



Regulators and Fair Energy Trading: Role of Guidelines for Market Participants

Jamie Marcos, Deputy Director

U.S. Federal Energy Regulatory Commission

Office of Enforcement, Division of Analytics and Surveillance

September 28, 2021



Disclaimer

The views expressed in this presentation are those of the presenter and do not necessarily reflect the views of the Federal Energy Regulatory Commission, its Chairman, or any individual Commissioner.



FERC's Enforcement Program

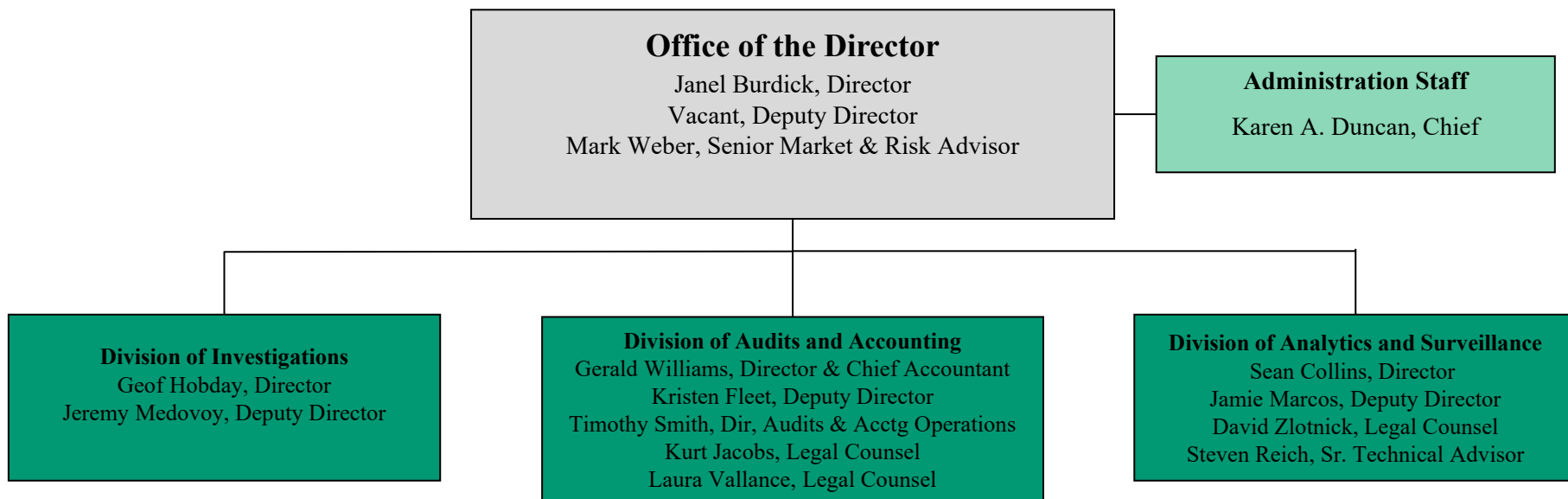
The Commission's Office of Enforcement is responsible for enforcing the Commission's Prohibition of Market Manipulation in wholesale natural gas and electric markets as well as a variety of other statutes, rules, regulations and orders. If a market participant is found to be in violation, the Commission has the authority to:

- Assess civil penalties against market participants of up to \$1,307,164 million per violation, per day;
- Order disgorgement of unjust profits; and/or
- Order other remedial actions, such as revoking market-based rates.

However, the **primary goal** of the Commission's Enforcement Program is achieving **compliance**, not assessing penalties.



Office of Enforcement





Promoting a Culture of Compliance

- The Commission has developed a variety of tools to promote a culture of compliance and to assist market participants in developing strong compliance programs.
- Each Division in the Office of Enforcement plays a role in the Commission's efforts to promote compliance.
- The Commission has consistently emphasized that there is no one-size-fits-all approach to compliance and has declined to mandate or recommend the adoption of any particular compliance program or compliance practices.



Guidance Documents and Outreach

- Since 2005, the Commission has issued five Policy Statements that emphasize for market participants the value of developing and maintaining an effective compliance program.
- These Policy Statements:
 - Provide guidance as to how organizations should design and implement their compliance programs;
 - Describe how investing in building robust and effective compliance programs can reduce the risk of violations occurring and enforcement actions;
 - Describe how the Commission evaluates the effectiveness of a market participant's compliance program; and
 - Explain that the existence of an effective compliance program will result in substantial reduction in the civil penalty assessment for violations that occur despite the existence of a compliance program.
- Commission staff also regularly engages in outreach with market participants to promote compliance, provide advice, and respond to questions.



