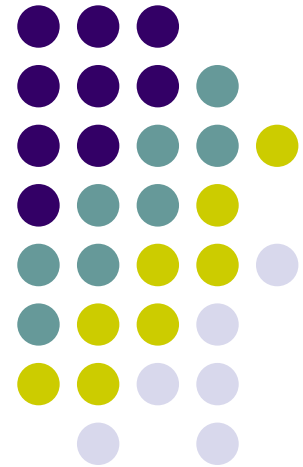


An Overview of the Federal Energy Regulatory Commission and Federal Regulation of Public Utilities in the United States

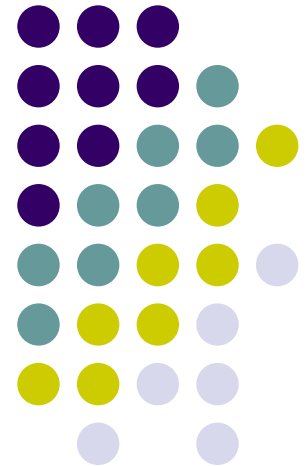


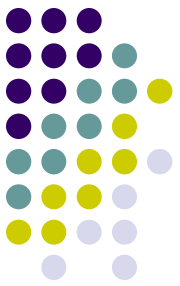
Lawrence R. Greenfield
Associate General Counsel – Energy Markets 1
Office of the General Counsel
Federal Energy Regulatory Commission

December 2010

Note: The views expressed herein are the author's, and do not necessarily reflect the views of the Commission, individual Commissioners, Commission staff or individual Commission staff members.

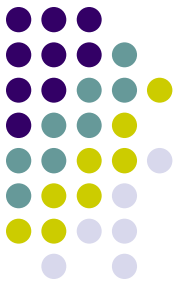
Part I:
**The Federal Energy Regulatory Commission and
Federal Regulation of Public Utilities**





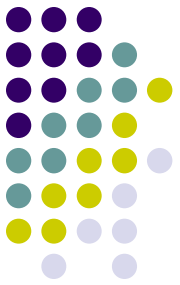
What is FERC?

- A Federal Agency
- An Independent Agency
 - Independent from political party influence: because no more than 3 Commissioners from one party
 - Independent from President's/Congress' influence: because FERC decisions are reviewed by a court
 - Independent from parties' influence: because private discussions in contested case-specific proceedings are prohibited by FERC's "ex parte" regulation (18 CFR 385.2201)



Who are the Commissioners?

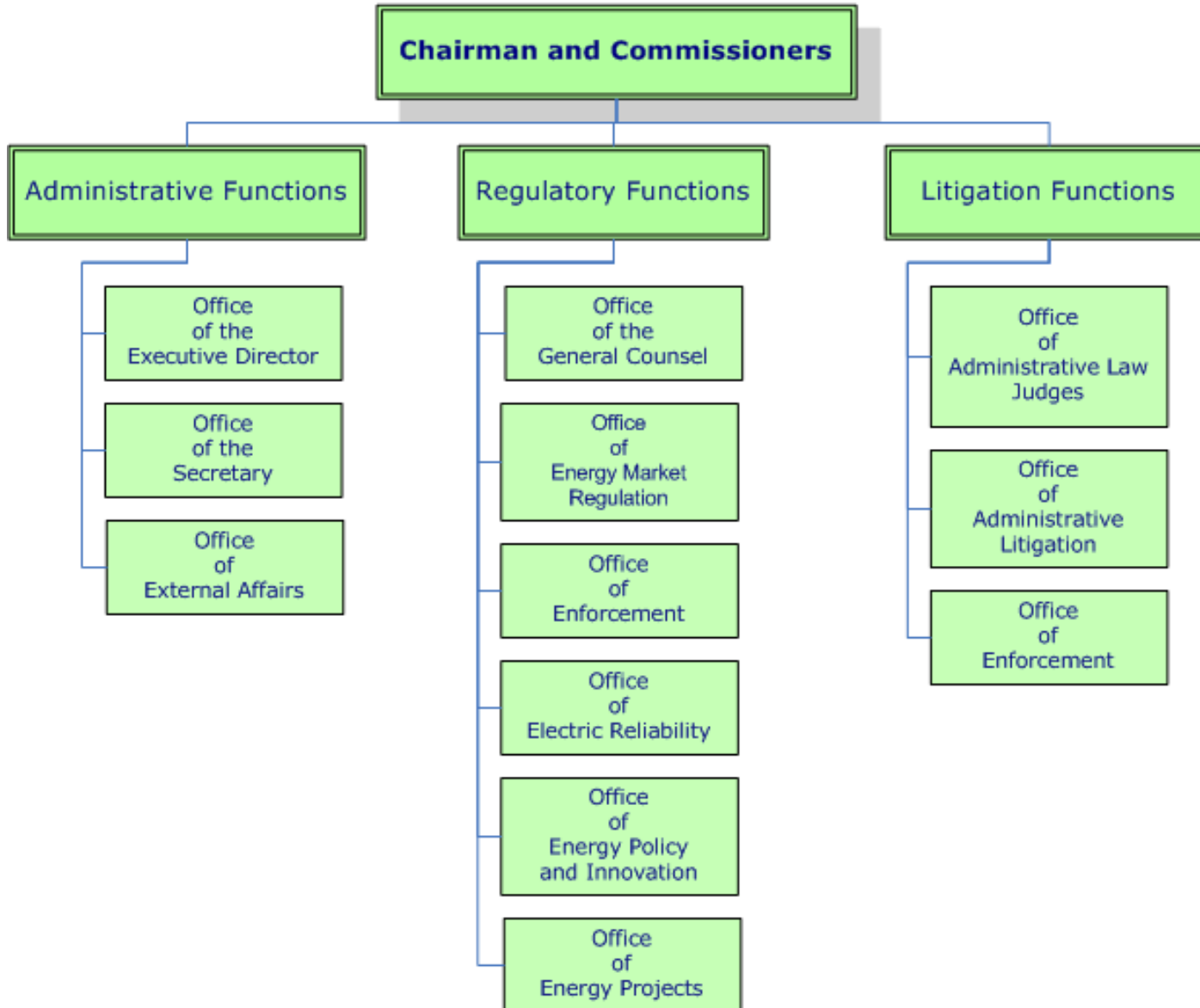
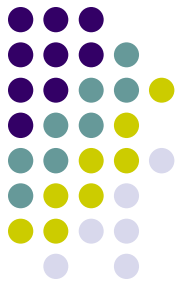
- Nominated by the President and confirmed by the Senate
- Serve staggered 5-year terms
- No more than 3 Commissioners may be from the same political party



How is FERC organized – Part 1?

