



**Federal Energy Regulatory Commission
November 20, 2008
Open Commission Meeting
Staff Presentation
Enforcement Staff Report**

"Good Morning, Mr. Chairman and Commissioners.

In May of this year, the Commission directed the Office of Enforcement to produce an annual report at the end of each fiscal year, similar to the one released in November of 2007. As directed, on November 6, 2008, the Office released its 2008 Report on Enforcement.

Overall, the statistics in the report demonstrate a significant increase in the number and complexity of the self-reports received and investigations conducted by the office. The number of self-reports of violations more than doubled in the past fiscal year, increasing from 31 in FY2007 to 68 in FY2008. This increase likely reflects improved compliance and auditing procedures on the part of the industry and the Commission's frequently stated intention to reduce or even eliminate penalties if violations are self-reported. As in FY2007, the majority of these self-reports involved the Commission's natural gas pipeline capacity release requirements.

In addition, the Office of Enforcement opened 48 investigations in 2008, as compared to 35 in 2007. The report also noted some emerging trends in investigations. Among them is an increase in the number of investigations involving allegations of market manipulation, which rose from twelve to twenty. There was also a large increase in the number of RTO/ISO market monitoring unit referrals. In FY2007, the office received only two such referrals and in 2008, it received 15. Another trend is the rise in the number of investigations into allegations that entities violated the Commission's regulations that require market-based rate power sellers to provide accurate, factual, and complete information in communications with the Commission and Commission-approved entities. And finally, the report notes that 2008 marked the first time that Enforcement staff has opened investigations into allegations of violations of the reliability standards that took effect in June 2007.

The report further reflects the closing of self-reports and investigations without the imposition of sanctions where the facts and circumstances so warrant. For example, the report notes that of the 68 self-reports received in 2008, staff closed 25 of them after an initial review and without opening an investigation and three more were closed without consideration of penalties after an investigation. Likewise, staff closed 22 investigations in 2008, eight of which had findings of violations, and seven of which had no findings of a violation.

To provide additional guidance to the industry, the report introduced two new sections that provide short, unnamed narratives about the self-reported and investigated matters, respectively, that were closed with no action. These narratives provide as much detail as possible, while also preserving the non-public nature of these matters. They also explain the factors that contributed to staff's determination that these matters did not warrant the Commission's consideration of any sanctions, despite findings of violations.

The information in the report demonstrates that the Commission continues to use its penalty authority to remedy violations and promote compliance, where appropriate. In fiscal year 2008, the Commission approved seven settlement agreements for a total of \$19.95 million in civil penalties. In two of these seven settlements, the Commission

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required the companies to establish stronger, more effective compliance programs.

Next, the report provides an overview of the audit activities of the office. In FY2008, audits staff completed 60 audits of public utilities and natural gas pipeline and storage companies, 39 of which were classified as financial audits and 21 that, among other things, addressed open access transmission tariffs, interconnection rules, gas tariffs, website posting, standards of conduct and Commission regulations. Audits staff also worked with the Commission's Office of Electric Reliability as an observer in eight Regional Entities' audits of users, owners and operators of the bulk power system.

These audits resulted in 156 recommendations for corrective action, and included \$1 million in recoveries from accounting and billing adjustments and \$8.7 million in reductions to utility plans. They also included implementation of compliance plans to ensure regulated entities adhere to Commission policies and procedures. Staff tracks all audit recommendations to ensure they are ultimately implemented.

Thank you."