FEDERAL ENERGY REGULATORY COMMISSION

NEWS

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FERC Acts to Strengthen Enforcement Program

The Federal Energy Regulatory Commission (FERC) today unveiled a package of reforms designed to strengthen its enforcement program.

"Energy consumers and competitive markets are best served by regulated entities who play by the rules and by our fair but firm enforcement of those rules," FERC Chairman Joseph T. Kelliher said. "Today's orders show our dedication to strengthening the ability of those regulated entities to comply with our rules, ensuring fairness in our process and preserving the integrity of our system. This represents an important step in the continued development of FERC's enforcement program."

The package is comprised of a revised and expanded policy statement on enforcement; an interpretative order that expands the areas in which FERC will allow the no-action letter process; a Notice of Proposed Rulemaking (NOPR) that clarifies off-the-record contacts and separation of functions in the context of enforcement investigations; and a final rule that outlines the rights of entities against whom staff from FERC's Office of Enforcement seeks an order to show cause.

Revised Policy Statement (PL08-3-000)

This new policy statement on enforcement reflects the experience FERC has gained in administering the enhanced enforcement tools Congress granted under the Energy Policy Act of 2005 and responds to requests from regulated entities for more transparency in the process.

The revised policy statement builds on provisions in the original policy statement issued in October 2005 by providing further guidance on factors FERC considers in its enforcement decisions. It also provides a detailed picture of how the FERC investigative process works, including the considerations that staff of the Office of Enforcement take into account when determining whether to open an investigation and, once opened, whether to close it without further action or to recommend sanctions. The policy statement also sets forth in detail the factors considered in determining whether, and how much of, a penalty is appropriate.

As part of this effort to open up the process, FERC also has directed Enforcement staff to release annual statistical reports summarizing enforcement activities concerning both investigations and audits for the preceding year, to be issued at the close of each fiscal year.

Obtaining Guidance on Regulatory Requirements (PL08-2-000)

This interpretive order expands the scope of issues for which FERC will permit requests for no-action letters, the process through which regulated entities seek a determination on whether staff would recommend enforcement action if particular transactions, practices or situations are pursued. This process now will include everything within the area of energy markets jurisdiction except for issues relating to the licensing of hydroelectric projects, certification of natural gas pipelines, operation of LNG terminals and enforcement of

mandatory reliability standards.

FERC also will establish an Internet-based compliance "help desk" as another way to obtain staff guidance, to go along with current mechanisms for obtaining formal and informal guidance through petitions for declaratory order, general counsel opinion letters, accounting interpretations, the enforcement hotline and other informal communication with FERC staff.

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

This NOPR proposes to revise FERC regulations to clarify the application of rules governing off-the-record contacts and separation of functions in the context of non-public investigations.

The NOPR proposes to ensure that the rules limiting contact with Commissioners and decisional staff apply in the same manner to outside parties as it does to litigation staff, and proposes to clarify the rule on intervention to specify that intervention is not available as of right in proceedings arising from non-public investigations.

Comments on the NOPR are due 60 days after publication in the *Federal Register.*

Submission to the Commission upon Staff Intention to Seek an Order to Show Cause (RM08-10-000)

This rule, which takes effect upon publication in the *Federal Register*, amends FERC's regulations to clarify the rights of an entity when Enforcement staff intends to seek an Order to Show Cause.

The rule states that Enforcement staff, in all but extraordinary circumstances, will notify the entity when it intends to seek an Order to Show Cause. The subject will have 30 days to respond, and the response will be presented to the Commission together with Enforcement staff's memorandum requesting an Order to Show Cause, both of which will be non-public documents.

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