- *Commissioners*– 5 Commissioners; each has 1 vote (FERC action requires a majority vote)
- *Chairman* – has 1 vote, but the Chairman is FERC’s administrative head
- *Staff* – for the current fiscal year, FERC has requested funding for approximately 1540 employees - including attorneys, accountants, engineers, economists, rate analysts, etc.
- *Budget* – for the current fiscal year, FERC has requested a budget of \$315.6 million:
 - Budget process involves a recommendation by the President and authorization by Congress (at present, FERC is operating under a so-called “continuing resolution”)
 - But funds equal to the budget are reimbursed through: filing fees for individual filings assessed to the filing entity, and annual charges assessed generally to the regulated industries - so that the agency has a “0” effect on the government’s overall budget

How is FERC organized – Part 2?

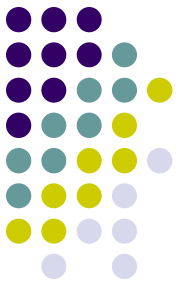




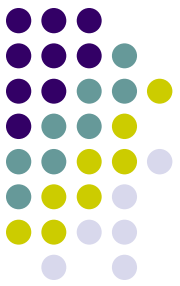
How is FERC organized – Part 3?

- **Office/Organization Descriptions (taken from FERC’s website) –**
- [Office of Administrative Law Judges](#): Resolves contested cases as directed by the Commission effectively, efficiently and expeditiously, either through impartial hearing and decision or through negotiated settlement, ensuring that the rights of all parties are preserved.
- [Office of Administrative Litigation](#): Litigates or otherwise resolves cases set for hearing. Represent the public interest and seek to litigate or settle cases in a timely, efficient and equitable manner while ensuring the outcomes are consistent with Commission policy.
- [Office of Electric Reliability](#): Oversees the development and review of mandatory reliability and security standards. Ensures compliance with the approved mandatory standards by the users, owners, and operators of the bulk power system.
- [Office of Energy Market Regulation](#): Deals with matters involving markets, tariffs and rates relating to electric, natural gas, and oil pipeline facilities and services.
- [Office of Energy Policy and Innovation](#): Issues, coordinates, and develops proposed policy reforms to address emerging issues affecting wholesale and interstate energy markets, including such areas as climate change, the integration of renewable resources, and the deployment of demand response and distributed resources, smart grid and other advanced technologies.
- [Office of Energy Projects](#): Fosters economic and environmental benefits for the nation through the approval and oversight of hydroelectric and natural gas pipeline energy projects that are in the public interest.
- [Office of Enforcement](#): Serves the public interest by guiding the evolution and operation of energy markets to ensure effective regulation and protecting customers through understanding markets and their regulation, timely identifying and remedying market problems, assuring compliance with rules and regulations, and detecting and crafting penalties to address market manipulation.
- [Office of External Affairs](#): Responsible for all external communications with the public and media for the Commission.
- [Office of the Executive Director](#): Provides administrative support services to the Commission including human resources, procurement, information technology, organizational management, financial, logistics and others.
- [Office of the General Counsel](#): Provides legal services to the Commission. OGC represents the Commission before the courts and Congress and is responsible for the legal phases of the Commission’s activities.
- [Office of the Secretary](#): Serves as the official focal point through which all filings are made for all proceedings before the Commission, notices of proceedings are given, and from which all official actions are issued by the Commission. The Secretary promulgates and publishes all orders, rules, and regulations of the Commission and prescribes the issuance date for these unless such date is prescribed by the Commission.

FERC's History



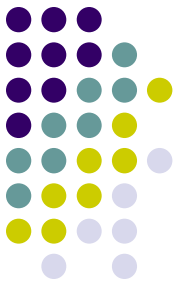
- Federal Power Commission:
 - Federal Water Power Act of 1920
 - Public Utilities Act of 1935: Title I - The Public Utility Holding Company Act of 1935; Title II - The Federal Power Act
 - Natural Gas Act of 1938
- Federal Energy Regulatory Commission:
 - Department of Energy Organization Act of 1977



What does FERC regulate?

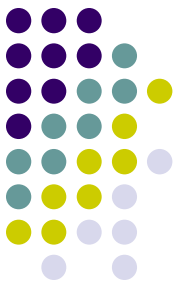
- Electric transmission and wholesale sales rates and services – Principally under Parts II and III of the Federal Power Act
- Hydroelectric dam licensing and safety – Principally under Part I of the Federal Power Act
- Natural gas pipeline transportation rates and services – Principally under the Natural Gas Act
- Oil pipeline transportation rates and services – Principally under the Interstate Commerce Act
- Bear in mind, however, that FERC is a creature of statute, and can only do what a statute allows it do. *California Independent System Operator Corporation v. FERC*, 372 F.3d 395, 398-99 (D.C. Cir. 2004).

What is within FERC's public utility-related statutory authority (i.e., FPA Parts II and III)?



