day operation of the transmission system;
- Adding the phrase “day-to-day” to further clarify the level of involvement employees need to be considered marketing function employees;
- Eliminating posting requirements under the Standards for tariff-approved exercises of discretion and for discounts;
- Eliminating proposals that prohibited receipt of non-public transmission function information by marketing function employees, due to complaints that such actions could be inadvertent; and
- Adding Critical Energy Infrastructure Information (CEII) as a category of non-public transmission function information for which only notice should be posted if the information were wrongfully disclosed to marketing function employees.

The rule takes effect 30 days after publication in the *Federal Register*.

#### **Ex Parte Contacts and Separation of Functions** (RM08-8-000)

This final rule adopts the proposal outlined in the May 2008 Notice of Proposed Rulemaking to revise FERC regulations to clarify the application of rules governing off-the-record contacts (*ex parte* communications) and separation of functions in the context of non-public investigations.

The rule would apply from the time FERC initiates a proceeding arising out of an investigation. It ensures that rules limiting contact with Commissioners and decisional staff apply in the same manner to outside parties as it does to litigation staff, and clarifies that the rule on intervention to specify that intervention is not available as of right in proceedings arising out of non-public investigations. Up until now, the regulations refer only to intervention not being available as of right in the investigation itself.

The rule takes effect 30 days after publication in the *Federal Register*.