

INSIGHTS

FERC Tees Up Enforcement for 2013

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The specter of enforcement actions by the Federal Energy Regulatory Commission is looming large over the energy industries. In the post-election flurry of FERC enforcement activity, FERC curtailed JP Morgan Venture Energy Corp.'s authority to sell power at market-based rates; opened investigations into the rates of two oil pipelines, Wyoming Interstate Company, L.L.C. and Viking Gas Transmission Company; settled with Gila River Power, LLC over allegations of market manipulation in the California energy markets; initiated an inquiry to improve price transparency in the natural gas markets; and initiated approximately ten audits of natural gas pipelines and other energy industry market participants. Buried amongst this industry-shaking deluge was the FERC Office of Enforcement's 2012 Report on Enforcement. In the report, FERC Enforcement stated it was going to continue focusing on last year's priorities, which were:

1. fraud and market manipulation;
2. serious violations of the reliability standards;
3. anti-competitive conduct; and
4. conduct that threatens the transparency of the regulated markets. This means that the industry can expect to see essentially more of the same from FERC Enforcement.

As for investigations, FERC likely will continue investigations into power outages and other disruptions to the markets, such as its investigation into the power outages caused by the 2011 Northeast Snowstorm or the late 2011 Arizona-Southern California power outages, but FERC will also continue to investigate possible non-compliance and market manipulation in the energy markets. To that end, FERC's new Division of Analytics and Surveillance came on line in February, 2012, and its task of surveilling the energy markets and detecting market manipulation will bolster FERC Enforcement's ability to pursue non-compliant entities. Further, FERC Enforcement's settlements in FY 2012 also reflected a focus on preventing market manipulation as four of the nine settlements entered in 2012 were for market manipulation and/or false statements, whereas in 2011 the number was significantly smaller; in 2010, there were none. Notwithstanding the focus on market manipulation, FERC Enforcement is continuing its monitoring and auditing obligations. For example, according to the Report on Enforcement, in FY 2012, FERC completed 44 financial, compliance, and performance audits of public utilities, natural gas pipelines, and storage companies covering a range of topics. If past trends hold, FERC will likely undertake a similar number in 2013, and it's off to a strong start

with 23 financial and operational audits already initiated in FY 2013. Further, the 2012 Report on Enforcement also indicated that the number of self-reports dropped in 2012; 89 were submitted as compared to 107 reports submitted in 2011 and 93 reports in 2010. By far the most frequently self-reported issue was a violation of a tariff or Open Access Transmission Tariff, whereas in 2011, the most frequently self-reported issue was a violation of the standards of conduct regulations. In all, FY 2013 promises to be another active year for FERC Enforcement.