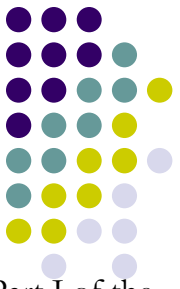
- What does FERC regulate under Parts II and III of the Federal Power Act (FPA):
 - FERC's "bread-and-butter" <> the regulation of public utility transmission and sales for resale:
 - Transmission of electric energy in interstate commerce by public utilities, i.e., the rates, terms & conditions of interstate electric transmission by public utilities – FPA 201, 205, 206 (16 USC 824, 824d, 824e)
 - Sales of electric energy at wholesale in interstate commerce by public utilities, i.e., the rates, terms & conditions of wholesale electric sales by public utilities – FPA 201, 205, 206 (16 USC 824, 824d, 824e)
 - That is, FERC has *exclusive* jurisdiction over the "transmission of electric energy in interstate commerce," and over the "sale of electric energy at wholesale in interstate commerce," and over "all facilities for such transmission or sale of electric energy." 16 USC 824(b); e.g., *Pennsylvania Power & Light Company*, 23 FERC ¶ 61,006 at 61,018, *reh'g denied*, 23 FERC ¶ 61,325 (1983); *Southern Company Services, Inc.*, 37 FERC ¶ 61,256 at 61,652 (1986); *Florida Power & Light Company*, 40 FERC ¶ 61,045 at 61,120-21, *reh'g denied*, 41 FERC ¶ 61,153 at 61,382 (1987); *Houlton Water Company v. Maine Public Service Company*, 60 FERC ¶ 61,141 at 61,515 (1992); *Northern Indiana Public Service Company*, 66 FERC ¶ 61,213 at 61,488 (1994); *Connecticut Light and Power Company*, 70 FERC ¶ 61,012 at 61,030, *reconsid. denied*, 71 FERC ¶ 61,035 (1995); *Central Vermont Public Service Corporation*, 84 FERC ¶ 61,194 at 61,973-75 (1998); *Progress Energy, Inc.*, 97 FERC ¶ 61,141 at 61,628 (2001); *Armstrong Energy Limited Partnership, LLLP*, 99 FERC ¶ 61,024 at 61,104 (2002); *Niagara Mohawk Power Corporation*, 100 FERC ¶ 61,019 at P 17 (2002); *Barton Village, Inc. v. Citizens Utilities Company*, 100 FERC ¶ 61,244 at P 12 (2002); *Virginia Electric and Power Company*, 103 FERC ¶ 61,109 at P 6 (2003); *Southern California Edison Company*, 106 FERC ¶ 61,183 at P 14, 19 (2004); *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,337 at P 14 & n.17 (2004); *Entergy Services, Inc.*, 120 FERC ¶ 61,020 at P 28 (2007); *Aquila Merchant Services, Inc.*, 125 FERC ¶ 61,175 at P 17 (2008).
 - Corporate activities and transactions by public utilities – mergers, securities issuances, interlocking directorates, etc. – FPA 203, 204, 305(b) (16 USC 824b, 824c, 825d(b))
 - Accounting by public utilities – FPA 301 (16 USC 825)
 - Reliability – FPA 215 (16 USC 824o)

“Public Utility” status is the key to understanding many FPA Parts II and III jurisdictional questions



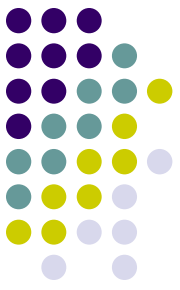
- Most sections found in Parts II and III of the Federal Power Act provide for Commission authority over the actions of a “public utility,” and a “public utility” is defined by the statute as “any person who owns or operates facilities subject to the jurisdiction of the Commission,” i.e., “any person who owns or operates” facilities for “the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce” (16 USC 824(e))
- “Public utilities” (16 USC 824(e)) are not the same as “electric utilities” (16 USC 796(22)) and are not the same as “transmitting utilities (16 USC 796(23))

What is not within FERC's public utility-related statutory authority (i.e., FPA Parts II and III)?



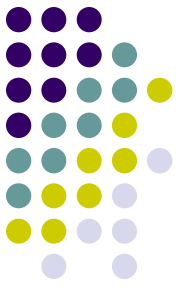
- “Local” distribution of electric energy, and the rates, terms and conditions of such distribution
- Sales of electric energy to end users (i.e., sales at retail), and the rates, terms and conditions of such sales
- Siting and construction of generation (other than hydroelectric generation, which is subject to FERC jurisdiction under Part I of the FPA) and transmission facilities (with the exception of so-called “backstop” siting authority under FPA 216 (16 USC 824p)) (E.g., *Californians for Renewable Energy Inc. v. California Independent System Operator Corp.*, 117 FERC ¶ 61,072 at P 10 (2006); *PacifiCorp*, 72 FERC ¶ 61,087 at 61,488 & n.3 (1995); *Duke Power Co.*, 43 FERC ¶ 61,001 at 61,003 (1988); *Northeast Maryland Waste Disposal Authority*, 53 FERC ¶ 61,161 at 61,587 (1990), *reh’g denied*, 54 FERC ¶ 61,058 (1991); *Southern Company Services, Inc.*, 22 FERC ¶ 61,047 at 61,084 (1983))
- Environmental matters (with the exception of hydroelectric generation-related environmental matters, which are subject to FERC jurisdiction under Part I of the FPA) (E.g., *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 96 FERC ¶ 61,117 at 61,448 (2001); *PSI Energy, Inc.*, 56 FERC ¶ 61,237 at 61,911 & n.27 (1991); *Duke Power Co.*, 43 FERC ¶ 61,001 at 61,003 (1988); *Monongahela Power Co.*, 39 FERC ¶ 61,350 at 62,096, *reh’g denied*, 40 FERC ¶ 61,256 (1987))
 - But rate recovery of environmental costs, as with rate recovery of any other cost, is subject to FERC review
- Safety matters (with the exception of hydroelectric generation-related safety matters, which are subject to FERC jurisdiction under Part I of the FPA)
- United States government and its agencies and instrumentalities, and States and their agencies and instrumentalities (including municipalities) - with certain limited exceptions, e.g., FPA 206(e), 222 (16 USC 824e(e), 824w)
- RUS-financed cooperatives and large cooperatives
- *Interstate v. Intrastate*: Alaska and Hawaii (where, given their electrical isolation, there is no *interstate* . . .); Electric Reliability Council of Texas (for the same reason, but with certain limited exceptions). But, the fact that sellers and buyers are located within a single state, and that there may be lines between them located within that same state, does not divest FERC of jurisdiction given the interconnected nature of the electric grid. That is, “interstate commerce” has been interpreted to give the Commission jurisdiction when the transmission system “is interconnected and capable of transmitting [electric] energy across the State boundary, even though the contracting parties and the electrical pathway between them are within one State,” i.e., if the transaction is made over the “interconnected interstate transmission grid.” *Florida Power & Light Company*, 29 FERC ¶ 61,140 at 61,291-92 (1984). (Accord, e.g., *Wisconsin Electric Power Company*, 62 FERC ¶ 61,142 at 62,008 n.40 (1993), *reh’g denied*, 66 FERC ¶ 61,096 (1994); *People’s Electric Cooperative*, 84 FERC ¶ 61,229 at 62,108-12, 62,113-14, 62,130-31 (1998), *reh’g denied*, 93 FERC ¶ 61,218 at 61,727, 61,730-31 (2000); *Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,966-69 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), . . ., *aff’d in relevant part*, 225 F.3d 667, 690-95 (D.C. Cir. 2000), *aff’d in relevant part*, 535 U.S.1 (2002))
- One further thought to bear in mind: sales v. purchases – FPA 205 and 206 (16 USC 824d, 824e) are written from the perspective of the seller; that is, FERC has the exclusive authority to review the rates, terms and conditions of “sales” but not of “purchases”¹² (“purchases” are the province of state commissions)