Guidance Document:

Staff White Paper on Effective Energy Trading Compliance Practices

In 2016, the Office of Enforcement issued a *Staff White Paper White Paper on Effective Energy Trading Compliance Practices* that focused on providing guidance on compliance practices that would help organizations that engage in energy trading to detect and deter market manipulation. The White Paper:

- Draws on staff’s experience in conducting surveillance, audits, and investigations of market participant activities and examining compliance programs from a variety of different market participants;
- Provides concrete examples of effective compliance practices, procedures, training, and review that assist electric energy and natural gas market participants in designing, implementing, and maintaining strong compliance programs; and,
- Lists examples of compliance practices that have proven ineffective in detecting and deterring market manipulation.



Examples of Effective Compliance Practices

- Hire compliance personnel with a variety of professional and educational experience, including legal, operations, risk management, and trading and invest in the necessary information technology resources.
- Integrate compliance into the organization's business units and empower compliance personnel to succeed by giving them proper authority.
- Implement compensation structures that incentivize compliance.
- Provide frequent, updated, and topic-specific training that is tailored to the organization's specific activities.
- Disseminate new compliance information in a timely manner.
- Establish appropriate trading rules and restrictions and consistently monitor traders for compliance with those rules.
- Establish and enforce consequences for noncompliance.
- Reassess a compliance program on a regular basis to ensure it continues to meet the evolving mission and needs of the organization.



Audit Program

The Office of Enforcement's Division of Audits and Accounting performs financial and operational audits of industry participants to ensure compliance with the Commission's rules, orders, regulations, and statutes. These audits involve:

- Site visits and interviews for staff to evaluate a market participant's systems and controls for complying with the applicable rules, orders, regulations and statutes;
- Discussions between staff and the market participants on improvements that can be made to their systems and controls to improve compliance; and,
- The issuance of public audit reports that provide recommendations for the entity under audit and valuable guidance to other market participants for their own programs.



Surveillance Program

The Office of Enforcement's Division of Analytics and Surveillance conducts ongoing surveillance of the electric and natural gas market. As part of this Surveillance Program, staff regularly contacts market participants whose activity raise concerns. These regular interactions with market participants, including traders and compliance personnel, promote compliance by:

- Providing guidance to the market participants about the kinds of activity that cause alerts for the Office of Enforcement;
- Informing compliance personnel about what they should be looking for when monitoring their traders internally;
- Helping market participants respond effectively to OE's concerns, potentially avoiding expensive investigations and enforcement actions; and,
- Emphasizing the importance of compliance with traders and highlighting the risks associated with failing to heed the advice of compliance personnel.



Investigations and Enforcement Actions

The Office of Enforcement's Division of Investigations is responsible for initiating and executing investigations of possible violations of the statutes administered by the Commission and the rules, orders, and regulations issued thereunder.

- If a violation is found, staff reviews the market participant's compliance program to determine if it was effective at the time of the violation, which could substantially reduce the civil penalty assessed by the Commission for a violation. Staff will consider the following:
 - Role of senior management in fostering compliance;
 - Effective preventive measures to ensure compliance;
 - Prompt detection, cessation, and reporting of violations; and,
 - Remediation efforts.
- If an investigation is resolved through settlement, staff may include a compliance monitoring requirement to ensure that the entity makes improvements to its compliance program.
- The Commission's issuance of detailed orders on enforcement matters provide valuable guidance to compliance personnel.



Questions?



Additional Resources

Policy Statement on Enforcement, *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 (2005). <https://www.ferc.gov/sites/default/files/2020-07/PolicyStatementonEnforcement.pdf>

Revised Policy Statement on Enforcement, *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008). <https://www.ferc.gov/sites/default/files/2020-04/M-1.pdf>

Policy Statement on Compliance, *Compliance with Statutes, Regulations, and Orders*, 125 FERC ¶ 61,058 (2008). <https://www.ferc.gov/sites/default/files/2020-04/M-3.pdf>

Policy Statement on Penalty Guidelines, *Enforcement of Statutes, Orders, Rules, and Regulations*, 130 FERC ¶ 61,220 (2010). <https://www.ferc.gov/sites/default/files/2020-07/PolicyStatementonPenaltyGuidelines.pdf>

Revised Policy Statement on Penalty Guidelines, *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 (2010). <https://www.ferc.gov/sites/default/files/2020-07/RevisedPolicyStatementonPenaltyGuidelines.pdf>

Staff White Paper on Effective Energy Trading Compliance Practices, November 2016. <https://www.ferc.gov/sites/default/files/2020-05/tradecompliancewhitepaper.pdf>