

FERC Issues 2023 Enforcement Report

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On 16 November 2023, the Federal Energy Regulatory Commission's (FERC or Commission) Office of Enforcement (Enforcement) released its **2023 Annual Report on Enforcement** (FY2023 Report). The FY2023 Report is the 8th annual report issued by the Commission, providing an overview of Enforcement's priorities. It summarizes actions taken by the three divisions within Enforcement: Division of Investigations (DOI), Division of Audits and Accounting (DAA), and Division of Analytics and Surveillance (DAS). The firm's **Energy** and **White Collar Defense and Investigations** groups closely collaborate to advise clients on self-reports to, as well as inquiries and investigations by, Enforcement.

SIGNIFICANT TAKEAWAYS

The FY2023 Report demonstrates that enforcement remains a key priority of the Commission, with inquiries and investigations continuing apace.

Self-reporting remains significant. The report highlights 148 new self-reports that Enforcement received over the past year and notes that detection and remediation of violations remain hallmarks of successful compliance programs. Enforcement closed 125 of the 148 self-reports with no action because the company promptly self-reported, corrected the mistake, and provided refunds in some instances. Only 23 reports led to further action.

Renewable resources and demand response providers received scrutiny. Several self-reports and settlements highlight Enforcement's close attention to compliance with market offers and market rules. Renewable resources were not exempted from such scrutiny. As newly developed facilities come online, their owners and operators must consider requirements to implement and maintain a compliance regime.

Understanding of tariff provisions is more important than ever. The FY2023 Report highlights that in the complex

regulatory regimes of Commission-jurisdictional electricity and natural gas markets, it remains critical for companies to keep up with tariff changes, updated reliability standards, and DAA compliance alerts, in addition to being proactive in assessing business operations and procedures for compliance issues.

2023 ENFORCEMENT MATTERS DEMONSTRATED A PROACTIVE ENFORCEMENT

Fiscal year 2023 (FY2023) saw a continuation of significant Enforcement activity. During FY2023, Enforcement opened 19 new investigations. The Commission also approved 12 settlement agreements that resolved either an active investigation or a matter in litigation. Of those, nine involved investigations asserting claims of market manipulation, tariff violations, and misrepresentations prohibited by the Commission's *Duty of Candor* rule.¹ Those settlements totaled US\$33.39 million, of which US\$11.72 million comprised civil penalties and approximately US\$21.67 million comprised disgorgement. The amounts recovered in the three litigated matters comprised US\$4 million in disgorgement and US\$15.15 million in civil penalties.

The year also saw nine audits of public utility, oil, and natural

gas companies that resulted in 68 findings of non-compliance and US\$33 million in refunds and other recoveries.

FY2023 PRIORITIES REMAIN UNCHANGED

In FY2023, Enforcement's priorities stayed the same as in 2021 and 2022:

- Fraud and market manipulation;
- Serious violations of Reliability Standards;
- Anticompetitive conduct;
- Threats to the nation's energy infrastructure and associated impacts on the environment and surrounding communities; and
- Conduct that threatens the transparency of regulated markets.

The fifth priority, regarding threats to the nation's energy infrastructure and impacts on the environment, was added in 2021. The other four priorities have remained consistent since the Energy Policy Act of 2005 gave expanded enforcement authority to the Commission.

FOCUS ON MARKET RULES

Enforcement reported that DAS worked with DOI on

approximately 60 investigations involving allegations of manipulation in the Commission-jurisdictional natural gas and electricity markets, or violations of tariff provisions. In the electric sector, Enforcement resolved eight investigations via settlement in FY2023. Of the eight settlements, five involved a market rule or tariff violation. These included the following:

- A company failing to comply with PJM Interconnection, LLC's Parameter Limited Scheduling requirements;
- A company submitting erroneous offers for its generating unit in the footprint of the Midcontinent Independent System Operator (MISO); and
- Several demand response providers bidding capacity into California Independent System Operator and MISO markets that were not actually available to perform or failing to reduce load.

Similarly, many of the self-reports highlighted in the FY2023 Report involve violations of the market rules or tariffs of independent system operators or regional transmission organizations. A sampling of self-reports includes:

- Failure to timely obtain market-based rate authority;
- Failure to obtain prior authorization under section 204 before entering into a construction finance agreement;
- Failures to timely file various filings, including requests for authorization under section 203, self-certifications of QF status, and notices of change in status; and

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- Failure to timely provide standards of conduct training.

These matters highlight the critical importance of awareness and compliance with all FERC and tariff requirements.

Companies would be advised to closely monitor market rule changes and regularly train all employees engaged in market activities to ensure they are aware of all rules and rule changes.

WINTER STORM ELLIOTT REVIEW

Enforcement participated in the review of Winter Storm Elliott's aftermath in several ways. First, the FY2023 report explains that DAS staff conducted enhanced surveillance to determine if any market participants engaged in behavior that might be considered market manipulation. This enhanced surveillance led to six inquiries. During the press conference following the November Open Meeting, acting Chairman Willie Phillips emphasized that any manipulation will be thoroughly investigated, stating "[t]hose people who conducted market manipulation ... we will find you, we will punish you and you will pay the price."²

Enforcement Staff also participated in the joint FERC-NERC report on the Winter Storm Elliott event, which provided 11 recommendations for actions to prevent similar problems in the future.³

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