
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION PROPOSES RULES ON MARKET MANIPULATION, OUTLINES POLICY ON CIVIL PENALTIES AND ENFORCEMENT

In two orders today implementing provisions of the Energy Policy Act of 2005, the Federal Energy Regulatory Commission proposed rules detailing broad prohibitions on energy market manipulation and outlined the Commission's policy on assessing civil penalties. In a third order, the Commission proposed to allow companies to challenge the findings of staff operational audits before a final order is issued.

"Our purpose is firm but fair enforcement of our rules and regulations," Chairman Joseph T. Kelliher said. "The Commission's goal is compliance. These orders will provide the industry with clarity and regulatory certainty."

The Energy Policy Act bars "any manipulative or deceptive device or contrivance" in wholesale natural gas and electricity commodity and transportation or transmission markets. In today's notice of proposed rulemaking, the Commission proposes to track the language of the Securities Exchange Act, as Congress directed in sections 315 and 1283 of the Energy Policy Act. This will serve to provide greater certainty to the industry because of the large body of case law interpreting the meaning of these terms.

Under the proposal, it would be unlawful for any entity, directly or indirectly, in connection with the purchase or sale of electric energy or natural gas, or in providing transmission or transportation services subject to the Commission regulation: (1) to defraud using any device, scheme or artifice; (2) to make any untrue statement of material fact or omit a material fact; or (3) to engage in any act, practice or course of business that operates or would operate as a fraud or deceit.

Pursuant to the new statutory authority granted to the Commission, the proposed regulations would apply to any entity, not just jurisdictional market-based rate sellers, natural gas pipelines or holders of blanket certificate authority. "Any entity" includes governmental utilities and other market participants.

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Concurrently, the Commission today issued a *Policy Statement on Enforcement*, outlining factors the Commission will consider when assessing civil penalties or developing remedies for violations of the statutes, orders, rules, and regulations the Commission administers. The Policy Statement also identifies factors to be weighed in determining the seriousness of the violation, and indicates what consideration will be given for mitigating factors, such as adopting strong internal compliance programs, voluntarily reporting violations, and cooperating with staff investigations.

“The Energy Policy Act gave the Commission enhanced enforcement authority, and we intend to use the tools Congress provided to safeguard the nation’s energy consumers,” Chairman Kelliher said. “However, it is important to emphasize that the Commission will approach this in a fair and even-handed manner, as demonstrated in our civil penalty assessment policy, which states: ‘We encourage regulated entities to have comprehensive compliance programs, to develop a culture of compliance within their organizations, and to self-report and cooperate with the Commission in the event violations occur,’” Chairman Kelliher said.

The Commission noted that while it has a variety of enforcement tools at present, such as the ability to order disgorgement of illegal profits or to condition, suspend, or revoke market-based rate authority, pipeline certificate authority or blanket certificate authority, the Energy Policy Act enhanced the Commission’s civil penalty authority both by extending it across all of the substantive provisions of the Federal Power Act and the Natural Gas Act, and by increasing the maximum civil penalty under these statutes to \$1 million per day per violation. Entities will be subject to the full array of possible enforcement tools and the Commission will exercise its discretion in a “fair, reasonable and appropriate manner,” the Commission said in its policy statement.

In a separate notice of proposed rulemaking, the Commission proposes to permit any audited company to challenge an audit finding before the Commission issues an order on disputed matters in the audit.

The Commission has traditionally conducted financial audits to determine compliance with its accounting regulations. The Commission’s regulations currently allow such audited companies an opportunity to challenge the staff’s financial audit findings before they are made public. In recent years, the Commission has begun conducting operational audits to assure compliance with the Commission’s Standards of Conduct and Codes of Conduct. Today’s proposed rule would extend the same procedural opportunity to challenge staff findings in operational and other audits as is currently afforded for financial audits.

“This proposed rule would advance the due process rights of all audited persons

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by providing an effective procedure for them to challenge staff audit findings,” Chairman Kelliher said. “Companies seeking to challenge a staff audit finding may choose either a paper hearing or a trial-type proceeding if there are material issues of fact to resolve before we issue an order on the audit findings.”

Comments on today’s order, *Prohibition of Energy Market Manipulation*, are due within 21 days of publication in the Federal Register. Comments on *Procedures for Disposition of Contested Audit Matters* are due within 21 days after publication in the Federal Register (www.gpoaccess.gov).

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