



USA – FERC

10th EU-US Energy Regulators Roundtable

**Commissioner Philip Moeller, USA
Federal Energy Regulatory Commission**

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FERC'S ENFORCEMENT ACTIVITIES



Enforcement History

- Historically, the electric and natural gas industries were regulated monopolies. FERC based rates on a utility's cost to provide the service plus a fair return on investment (cost-of-service regulation).
- In the 1980s and 1990s, the electric and natural gas industries evolved into competitive markets consisting of a complex structure of formal and informal markets that help determine the rates.
- Western Energy Crisis and ENRON occurred.



Enforcement

- **New manipulation authority**
 - In EAct 2005, Congress granted FERC significant new authority to prohibit manipulation
 - Not only by direct participants in the physical natural gas and wholesale electric markets
 - But also where “any entity” commits manipulation, directly or indirectly, “in connection with” jurisdictional transactions.
- **New Penalty Authority**
 - Congress also substantially increased the remedies available to FERC to punish and deter violations, including market manipulation
 - *Civil penalties of up to \$1,000,000 per violation/per day*
 - *Criminal penalties up to \$1,000,000 and 5 years in prison*



Recent Activity

In fiscal year 2012, a significant percentage of the investigations opened by FERC involved allegations of market manipulation or false statements.

- Fraud and market manipulation present a significant risk to the markets overseen by the Commission
- Anticompetitive conduct and conduct that interferes with market transparency undermine confidence in wholesale energy markets
- Serious violations of the reliability standards compromise the public interest by threatening the reliable and secure operation of the bulk power system



Results

- Monetary remedies under EPOA 2005 (all violations)
 1. Civil penalties = > \$148 million
 2. Disgorgement = > \$119 million
 - Largest disgorgement amount (ETP) = \$25 million*
- 9 Commission-approved settlement agreements
 - One company, Constellation, agreed to pay \$135 million in civil penalties and disgorge \$110 million in unjust profits
 - 3 of the 9 settlements involved violations of the Commission's Anti-Manipulation Rule and 3 involved violations of Natural Gas Open Access rules
 - The remaining three settlements involved violations concerning Market-Based Rate Authority, Open-Access Transmission Tariffs, and the Reliability Standards.



Enforcement / Reliability

- **Enforcing Reliability**
 - FERC enforces Reliability Standards established by the Electric Reliability Organization (NERC) and approved by the Commission
 - The primary focus is on violations resulting in actual harm – such as loss of load
 - Investigations can involve repeat violations of the Reliability Standards
- **Recent activity in 2012**
 - Completed 2 inquiries into the causes of bulk power system outages in New England and in the Southwest
 - Reviewed 771 potential or confirmed violations of the Reliability Standards
 - Issued 45 filed notices of penalty
 - Completed 44 audits
 - Resulted in almost four hundred recommendations for corrective action
 - Directed over \$5.8 million in refunds.



Other Enforcement Activities

- Enforcement staff produces an annual State of the Markets Report and seasonal Market and Reliability Assessments –
<http://www.ferc.gov/market-oversight/reports-analyses/reports-analyses.asp>
- In 2012 Enforcement staff released an Energy Primer which is a comprehensive overview of the natural gas and electric sectors –
<http://www.ferc.gov/market-oversight/guide/energy-primer.pdf>
- The Office of Enforcement created a new division in 2012, the Division of Analytics and Surveillance
- FERC recently issued regulations that will greatly enhance its ability to conduct surveillance of the electric markets.
- Much more information can be found in the 2012 Report on Enforcement
<http://www.ferc.gov/legal/staff-reports/11-15-12-enforcement.pdf>