



# Overview of the Federal Energy Regulatory Commission's Penalty Authority

Jeremy Medovoy  
Deputy Director, Division of Investigations  
Office of Enforcement  
Federal Energy Regulatory Commission



# Agenda

- FERC's Civil Penalty Authority
- Penalty Determinations Pre-Penalty Guidelines
- Adoption of Penalty Guidelines
- Structure and Applicability of Penalty Guidelines
- Mechanics of Penalty Determinations Under the Penalty Guidelines



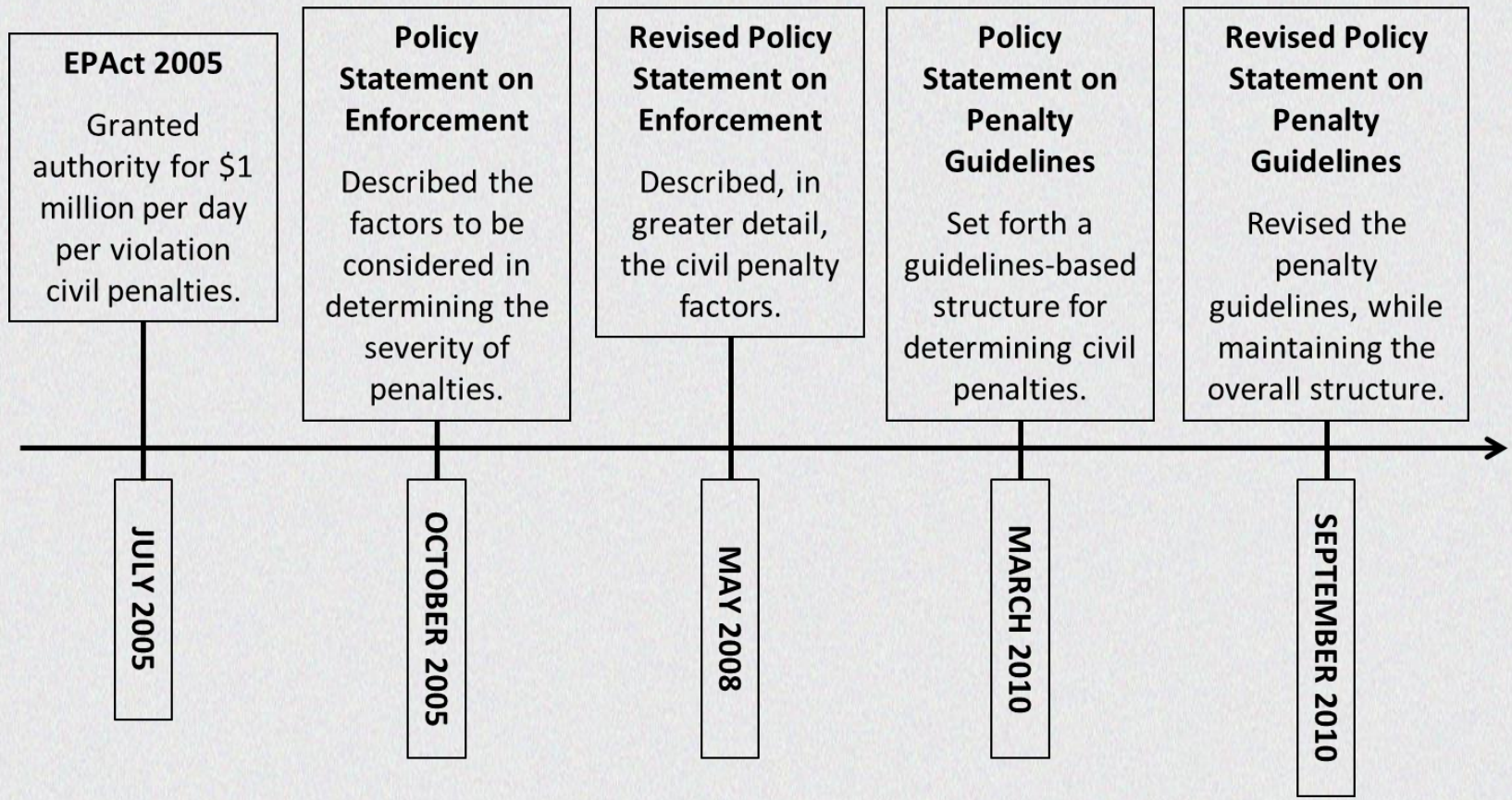
# FERC's Civil Penalty Authority

- FERC's penalty authority since 2005: **\$1 million per day, per violation** for violations of the Federal Power Act and Natural Gas Act.
  - Significant increase from pre-2005 authority
  - Adjusted each year for inflation
- By statute, FERC penalties must consider the (1) **seriousness of the violation** and (2) the **efforts to remedy the violation in a timely manner**.
- The Commission also has routinely required disgorgement of unjust profits.