NGO Participation in FERC Proceedings (Part 1)



- Rulemaking proceedings
 - Participation by filing comments by FERC-specified comment date
 - FERC’s “ex parte” regulations do not apply in rulemaking proceedings (18 CFR 385.2201(a), (b), (c)(1)(ii))
- Case-specific proceedings
 - Participation by intervening (18 CFR 385.214)
 - Intervention is necessary for “party” status, and “party” status is necessary, not only in order to receive copies of other parties’ pleadings and FERC’s orders, but also to participate in the proceeding – including the right to ask FERC to grant rehearing/reconsideration of its decision and the right to seek subsequent judicial review (16 USC 825)
 - Participation by protesting (18 CFR 385.211)
 - Participation by filing a complaint (18 CFR 385.206)
 - FERC’s “ex parte” regulations do apply in case-specific, contested proceedings (18 CFR 385.2201(a), (b), (c)(1)(i))

NGO Participation in FERC Proceedings (Part 2)



- “Party” status in utility-filed FPA 205 proceedings
 - Intervention (requirements: 18 CFR 385.214)
 - Intervention is necessary to be a “party” (18 CFR 385.102(c)(3))
 - Intervenor (pursuant to 18 CFR 385.214) *versus* Protestor (pursuant to 18 CFR 385.211)
 - Intervention does not make one a protestor, and a protest does not make one an intervenor (and thus does not make one a party)
 - The filing of an intervention alone, without a protest, does not make a proceeding "contested." *Midwest Power Systems, Inc.*, 69 FERC ¶ 61,025 at 61,104 (1994)
 - The filing of a protest alone, without an intervention, does not make an entity a party. *Pacific Gas & Electric Company*, 111 FERC ¶ 61,156 at P 13 (2005)
- “Party” Status in complaint/FERC initiated FPA 206 proceedings
 - Intervention (requirements: 18 CFR 385.214)
 - Intervention is necessary to be a “party” (18 CFR 385.102(c)(3))
 - Intervenor (pursuant to 18 CFR 385.214) *versus* Protestor (pursuant to 18 CFR 385.211)
 - Intervention does not make one a protestor, and a protest does not make one an intervenor (and thus does not make one a party)
 - The filing of an intervention alone, without a protest, does not make a proceeding "contested." *Midwest Power Systems, Inc.*, 69 FERC ¶ 61,025 at 61,104 (1994)
 - The filing of a protest alone, without an intervention, does not make an entity a party. *Pacific Gas & Electric Company*, 111 FERC ¶ 61,156 at P 13 (2005)
 - Complainant (pursuant to 18 CFR 385.206)
 - Complainant is automatically a party (18 CFR 385.102(c)(1))
- *Timely* intervention is important
 - Timely, unopposed interventions are automatically granted (18 CFR 385.214(c)(1))
 - Untimely, i.e., late, interventions require an affirmative grant of party status (18 CFR 385.214(c)(1), 385.214(d))
 - But, in an FPA 205 proceeding, once FERC has issued an order, FERC policy is generally to deny late interventions that are coupled with a request for rehearing/reconsideration of the order (*E.g., Pacific Gas & Electric Company*, 100 FERC ¶ 61,097 at P 5 (2002); *American Electric Power Service Corporation*, 111 FERC ¶ 61,372 at P 16-17 (2005); *California Independent System Operator Corporation*, 112 FERC ¶ 61,337 at P 3 (2005); *Bridgeport Energy, LLC*, 114 FERC ¶ 61,265 at P 4 (2006)).
 - And FERC rejects the accompanying requests for rehearing/reconsideration, as such requests must be filed by a party (16 USC 825l(a); *e.g., American Electric Power Service Corporation*, 111 FERC ¶ 61,372 at P 18 (2005); *California Independent System Operator Corporation*, 112 FERC ¶ 61,337 at P 3 (2005))
 - And filing for reconsideration/rehearing is a necessary prerequisite to seeking judicial review (16 USC 825l(b))
 - Separately, opposed interventions also require an affirmative grant of party status, but FERC is generally inclined to grant opposed¹⁴ interventions and so interventions are, in practice, rarely opposed (18 CFR 385.214(c)(1))

Case-specific proceedings: how does FERC protect customers from excessive rates?



- Review of public utility filings asking to establish or change rates (Addressed in Part II below)
- Review of customer/competitor/state commission/attorney general/etc. complaints asking to change rates (Addressed in Part III below)
- Independent Commission review of rates, i.e., Commission review not initiated by an electric utility filing or a customer/competitor complaint (Addressed in Part III below)

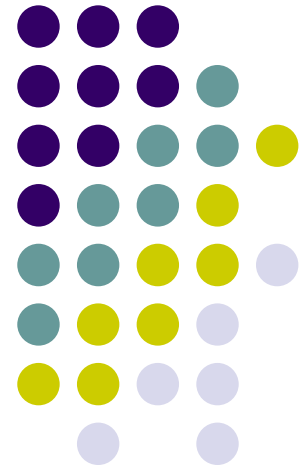
FERC's Website



www.ferc.gov

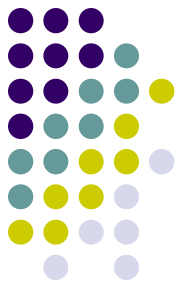
(within which is “eLibrary” – a public database containing all submissions to FERC and all issuances by FERC in docketed proceedings)

**Part II:
Rate Revision Process:
Federal Power Act Section 205**



Federal Power Act Section 205

- What Must Be Filed -



- Public utilities must file the rates, terms and conditions for interstate electricity transmission and wholesale electricity sales:
 - Rates, terms and conditions must be filed
 - Rates, terms and conditions must be public
 - But, there are some exceptions to the filing requirement: e.g., individual customer-specific rates, terms and conditions need not be filed if they conform to model *pro forma* agreements that are filed (with individual customer-specific rates reported in quarterly reports known as “EQRs”), or if they are market-based power sales rates (with individual customer-specific rates reported in quarterly reports known as “EQRs”)¹⁸

