
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION OUTLINES PROCESS FOR ASSESSING CIVIL PENALTIES; SETTLEMENTS CONTINUE TO BE PREFERRED RESOLUTION

The Federal Energy Regulatory Commission today outlined its policy for processing and assessing civil penalties administratively. In doing so, the Commission emphasized that in situations where civil penalties are possible, settlements continue to be strongly encouraged as a means of resolving outstanding violations.

“One of the most important changes made by the Energy Policy Act of 2005 to the laws we administer was in the area of enforcement. For the first time, the Commission was granted significant civil penalty authority. The ability to impose civil penalties is the heart of the enforcement authority at most regulatory bodies,” said Commission Chairman Joseph T. Kelliher.

“The Commission prefers settlement to litigation, particularly in regard to enforcement matters,” Chairman Kelliher continued. “However, not all enforcement actions will result in settlement. In those instances, we are prepared to litigate. This order lays out the process we will use to assess civil penalties in enforcement actions that are fully litigated.”

The Commission has civil penalty authority under the Federal Power Act, the Natural Gas Act, and the Natural Gas Policy Act of 1978. There are differences in each statute as to how to assess civil penalties. Today’s administrative policy statement provides specific guidance for each of the statutes.

The Energy Policy Act of 2005 gave the Commission additional civil penalty authority under Part II of the Federal Power Act, the Natural Gas Act and the Natural Gas Policy Act. In addition, the Commission was authorized to assess civil penalties of up to \$1 million per day per violation for violations of rules, regulations and orders issued pursuant to these statutes.

While the specific processes required by each of the statutes differs, in all cases

the Commission first will issue a notice of the proposed penalty, including a statement of the material facts describing the violation, and will give the entity an opportunity to respond with information that could justify reducing, modifying, or eliminating a penalty. The steps the Commission takes after it considers the response to the notice of proposed penalty are governed by the applicable statute.

For violations of Part II of the Federal Power Act, the entity can elect to have a hearing before a Commission administrative law judge or to be assessed a penalty immediately. In the latter case, the Commission will issue an order and assess any appropriate penalty, which is then subject to review *de novo* in a United States district court.

For violations of the Natural Gas Act, which does not specify the procedure to be followed, the Commission will issue an order for a paper hearing or a hearing before an administrative law judge, depending on the nature of the facts or issues that need to be resolved.

For violations of Part I of the Federal Power Act, the process depends in part on whether there has been a violation of a final compliance order. If so, there will be a hearing before an administrative law judge. If there is no compliance order, the entity can elect to have a hearing before an administrative law judge or be assessed a penalty immediately, subject to review *de novo* in a United States district court.

For violations of the Natural Gas Policy Act, the Commission will, after considering the entity's response to the notice of proposed penalty, issue an order and assess any appropriate penalty, which then is subject to review *de novo* in United States district court.

Under all of the statutes, entities being assessed civil penalties will have either a hearing before the Commission or review *de novo* in court, and can appeal final orders assessing penalties to the United States Court of Appeals.