FERC’s 2020 Annual Report on Enforcement: Key Focus for Pipeline Companies

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On November 19, 2020, the Federal Energy Regulatory Commission (FERC) Office of Enforcement (Enforcement) issued the 2020 Annual Report on Enforcement (Report). The Report informs the public and the regulated community of Enforcement’s fiscal year activities occurring October 1, 2019, through September 30, 2020 (FY 2020). Notably, the Report does not include any enforcement actions resulting in civil penalties involving pipeline companies. As stated in the Report, the unprecedented pandemic allowed Enforcement to make several compliance-related accommodations, including extending deadlines, suspending new audits, and postponing the contacts it makes in connection with surveillance inquiries. It is expected that, in a post-COVID-19-era and with a new administration, FERC’s enforcement approach may be more active in the coming years.

The 82-page Report identifies the FY 2020 activities conducted by the following Enforcement divisions: the Division of Investigations (DOI), the Division of Audits and Accounting (DAA), and the Division of Analytics and Surveillance (DAS). While the Report covers a wide range of Enforcement activities, the areas of focus for pipeline companies include illustrative examples of the following activities: (1) self-reports, (2) an investigation that closed with no action, (3) surveillance screens activity, and (4) audits featuring accounting and tariff noncompliance examples. [1]

1. Self-Reports Closed with No Action. Prompt action, corrective training, and no harm to third parties allowed the following self-reports to be closed with no action:

a. Regulatory filing violation: a natural gas company failed to obtain certain environmental clearance documents required for a disposal pipeline project, pertaining to its certificate of public convenience and necessity. FERC staff closed this self-report because: the violation appeared to be an anomaly, the company conducted refresher training, and the company took steps to correct the violation.

b. Interstate Commerce Act (ICA) violation: a natural gas liquids pipeline inadvertently disclosed, for 15 months, confidential shipper information contained in an inventory report. FERC staff closed this self-report because: the disclosure was inadvertent, there was no harm to any third party, and the company took preventative steps to avoid future violations.

c. ICA violation: a pipeline company failed to seek an independent tariff when it added a small lateral line to an existing fully certificated pipeline that already had a tariff. FERC staff closed this self-report due to the lack of market harm and the company's prompt efforts to remedy the violation by making the required filings.

d. Natural Gas Act (NGA) Section 7 violation: an interstate gas pipeline with NGA Section 7(c) blanket certificate authority failed to provide notice of interconnection to a gas distribution facility that was already served by a local distribution company. The company also failed to conduct an environmental review, under the belief that the gas distribution facility had performed it. FERC staff closed this self-report due to the lack of economic or environmental harm and because of the company's prompt reporting and remediation (ceasing project construction, late-filing the notice filing, and completing environmental reviews).

e. Natural gas transportation violation: two affiliates of a public utility engaged in several purchases and sales that violated the Commission's prohibition on buy/sell transactions. The trades occurred on five flow days over one week and involved small quantities. FERC staff closed this self-report because there was no harm, and the company took steps to prevent future violations.

2. An Investigation Closed with No Action. FERC staff opened an investigation into whether a natural gas company failed to obtain advance landowner authorization for a right-of-way (ROW) variance. Staff closed the investigation when it determined that the company had accessed the landowner's off-ROW property to perform the work at the landowner's ambiguous request.

3. 10,594 Physical Natural Gas Market Surveillance Screen Trips Returned Zero Referrals to DOI. Although there were zero referrals to DOI, the DAS screen trips generated 1,457 surveillance alerts and 26 surveillance inquiries. For example, trades affecting next-month bidweek indices—such as the Platts Inside FERC Gas Market Report—prompted FERC staff to contact each respective market participant to learn more. Similarly, FERC staff contacted a market participant when its hedging strategy appeared to provide support for the market participant's produced gas and financial basis options. In each case, the market participant provided satisfactory explanations; and following this, there was no referral to DOI.

4. FERC Audits Uncovered Recurring Noncompliance Areas in Tariffs and Accounting. DAA conducted ten audits of jurisdictional entities in FY 2020. DAA audits allow jurisdictional companies to evaluate and improve their overall compliance and to identify areas of noncompliance before they escalate. With respect to audits of natural gas pipelines, DAA found that some natural gas tariffs did not comply with the Commission's procedures for: (1) using the method specified in the tariff for valuing system gas activities; (2) enforcing stipulations in operational balancing agreements to manage and monitor gas imbalance activities between interstate and intrastate pipelines; (3) updating their tariffs to fully reflect the Commission's reservation charge crediting policy for force majeure and non-force majeure events; and (4) penalty revenues collected from offending shippers and refunded to non-offending shippers.

Certain accounting for natural gas pipelines did not comply with the Commission's accounting procedures in: certain activities pertaining to system gas accounting, penalty revenues assessed to noncompliant shippers, shipper imbalances and cash-outs, lost and unaccounted-for gas, and fuel used in compressor stations.

Other areas of accounting noncompliance included the: use of allowance for funds used during construction (AFUDC) rates above the maximum allowed rate; improper derivation of certain components included in the AFUDC rate; accrual of AFUDC on unpaid amounts and non-eligible construction costs; misclassification of non-operating expenses associated with donations, fines, employment discrimination compromise settlements, penalties, lobbying activities, and membership dues; misclassification of operating expenses as general and administrative expenses; improper allocation of shared service costs; and application of cost allocation methodologies absent a time study or other supporting records.

Even though the effects of the current pandemic continue to weigh on the activities of jurisdictional companies, recent comments at Commission Open Meetings, and a change in administration, may signal additional Enforcement activity in FY 2021. Notwithstanding, pipeline companies should continue to be proactive in developing and implementing programs that effectively institute a culture of compliance within their respective organizations.

To access the full Report, please visit: https://www.ferc.gov/media/2020-annual-report-enforcement.

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[1] The examples in the Report are not intended to be an exhaustive description of all matters and activities affecting pipeline companies that are discussed in the Report.

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