FEDERAL ENERGY REGULATORY COMMISSION

NEWS

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FERC Enhances Enforcement Program with New Civil Penalty Guidelines

The Federal Energy Regulatory Commission (FERC) today acted to enhance its enforcement program with a policy statement on penalty guidelines that will add fairness, consistency and transparency to all FERC civil penalty determinations.

The policy statement guidelines are modeled on portions of the United States Sentencing Guidelines, with appropriate modifications to account for FERC-specific considerations.

The Commission adopted today's policy statement after nearly four years of experience with new and expanded civil penalty authority under the Energy Policy Act of 2005 (EPAct 2005). That statute expanded FERC's civil penalty authority under the Federal Power Act (FPA) and, for the first time, provided civil penalty authority to cover violations of the Natural Gas Act (NGA). The statute also raised the maximum civil penalty to $1 million per day per violation, for any violation of the Natural Gas Policy Act, the NGA or Part II of the FPA.

Although the Penalty Guidelines represent a change in how FERC will determine civil penalties, the guidelines will continue to use many of the factors previously considered, such as the seriousness and remediation of a violation, that reflect the requirements of EPAct 2005 and that are the centerpiece of the Commission's penalty regime.

This approach promotes consistency by basing the penalty calculations on a set of uniform factors that are weighted similarly for similar types of violations and similar types of violators. The Penalty Guidelines also provide specific credit to companies for self-reporting violations and for implementing robust compliance programs, thus further encouraging compliance by the industry. Based on the specific facts and circumstances of a violation, the Commission retains the discretion to impose a penalty that is not based on an application of the Penalty Guidelines.

The Penalty Guidelines also provide greater transparency and fairness by giving notice to regulated organizations how FERC will determine civil penalties. This method will provide a more straightforward process, while still giving FERC the discretion to depart from the guidelines where appropriate.

The Penalty Guidelines policy statement will apply to all future violations and any pending investigation where FERC's Enforcement staff has not entered into settlement negotiations.

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