# Evolution of the Commission's Penalty Determination Process

## Evolution of Commission's Approach to Penalty Determinations Under Statutory Authority





# Penalty Determinations Pre-Penalty Guidelines

- FERC determined penalties on a case-by-case basis, considering factors relevant to the seriousness of the violation and efforts to remedy.
- Factors included:
  - Harm caused by violation
  - Whether conduct was willful
  - Prior history of entity
  - Senior management involvement
  - Efforts to remedy
  - Commitment to compliance
  - Self-reporting and cooperation
  - Impact of penalty on financial viability of entity



# Adoption of Penalty Guidelines

- **FERC adopted a Penalty Guidelines approach to determine penalties in 2010.**
- **Penalty Guidelines changed determination process from a case-by-case approach to a formulaic calculation**
  - Modeled after the U.S. Sentencing Guidelines, FERC's Penalty Guidelines base penalties on the same factors FERC previously considered but do so in a more focused manner by assigning specific and transparent weight to each factor.
  - The Penalty Guidelines generate a penalty range based on a combination of the type of violation at issue and a set of culpability factors, unique to the facts of a particular case.



# Structure and Applicability of Penalty Guidelines

## Applicability:

- Penalty Guidelines apply to the penalties to be imposed on organizations for violations of the statutes, rules, and regulations, under FERC's jurisdiction.
- But, there are two exceptions where Penalty Guidelines do not apply:
  - Penalties for individuals.
  - Multiple types of violations.
- The Commission can depart to account for unique or exceptional factors that might arise in a case that are not specifically accounted for by the Penalty Guidelines.
  - Commission has departed seven times since 2010.



# Mechanics of Penalty Guidelines Calculations

## Penalty Guidelines Flowchart







# Mechanics of Penalty Guidelines Calculations (Cont'd)

- **Step One: “Base Violation Level”**
  - **Fixed number based on the type of violation**
    - **Violation of Reliability Standards: 6**
    - **Fraud, anti-competitive conduct, and other rule, tariff, and order violations: 6**
    - **Misrepresentations and false statements to Commission or Commission staff: 18**



# Mechanics of Penalty Guidelines Calculations (Cont'd)

- **Step Two: Adjustments**

- Example of adjustments in Chapter on fraud:
- Loss adder:

(A) \$5,000 or less no increase	(K) More than \$7,000,000 add <b>20</b>
(B) More than \$5,000 add <b>2</b>	(L) More than \$20,000,000 add <b>22</b>
(C) More than \$10,000 add <b>4</b>	(M) More than \$50,000,000 add <b>24</b>
(D) More than \$30,000 add <b>6</b>	(N) More than \$100,000,000 add <b>26</b>
(E) More than \$70,000 add <b>8</b>	(O) More than \$200,000,000 add <b>28</b>
(F) More than \$120,000 add <b>10</b>	(P) More than \$400,000,000 add <b>30</b>
(G) More than \$200,000 add <b>12</b>	
(H) More than \$400,000 add <b>14</b>	
(I) More than \$1,000,000 add <b>16</b>	
(J) More than \$2,500,000 add <b>18</b>	



# Mechanics of Penalty Guidelines Calculations (Cont'd)

- **Step Three: “Base Penalty”**

- Calculate the “Base Penalty,” which is the greater of:
  - Dollar amount from the “Violation Level Penalty Table”
  - Pecuniary gain to organization
  - Pecuniary loss caused by violation

- **Violation Level Penalty:**

6 or less	\$5,000	17	\$250,000	28	\$6,300,000
7	\$7,500	18	\$350,000	29	\$8,100,000
8	\$10,000	19	\$500,000	30	\$10,500,000
9	\$15,000	20	\$650,000	31	\$13,500,000
10	\$20,000	21	\$910,000	32	\$17,500,000
11	\$30,000	22	\$1,200,000	33	\$22,000,000
12	\$40,000	23	\$1,600,000	34	\$28,500,000
13	\$60,000	24	\$2,100,000	35	\$36,000,000
14	\$85,000	25	\$2,800,000	36	\$45,500,000
15	\$125,000	26	\$3,700,000	37	\$57,500,000
16	\$175,000	27	\$4,800,000	38 or more	\$72,500,000



# Mechanics of Penalty Guidelines Calculations (Cont'd)

- **Step Four: “Culpability Score” (Aggravating and Mitigating Factors) Start with 5 points**
  - + Add 0-5 points for Senior Management Involvement in or Tolerance of Violations
  - + Add 0-2 points for Prior History
  - + Add 0 or 2 points for Violation of an Order
  - + Add 0 or 3 points for Obstruction of Justice
  - Subtract 0-3 points for an Effective Compliance Program
  - Subtract 0 or 2 points for a Self Report
  - Subtract 0 or 1 point for Full Cooperation
  - Subtract 0 or 1 point for Avoidance of a Trial-Type Hearing
  - Subtract 0 or 1 point for an Admission

Final “culpability score” corresponds to a set of minimum and maximum multipliers listed in the Penalty Guidelines



# Mechanics of Penalty Guidelines Calculations (Cont'd)

- **Step Five: Multiply “Base Penalty” by Minimum and Maximum Multipliers to generate a civil penalty range**

Culpability Score	Minimum Multiplier	Maximum Multiplier
10 or more	2.00	4.00
9	1.80	3.60
8	1.60	3.20
7	1.40	2.80
6	1.20	2.40
5	1.00	2.00
4	0.80	1.60
3	0.60	1.20
2	0.40	0.80
1	0.20	0.40
0 or less	0.05	0.20

- **Base Penalty x Minimum Multiplier = Low End**
- **Base Penalty x Maximum Multiplier = High End**