Federal Power Act Section 205

- When Must They Be Filed -



- Absent waiver, public utilities must file at least 60 days before any proposed rate, term or condition is to become effective – i.e., absent waiver, utilities must give at least 60 days’ prior notice
- Waiver can be granted to allow proposed rates, terms or conditions to become effective on less than 60 days’ prior notice
- If public utilities do not file timely, and waiver is not granted, they must provide “time value” refunds, i.e., “interest” refunds, to their customers for the period of time the rates were collected without authorization

Federal Power Act Section 205

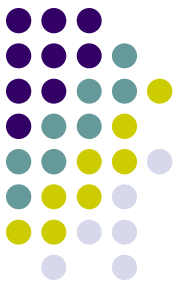
- When Must Responses Be Filed -



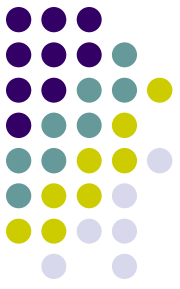
- Public notice of a filing is issued, providing a time for responses
 - For typical filings, unless a notice is issued providing otherwise, **21 days** is normally allowed for responses (bear in mind that FERC often has a statutory 60-day action date – so FERC’s ability to grant extensions is limited) (18 CFR 35.8)
 - Timely response is essential to preserving your rights, as discussed above
 - Note: For those of you interested in Natural Gas Act section 4 filings (the counterpart to Federal Power Act section 205 filings), for typical filings, unless a notice is issued providing otherwise, 12 days is normally allowed for responses (bear in mind that FERC often has a statutory 30-day action date – so FERC’s ability to grant extensions is limited) (18 CFR 154.210(a))

Federal Power Act Section 205

- What Can FERC Do -



- FERC can find the filing deficient, i.e., incomplete
- FERC can accept the rates, terms and conditions, i.e., rule “on the paper”
- FERC can reject the rates, terms and conditions, i.e., rule “on the paper”
- FERC can “suspend,” i.e., defer, the effectiveness of the rates, terms and conditions
 - “Suspension” is for up to 5 months
 - At the end of the “suspension period,” the rates, terms and conditions become effective subject to refund unless, by that date, FERC has issued a final order
 - At the end of the case, FERC can order refunds back to the effective date (or provide other remedies) for rates, terms and conditions that are “unjust and unreasonable” or that are “unduly discriminatory or preferential”
- FERC can send the rates, terms and conditions to trial-type, oral hearing or can order settlement judge/alternative dispute resolution procedures
- FERC can choose some combination of the above



Federal Power Act Section 205

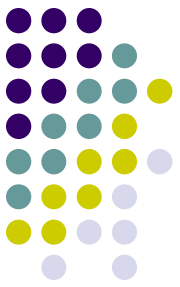
- What Standard Does FERC Use –

Part 1

- Rates, terms and conditions *must be* “just and reasonable” and *must be* “not unduly discriminatory or preferential”
- Phrased differently: rates, terms and conditions *cannot be* “unjust or unreasonable” and *cannot be* “unduly discriminatory or preferential”
- The same standard governs both section 205 proceedings, i.e., utility-initiated proceedings, and section 206 proceedings, i.e., complaint/FERC-initiated proceedings

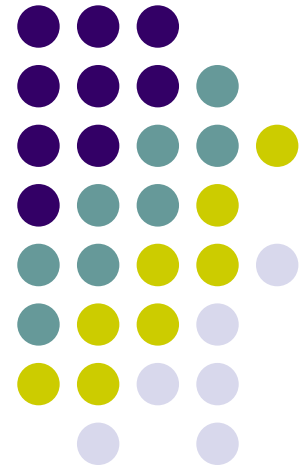
Federal Power Act Section 205

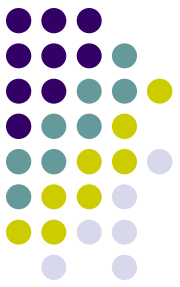
- What Standard Does FERC Use – Part 2



- What is a “just and reasonable” rate?
 - Cost-justified
 - Market-justified
- What is a “not unduly discriminatory or preferential” rate?
 - Similarly-situated customers must be treated similarly
 - Discrimination without a reason is prohibited:
 - E.g., a difference in rates that is not cost-justified
 - Discrimination with a reason is allowed
 - E.g., a difference in rates that is cost-justified
 - Differences in treatment are not inherently prohibited
- Again, the same standards govern both section 205 proceedings, i.e., utility-initiated proceedings, and section 206 proceedings, i.e., complaint/FERC-initiated proceedings

**Part III:
Rate Challenge Process:
Federal Power Act Section 206**





Federal Power Act Section 206

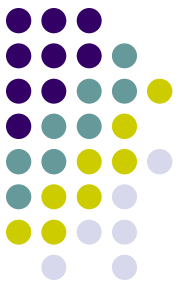
- The Basics -

- FERC, either pursuant to a complaint or on its own, (1) may find that an existing rate, term or condition is not just and reasonable or is unduly discriminatory or preferential, and (2) specify a new rate, term or condition that is just and reasonable and not unduly discriminatory or preferential and that is to be thereafter used
- Complaints may be filed by any person – including a customer or a competitor

Federal Power Act Section 206

- Remedies -

Part 1

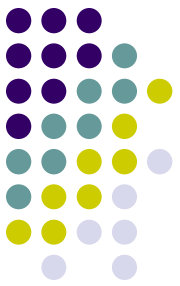


- FERC remedies in complaint/FERC-initiated proceedings are typically prospective or forward-looking only; that is, from the date of the FERC order (1) finding an existing rate, term or condition is not just and reasonable or is unduly discriminatory or preferential, and (2) specifying a new rate, term or condition that is just and reasonable and is not unduly discriminatory or preferential and that is to be thereafter used

Federal Power Act Section 206

- Remedies -

Part 2



- Exceptions:
 - *Complaint-initiated cases*: 15 month “refund window” – i.e., up to 15 months of refunds are allowed, which can begin as early as the date a complaint is filed or as late as 5 months from the date a complaint is filed
 - *FERC-initiated cases*: 15 month “refund window” – i.e., up to 15 months of refunds are allowed, which can begin as early as FERC publishes a notice that a case has been initiated or as late as 5 months from the date FERC publishes a notice that a case has been initiated

