
FEDERAL ENERGY REGULATORY COMMISSION



WASHINGTON, D.C. 20426

NEWS RELEASE

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FOR IMMEDIATE RELEASE

November 17, 2005
Docket No. PL06-4-000

COMMISSION IMPLEMENTS 'NO ACTION' LETTER PROCESS DESIGNED TO HELP CLARIFY ITS RULES

The Federal Energy Regulatory Commission today approved a process whereby Commission staff will provide informal advice as to whether a proposed transaction, practice or situation may raise compliance issues under the Commission's regulations.

Effective immediately, the Commission will adopt a "no action" letter process, similar to those provided by other federal regulatory commissions, to make available informal advice from Commission staff on transactions that otherwise could lead to enforcement action by the Commission.

Together with an enforcement policy statement and proposed rules adopted last month (Docket Nos. RM06-2, RM06-3 and PL06-1), and separate actions today regarding the Commission's Market Behavior Rules (Docket Nos. RM06-5 and EL06-16), the no-action letter process is part of the Commission's efforts to provide clarity and regulatory certainty regarding its enforcement program, said Commission Chairman Joseph T. Kelliher.

"The Commission will be firm, yet fair, in implementing the new enforcement authority Congress provided us in the Energy Policy Act," Chairman Kelliher said. "For us to be fair, we need to be as clear as possible regarding what we expect from market participants. Market participants need to know what it takes to comply with our rules. Last month and today, we have taken concrete steps to spell out our enforcement stance. This no-action letter process will help clear up ambiguities in our rules," Chairman Kelliher said.

Both the Securities and Exchange Commission and the Commodity Futures Trading Commission provide no-action letter procedures, which permit their regulatory staffs to review certain proposed matters and provide informal advice as to whether the staff would recommend enforcement action if the matter under review is put into effect as proposed. Although the advice provided in these no-action letters does not bind the

agency, it is understood that the agency staff involved in the process is well-acquainted with the statutes, regulations, rules and orders the agency administers.

“We believe that a no-action letter process can yield significant benefits to the entities subject to the statutes, regulations, rules and orders administered by the Commission, particularly by reducing such entities’ risk of failing to comply with our rules and regulations,” the Commission said in today’s order implementing the process.

The Commission will initially limit no-action inquiries to questions regarding whether particular transactions, practices, situations or other matters would violate the Commission’s Standards of Conduct, Market Behavior Rules or, once they take effect, the final Prohibition of Energy Market Manipulation Rules.

Requests for no-action letters should be submitted on a non-public basis to the Commission’s General Counsel, with the understanding that the requests will be reviewed by staff experts in relevant Commission offices. Any no-action letters issued will be made public, and should be viewed as providing the consensus view of Commission staff. The Commission will consider specific circumstances in which a no-action letter should be kept non-public for a particular period of time in order to accommodate confidential or proprietary information, or until a transaction is implemented.

“As with any advice provided by our staff, staff responses to requests for no-action letters will not bind the Commission and will not operate as agency action that would be subject to rehearing or judicial review. Any person who seeks a binding Commission determination concerning a proposed transaction, practice, situation or other matter may file a petition for a declaratory order,” the Commission explained in today’s order.