



*FERC Audit and Enforcement:
What is  on FERC's List?*

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Old News

- FERC's new civil penalty authority under the Energy Policy Act of 2005 is:
 - ❖ Up to \$1 million per day per violation.





New News

- Since January 2007, FERC has assessed \$45.2 million in civil penalties:
 - ❖ Electric - \$25 million
 - ❖ Gas - \$20.2 million





FERC's Civil Penalty Focus

- FERC's focus in its enforcement and assessment of civil penalties reflects Chairman Kelliher's directive to ensure:
 - ❖ Open and non-discriminatory electric transmission and gas transportation access; and
 - ❖ Fair and transparent wholesale electric and gas markets free of market manipulation activity.



Electric Violations Resulting in Civil Penalties

- OATT, OASIS and Standards of Conduct
 - ❖ PacifiCorp - \$10 million
 - ❖ Scana - \$9 million
 - ❖ Entergy - \$2 million
 - ❖ Northwestern - \$1 million



Electric Violations Resulting in Civil Penalties

- Market Manipulation
 - ❖ NRG - \$500 K
- Code of Conduct for Market-Based Rates
 - ❖ CLECO - \$2 million
- Section 203 Merger Authorization
 - ❖ Gexa Energy - \$500 K



Gas Violations Resulting in Civil Penalties

- Capacity Release Policies
- Shipper-Must-Have-Title
- Prohibition on buy-sell transactions
- Penalties ranged from \$400 K to \$7 million per company:
 - ❖ Bangor Gas, Calpine Energy, Columbia Gulf Transmission, MGTC, BP Energy, Constellation New Energy, and Entergy New Orleans



Show Cause Orders for Civil Penalties

➤ Market Manipulation

- ❖ Amaranth - \$232 Million
- ❖ Energy Transfer Partners - \$97.5 million



Breaking News in Last Week

- PJM files complaint against all seven of Tower Research Capitol's companies concerning alleged manipulation of the PJM FTR and energy markets.
- FERC closes an investigation of alleged economic withholding of capacity in New York City's ICAP market. FERC found no evidence that generators violated NYISO's tariff or FERC market manipulation rules.



FERC's Audit Focus Before 2007

- FERC generally audited a narrower scope of areas:
 - ❖ Standards of Conduct
 - ❖ Code of Conduct
 - ❖ OATT and OASIS
 - ❖ In 2006, some EQRs and Interlocking Directorates



FERC's Audit Program After 2007

- FERC is auditing everything under the sun:
 - ❖ OATT, OASIS, Standards of Conduct and Code of Conduct
 - ❖ EQR's and price indices reporting
 - ❖ FERC Annual Charges – Is FERC getting paid right?!
 - ❖ Wholesale Fuel Adjustment Clauses
 - ❖ PUHCA 2005 Requirements for Centralized Service Companies
 - ❖ Interlocking Directorates
 - ❖ Record Retention Requirements



Yes, Yet More Conduct Regulation

- FERC issues Final Rule on Cross-Subsidization Restrictions on Affiliate Transactions (February 2008).
- FERC expands the regulation of sales of non-power goods and services to transactions involving a franchised public utility who owns or provides transmission services.
 - ❖ Utility sells to market-regulated power sales affiliate or non-utility affiliate – higher of cost or market.
 - ❖ Market-regulated power sales affiliate or non-utility affiliate sells to utility – no higher than market.
 - ❖ Utility sells or purchases from centralized service company – at cost.
- Our clients need to evaluate the impact of the Final Rule! Let us help!