Federal Power Act Section 206

- Remedies -

Part 3

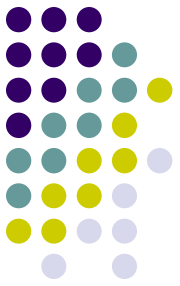


- Additional Exceptions:
 - Violations of “filed rate”: refunds and/or disgorgement of profits may be ordered for failure to abide by the “filed rate” in past years/months
 - Formula rates: refunds may be ordered for abuse of formula rates in prior years

Federal Power Act Section 206

- Remedies -

Part 4

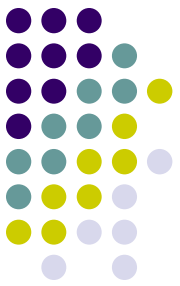


- *As a result of the Energy Policy Act of 2005, . . .*
 - Market manipulation is now prohibited, FPA 222 (16 USC 824w)
 - FERC now has authority to impose penalties up to \$1 million per violation per day, FPA 316A (16 USC 825o-1)

Federal Power Act Section 206

- Processing Complaints -

Part 1



- Public notice of a complaint is issued, providing a time for responses
 - For typical complaints, unless a notice is issued providing otherwise, **20 days** is normally allowed for responses (18 CFR 385.206(f))
 - For “fast-track” complaints, 10 days or less may be allowed for responses (18 CFR 385.206(h); *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. 31,071 at 30,766, *order on reh’g*, Order No. 602-A, FERC Stats. & Regs. 31,076, *order on reh’g*, Order No. 602-B, FERC Stats. & Regs. 31,083 (1999))
 - Timely response is essential to preserving your rights, as discussed above
 - Note: For those of you interested in Natural Gas Act section 5 complaints (the counterpart to Federal Power Act section 206 complaints), the same regulations and timeframes apply

Federal Power Act Section 206

- Processing Complaints -

Part 2

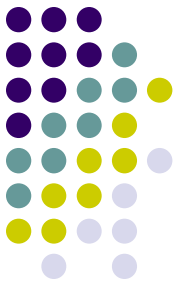


- FERC may:
 - Rule summarily, i.e., “on the paper,” on a complaint – granting or denying
 - Institute trial-type, oral hearing procedures to gather more information
 - Institute settlement judge or alternative dispute resolution procedures to promote consensual resolution
 - Adopt some combination of the above

Federal Power Act Section 206

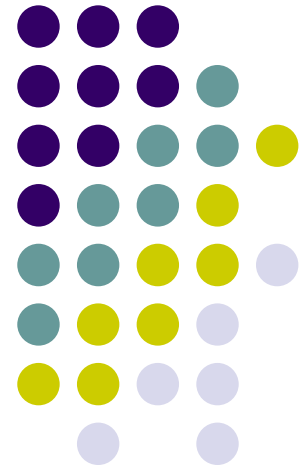
- Processing Complaints -

Part 4



- A simplified complaint process may be used if the dispute involves less than US \$100,000 and the effect on non-parties will be de minimus
- But, given the nature of FERC's jurisdiction and the parties before FERC, these circumstances are rarely invoked

Part IV: Some FERC Orders of Interest



Order Nos. 888 and 888-A – Open Access Transmission



- All public utilities that own, control or operate jurisdictional transmission facilities are required to have open access transmission tariffs (18 CFR 35.28(a) & (c)) – the goal was to eliminate undue discrimination/preference
 - That tariff must track the FERC-mandated *pro forma* open access transmission tariff, unless a waiver has been granted
 - Not just third-party customers, but the public utilities themselves must take service pursuant to this tariff
- Non-public utilities may have “reciprocity” open access transmission tariffs (18 CFR 35.28(a) & (e))
 - “Reciprocity” provides a so-called safe harbor, ensuring that the non-public utility is entitled to transmission service from public utilities

Order Nos. 890 and 890-A – Improvements in Open Access Transmission, e.g., Transmission Planning (Part 1)

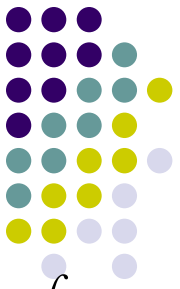


- Overall, in Order Nos. 890 and 890-A, FERC sought to make improvements to its *pro forma* open access transmission tariff, and better achieve the goal of eliminating undue discrimination/preference
- One principal reform was with respect to transmission planning – with adoption of FERC-mandated coordinated, open and transparent transmission planning
 - Order No. 888 (and 888-A) *pro forma* tariff, in section 28.2, for example, required simply that the transmission provider plan and construct additional transmission facilities so as to be able to serve network customers “on a basis comparable to the Transmission Provider’s delivery of its own generating and purchased resources to its Native Load Customers.” While FERC encouraged joint planning with customers and other utilities, and also regional planning, FERC did not mandate such planning.
 - To better ensure that planning and construction occur in a non-unduly discriminatory manner, Order No. 890 (and 890-A) took a more aggressive approach – mandating coordinated, open and transparent transmission planning on a local and regional level. FERC explained that, in light of a decline in investment relative to load growth resulting in increased congestion and a reduced access to alternative sources of energy, as well as a disincentive to remedy congestion on a non-unduly discriminatory basis, reform of the Order No. 888 (and 888-A) *pro forma* tariff was needed.
 - In Order No. 890-A (at paragraph 181), the Commission explained:

The Commission identified nine planning principles in Order No. 890 that must be satisfied for a transmission provider’s planning process to be considered compliant with that order. These nine planning principles are:

- (1) Coordination – the process for consulting with transmission customers and neighboring transmission providers;
- (2) Openness – planning meetings must be open to all affected parties;
- (3) Transparency – access must be provided to the methodology, criteria, and processes used to develop transmission plans;
- (4) Information Exchange – the obligations of and methods for customers to submit data to transmission providers must be described;
- (5) Comparability – transmission plans must meet the specific service requests of transmission customers and otherwise treat similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning;
- (6) Dispute Resolution – an alternative dispute resolution process to address both procedural and substantive planning issues must be included;
- (7) Regional Participation – there must be a process for coordinating with interconnected systems;
- (8) Economic Planning Studies – study procedures must be provided for economic upgrades to address congestion or the integration of new resources, both locally and regionally; and
- (9) Cost Allocation – a process must be included for allocating costs of new facilities that do not fit under existing rate structures, such as regional projects.

