



Federal Energy Regulatory Commission

Enforcement Procedure

A Few Procedural Points

Jay Matson
Chief, Branch 2
Office of Enforcement, Division of Investigations
Federal Energy Regulatory Commission

December 1, 2021

888



Investigations

Federal Energy Regulatory Commission

Basic Life Cycle of an Investigation

- Matter comes to Investigation
- Often do some informal research – is this suspicious enough to merit an investigation?
- Preliminary Investigation
- Convert to Formal Investigation?
- Can close at any time, but if it goes forward, the following are the major milestones . . .
 - Preliminary Findings/Conclusions
 - Obtain Settlement Authority
 - 1b.19 letter
 - Order to Show Cause



Sources of Investigations

Federal Energy Regulatory Commission

- Primary Sources
 - Market Monitors
 - Other FERC Offices/Divisions
 - Market Participants
 - Public
 - Self-Reports



Opening

Federal Energy Regulatory Commission

- **Initial Inquiry**
 - are there enough questions and/or evidence worthy of examination?
- **Preliminary Investigation**
 - “preliminary” is, in some ways, a misnomer
- **Formal Investigation**
 - Need Commission to convert it
 - No public order
 - The key difference: subpoena authority



Fact Gathering

Federal Energy Regulatory Commission

- **Fact Gathering Tools**
 - Data Requests
 - Witness Testimony
 - often at FERC, but do go out into the field
 - testimony occur over several non-consecutive days
 - can have more than staffer in the room
 - attorneys and technical
 - all staffers can ask questions
 - Informal Interviews
 - trying to be more efficient





Exculpatory Evidence

Federal Energy Regulatory Commission

- Criminal Law

- Fifth Amendment of the US Constitution
- *Brady v. Maryland*, 373 U.S. 83 (1963)



- FERC

- Policy Statement on Disclosure of Exculpatory Materials

- the principle of *Brady* should apply to FERC enforcement actions
- defendant need not ask for it; government already obligated turn it over
- need not turn over if . . .
 - already in defendant's possession
 - can be obtained with reasonable diligence



Preliminary Findings

Federal Energy Regulatory Commission

- **Preliminary Findings**
 - The first comprehensive summary of OE's thinking
 - Subject has an opportunity to respond
 - It is “preliminary” so staff's view might change after this as it continues to review and analyze the evidence, especially if new evidence is received



Settlement

Federal Energy Regulatory Commission

- Staff needs Commission authorization to engage in settlement negotiations with a subject
- Even if subject does not want to settle, staff will get authorization and provide the subject an opportunity
- If settlement reached, a “Stipulation and Agreement” is signed by the subject and OE’s Director
- If the Commission approves the Stipulation and Agreement, it will do so by issuing an order with the Stipulation and Agreement Attached

156 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Saracen Energy Midwest, LP Docket No. IN16-7-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT
(Issued August 22, 2016)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Saracen Energy Midwest, LP (Saracen). This order is in the public interest because it resolves on fair and equitable terms Enforcement’s investigation under Part 1b of the Commission’s regulations, 18 C.F.R. Part 1b (2015), into whether Saracen violated the Southwest Power Pool, Inc.’s (SPP) Open Access Transmission Tariff, Attachment AE, § 7.4.1(4) by submitting bids for Transmission Congestion Rights (TCRs) at Electronically Equivalent Settlement Locations (EESLs). Saracen submitted the bids at issue for auctions in September and October 2014, and March and April 2015 (Relevant Bids or Relevant Auctions).

2. Saracen neither admits nor denies the violations and agrees to pay a civil penalty of \$25,000. Saracen will also implement measures designed to ensure compliance in the future, including submitting an annual compliance report.

1. **Background and Investigation**

3. SPP’s Market Monitoring Unit (MMU) submitted a referral to Enforcement on April 7, 2015. Thereafter, on September 21, 2015, staff opened a preliminary, non-public investigation. Staff sent data requests to Saracen and SPP, interviewed several SPP employees, and took investigative testimony from the relevant Saracen trader (Trader).

4. Saracen is one of several affiliated companies comprising a privately held investment enterprise based in Houston, Texas. The enterprise is involved in a variety of investment activities, but is focused primarily on energy trading. Saracen has traded TCRs in SPP since SPP’s Integrated Marketplace started-up in March 2014. The referral and investigation centered on Saracen’s bids in SPP’s monthly TCR auctions.



1b.19 Letter

Federal Energy Regulatory Commission

- If going to recommend that Commission issue an Order to Show Cause, must give notice to the subject
- Subject has an opportunity to respond
 - 30 days to respond
 - Subject is not required to respond, but most do



WARNING



Recommendation to FERC

Federal Energy Regulatory Commission

- Staff Report provided to Commission asking it to issue an Order to Show Cause or initiate ALJ proceeding
- Comprehensive justification offered to support the recommendation
- Subject given opportunity to respond
- Based on the report and the response, the Commission decides what to do