

**Federal Energy Regulatory Commission
October 20, 2005 Meeting
Commissioner Suedeen G. Kelly**

**M-1
Market Manipulation NOPR
M-2
Enforcement Policy Statement
M-4
Contested Audit Procedures NOPR**

Intro:

- The proposed market manipulation regulations (M-1) are an important tool that we intend to use to prevent market manipulation.
- The EPCRA authority under which we propose these rules goes beyond any authority previously held by the Commission.
- In particular, these proposed regulations will apply to “any entity,” not just jurisdictional market-based rate sellers, natural gas pipelines, or holders of blanket certificate authority. “Any entity” may include governmental utilities and other market participants.

New & Existing Rules:

- For the time being, these proposed regulations will coexist with Market Behavior Rule 2. However, I am aware that many members of the industry have suggested ways to improve the administration of our existing Market Behavior Rules. As we begin to promulgate new rules, I want to give assurance that we take seriously the comments that we’ve received regarding our existing rules. With this in mind, we have a number of additional initiatives underway that are designed to give some regulatory certainty to the industry:
 - We have established an inter-office task force to consider suggestions and comments received at our May 2005 Chicago Compliance Officers Conference regarding our Market Behavior Rules, and we intend to undertake a review of Market Behavior Rule 2 in the near future.
 - Moreover, we will not seek duplicative sanctions for the same conduct in the event the conduct violates both Market Rule 2 and these proposed Market Manipulation rules.

- In addition, we are today issuing our Enforcement Policy Statement (M-2), which is designed to provide guidance and regulatory certainty regarding our rules by providing information about the factors we will take into account in determining the severity of penalties and other remedies to be imposed for violations of our rules, and to recognize steps taken to remedy violations, including compliance programs, self-reporting of violations, and cooperation with Commission investigations.
- Also, the M-4 NOPR on Contested Audit Procedures seeks to close a regulatory gap that has arisen as the Commission's audit program has expanded from mostly financial matters to include many operational matters including compliance with tariff provisions. This NOPR seeks to give respondents to operational audits the same process protections that respondents to financial audits have long enjoyed.
 - However, we recognize the possibility that respondents to operational audits may require different or enhanced due process rights as compared to respondents to financial audits. For example, being the subject of a financial audit may not carry the same stigma as being the subject of an operational audit into whether you properly adhered to the requirements of your tariff.
- Finally, we intend to consider implementing a "No-Action Letter" process, similar to that employed by the Securities and Exchange Commission and the Commodity Futures Trading Commission, that will provide guidance on whether particular transactions or practices will be subject to Commission enforcement action.
- I encourage the industry to think carefully about the issues raised by these initiatives and to provide comments accordingly.