Order Nos. 890, 890-A, and 890-B – Improvements in Open Access Transmission, e.g., Transmission Planning (Part 2)



- The Commission thus adopted a new “Attachment K” to its *pro forma* open access transmission tariff; Order No. 890-B contained the following *pro forma* Attachment K:

The Transmission Provider shall establish a coordinated, open and transparent planning process with its Network and Firm Point-to-Point Transmission Customers and other interested parties, including the coordination of such planning with interconnected systems within its region, to ensure that the Transmission System is planned to meet the needs of both the Transmission Provider and its Network and Firm Point-to-Point Transmission Customers on a comparable and nondiscriminatory basis. The Transmission Provider’s coordinated, open and transparent planning process shall be provided as an attachment to the Transmission Provider’s Tariff.

The Transmission Provider’s planning process shall satisfy the following nine principles, as defined in the Final Rule in Docket No. RM05-25-000: coordination, openness, transparency, information exchange, comparability, dispute resolution, regional participation, economic planning studies, and cost allocation for new projects. The planning process shall also provide a mechanism for the recovery and allocation of planning costs consistent with the Final Rule in Docket No. RM05-25-000.

The Transmission Provider’s planning process must include sufficient detail to enable Transmission Customers to understand:

The process for consulting with customers and neighboring transmission providers;

The notice procedures and anticipated frequency of meetings;

The methodology, criteria, and processes used to develop transmission plans;

The method of disclosure of criteria, assumptions and data underlying transmission system plans;

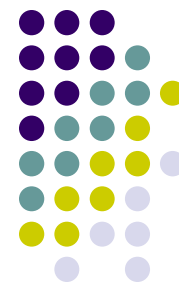
The obligations of and methods for customers to submit data to the transmission provider;

The dispute resolution process;

The transmission provider’s study procedures for economic upgrades to address congestion or the integration of new resources; and

The relevant cost allocation procedures or principles.

Order Nos. 719 and 719-A – Competition in Wholesale Electric Markets (Part 1)



- FERC recognized that reforms were necessary to improve the operation of the organized wholesale electric markets (the markets operated by ISO New England, NYISO, PJM, Midwest ISO, CAISO, and SPP), and thus to improve the competitiveness of those markets.
- Accordingly, in Order No. 719 (and 719-A), FERC adopted improvements in the areas of:
 - Demand response and use of market pricing to elicit demand response during periods of operating reserve shortages
 - Long-term power contracting
 - Market monitoring
 - Responsiveness of the organized wholesale electric markets to their customers and other stakeholders

Order Nos. 719 and 719-A – Competition in Wholesale Electric Markets (Part 2)



- In Order No. 719-A (at paragraphs 2-7 (footnotes deleted; emphasis added)), the Commission delineated the improvements adopted in Order No. 719:

In the area of ***demand response***, the Commission required each RTO and ISO to: (1) accept bids from demand response resources in RTOs' and ISOs' markets for certain ancillary services on a basis comparable to other resources; (2) eliminate, during a system emergency, a charge to a buyer that takes less electric energy in the real-time market than it purchased in the day-ahead market; (3) in certain circumstances, permit an aggregator of retail customers (ARC) to bid demand response on behalf of retail customers directly into the organized energy market; and (4) modify their market rules, as necessary, to allow the market-clearing price, during periods of operating reserve shortage, to reach a level that rebalances supply and demand so as to maintain reliability while providing sufficient provisions for mitigating market power.

Additionally, the Commission recognized that further reforms may be necessary to eliminate barriers to demand response in the future. To that end, the Commission required each RTO or ISO to assess and report on any remaining barriers to comparable treatment of demand response resources that are within the Commission's jurisdiction. The Commission further required each RTO's or ISO's Independent Market Monitor to submit a report describing its views on its RTO's or ISO's assessment to the Commission.

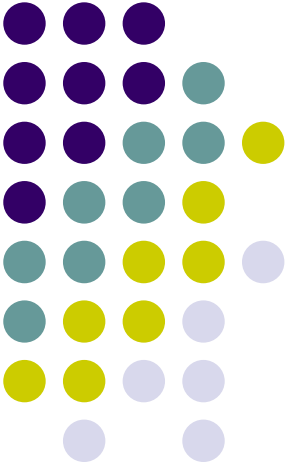
With regard to ***long-term power contracting***, the Commission required each RTO and ISO to dedicate a portion of its web sites for market participants to post offers to buy or sell power on a long-term basis.

To improve ***market monitoring***, the Commission required each RTO and ISO to provide its Market Monitoring Unit (MMU) with access to market data, resources and personnel sufficient to carry out their duties, and required the MMU to report directly to the RTO or ISO board of directors. In addition, the Commission required that the MMU's functions include: (1) identifying ineffective market rules and recommending proposed rules and tariff changes; (2) reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities; and (3) notifying appropriate Commission staff of instances in which a market participant's or the RTO's or ISO's behavior may require investigation.

The Commission also took the following actions with regard to MMUs: (1) expanded the list of recipients of MMU recommendations regarding rule and tariff changes, and broadened the scope of behavior to be reported to the Commission; (2) modified MMU participation in tariff administration and market mitigation, required each RTO and ISO to include ethics standards for MMU employees in its tariff, and required each RTO and ISO to consolidate all its MMU provisions in one section of its tariff; and (3) expanded the dissemination of MMU market information to a broader constituency, with reports made on a more frequent basis than in the past, and reduced the time period before energy market bid and offer data are released to the public.

Finally, the Commission established an obligation for each RTO and ISO to establish a means for customers and other stakeholders to have a form of direct access to the RTO or ISO board of directors, and thereby, increase its ***responsiveness to customers and other stakeholders***. The Commission stated that it will assess each RTO's or ISO's compliance filing using four responsiveness criteria: (1) inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness.

