

ARE THE FERC CONDUCT POLICE ON YOUR TAIL?



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Thomas L. Blackburn
Bruder, Gentile & Marcoux, L.L.P.
1701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20006
Telephone: 202/296-1500
Facsimile: 202/296-0627
E-Mail: tlblackburn@brudergentile.com

FERC Compliance: What Happened to Deregulation?



- ❑ Twelve years ago, many people wondered whether FERC would deregulate itself out of business.
- ❑ Skeptics who said that would never happen had physical proof that they were right.

888 First Street



FERC Compliance: It's not just about the Standards of Conduct

Form 3-Q Quarterly Financial Report

Form 423

Annual Report of Interlocking Positions

Reports re Price Indices

Anticipated Shortages of Energy or Capacity

Standards of Conduct

Form 580

Form 714

Annual Nuclear Decommissioning Trust Fund Report

Form 582

Three-year MBR Update

Form 671

Electronic Notice of Change of Control

Form 714

Quarterly Concise

Form 1

Form 566

Approval of Interlocking Positions

Cash Management Programs

Standards of Conduct



- ❑ The number of FERC audit reports has declined in recent months.
- ❑ FERC has not assessed any civil penalties since the Carolina Power & Light/Florida Power order in May 2005.
- ❑ It appears that FERC is holding back on audit reports and civil penalties until the Commission clarifies some aspects of the Standards of Conduct.
- ❑ Chairman Kelliher has expressed concern that there is too much uncertainty concerning compliance obligations.
- ❑ However, the Chairman is not averse to assessing penalties for violations if the regulations are clear.

Standards of Conduct continued



- ❑ At the Technical Conference in April 2006, FERC Staff orally clarified and modified some of the requirements of the Standards of Conduct.
- ❑ FERC also engaged in outreach to the industry. EEI met twice with Staff on proposed clarifications of the Standards and submitted written comments on proposed clarifications.
- ❑ FERC probably will issue an order within the next couple of months.
- ❑ Compliance with the Standards is complex, and there are many requirements that are not clear.

**ORDER No. 2004
DESK REFERENCE FOR
ELECTRIC UTILITY
TRANSMISSION PROVIDERS**

PREPARED FOR EDISON ELECTRIC INSTITUTE

by: Thomas L. Blackburn
Bruder, Gentile & Marcoux, L.L.P.
1701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20006
Telephone: 202/296-1500
Facsimile: 202/296-0627
E-Mail: tblackburn@brudergentile.com

Code of Conduct



- ❑ FERC compliance audits are increasingly focusing on the Code of Conduct.
- ❑ However, there is far less guidance on interpretation of the Code of Conduct than there is with respect to the Standards of Conduct.
- ❑ Penalties for violations can include loss of market-based rate authority, refunds and civil penalties.

Interlocking Positions



- ❑ FERC eliminated automatic authorization of interlocking director and officer positions within holding companies in September 2005.
- ❑ FERC also has held that late filing of an application for approval of an interlock is grounds for denial of the application.
- ❑ Chairman Kelliher – before becoming Chairman – issued two concurring opinions on interlock applications in which he hinted that un-approved interlocks could be grounds for criminal penalties.
- ❑ Staff has taken a much softer position, suggesting that un-approved interlocks can be cured by having the officer or director resign one position, and then filing the application.

Interlocking Positions continued



- ❑ The Staff's tolerant approach may not last forever.
- ❑ A FERC audit of ALLETE took the company to task for failing to comply with interlock requirements.

Electronic Quarterly Reports



- ❑ FERC is beginning to more strictly enforce EQR filing requirements.
- ❑ Some utilities are not filing data with the specificity required by the regulations.
- ❑ FERC has informally asked non-compliant utilities to correct old EQRs. One utility is engaged in a year-long effort to make its EQRs compliant.
- ❑ In *California v. FERC*, 383 F.3d 1006 (2004), the Court of Appeals held that FERC authority to approve market-based rates is contingent on a pre-sale finding of a lack of market power and post-approval reporting requirements.
- ❑ The Court held that in the absence of adequate EQRs, FERC has the authority to order refunds of market-based sales.

Filing of Other Reports



- ❑ Numerous reports must be filed each year.
- ❑ FERC has begun issuing letters to companies that do not file required reports.
- ❑ In August, FERC Staff issued a letter to Sierra Pacific and Nevada Power asserting that they had not filed Form 714, “Annual Control and Planning Area Report,” and reminding the companies that it could impose “substantial penalties” for non-compliance.
- ❑ FERC has issued reminder notices to the industry concerning Form 580, the biennial Interrogatory on Fuel and Energy Purchase Practices, and Form 566, the annual report of the 20 largest purchasers.

Records Requirements



- ❑ FERC now requires records to be retained for five years. See Order Nos. 670 (Market Manipulation) and 677 (Records Retention).
- ❑ FERC auditors routinely request companies provide the indices of records that are required by 18 C.F.R. § 125.2(j).

Reporting of Capacity and Energy Shortages



- ❑ 18 C.F.R. § 294.101 requires utilities to file with the Commission a brief statement indicating how it would accommodate any capacity or energy shortages that would affect firm power wholesale customers and serve it on those customers and state commissions.
- ❑ Any modifications must be filed and served within 15 days of their adoption.
- ❑ Any anticipated shortages must be reported immediately to FERC by e-mail and to state commissions and firm wholesale power customers.
- ❑ FERC has assigned staff to monitor the e-mail address to which shortages are reported on a 24-hour per day basis.

Compliance: The Bottom Line



- ❑ Comprehensive compliance programs are a critical aspect of utility operations.
- ❑ FERC oversight of all compliance activities will continue to increase.