**Part V:
FERC's Website**





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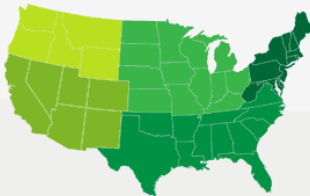


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November 18, 2010 - Item E-1: FERC proposes rule to integrate variable energy resources [News Release](#) | Chairman's Statement | Commissioners' Statements: Norris and LaFleur | NOPR

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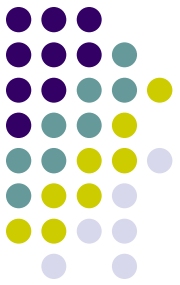
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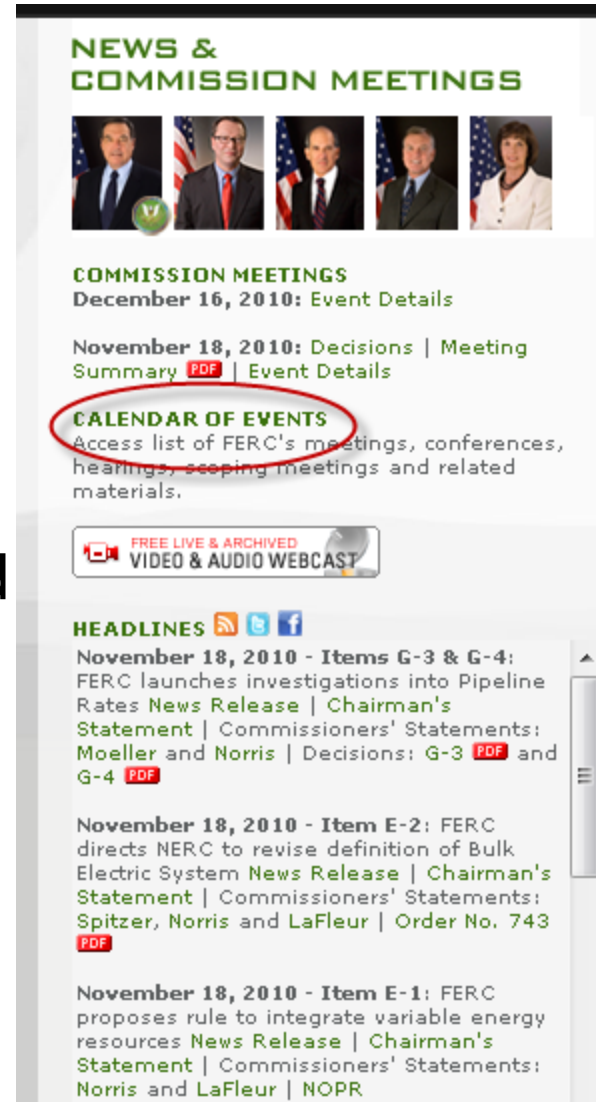
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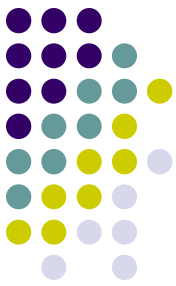
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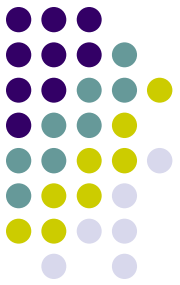
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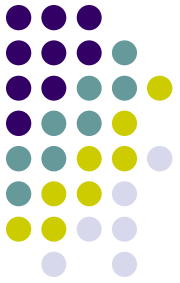
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Major Orders

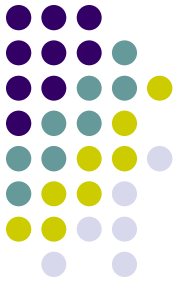


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The "LEGAL RESOURCES" dropdown menu is open, listing the following items:

- Federal Statutes
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Other visible content includes a "SMALL/LOW IMPACT HYDROPOWER" article snippet and a sidebar with categories: ELECTRIC, HYDROPOWER, NATURAL GAS, OIL, and QUICK LINKS.



Major Orders

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The screenshot shows the FERC website's 'Major Orders & Regulations' page. At the top, there is a navigation bar with links for eLIBRARY, eTARIFF VIEWER, STUDENTS CORNER, SITEMAP, HELP, and HOME. Below this is the FERC logo and the text 'FEDERAL ENERGY REGULATORY COMMISSION'. A search bar and a dropdown menu for 'All of FERC' are also present. The main navigation menu includes links for ABOUT, MEDIA, DOCUMENTS & FILINGS, INDUSTRIES, LEGAL RESOURCES, MARKET OVERSIGHT, ENFORCEMENT, CAREERS, CONTACT US, and FOR CITIZENS. The 'Legal Resources >> Major Orders & Regulations' section is highlighted. On the left, a sidebar menu lists various document types, with 'Major Orders & Regulations' selected. The main content area features a heading 'Major Orders & Regulations' with a 'TEXT SIZE' control. Below the heading, there is a paragraph explaining that the Commission's regulations are found under Title 18 Chapter I of the Code of Federal Regulations (CFR), and provides links to the CFR, Governmental Printing Organization, and National Archives and Records Administration. A second paragraph explains the 'Landmark' and 'General' tabs. Below this, there is a table with columns for 'Docket No.', 'Date', and 'Title'. The table lists three orders: Order No. 743 (November 18, 2010), Order No. 741 (October 21, 2010), and Order No. 719-B (December 17, 2009).

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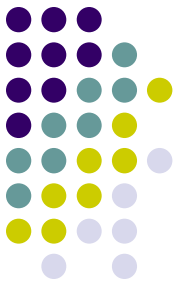
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The tab '**Landmark**' contains certain landmark orders that set precedent in establishing the regulations on how FERC will regulate a certain area that we have jurisdiction over. The tab '**General**' contains certain major orders that have an effect on all the industries that FERC regulates.

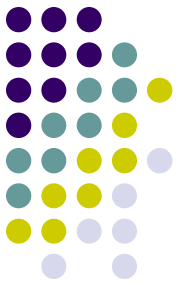
Click on the categories below to view additional information.

Landmark	General	Electric	Gas	Hydropower	Oil
Docket No.	Date	Title			
Order No. 743 PDF (RM09-18-000)	November 18, 2010 (effective January 25, 2011)	Revision to Electric Reliability Organization Definition of Bulk Electric System (Final Rule)			
Order No. 741 PDF (RM10-13-000)	October 21, 2010 (effective November 26, 2010)	Credit Reforms in Organized Wholesale Electric Markets (Final Rule)			
Order No. 719-B PDF (RM07-19-002)	December 17, 2009	Wholesale Competition in Regions with Organized Electric Markets (Order Denying Rehearing And Providing Clarification)			

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