



FEDERAL ENERGY REGULATORY COMMISSION

NEWS

December 20, 2007
Docket No. IN06-3-003

NEWS MEDIA CONTACT
Mary O'Driscoll- 202.502.8680

FERC Expands Protections in Civil Penalty Cases, Rejects ETP Rehearing Request

The Federal Energy Regulatory Commission (FERC) today acted to expand the due process protections of subjects of investigations in civil penalty cases under the Federal Power Act (FPA), the Natural Gas Policy Act (NGPA) and the Natural Gas Act (NGA). These changes are generic in nature, and will apply to all future civil penalty cases.

For all future civil penalty cases under the FPA, the NGPA and the NGA, FERC ordered that, at the time Office of Enforcement investigative staff completes its investigation, it will transmit to FERC a report with recommended findings and conclusions of fact and law.

When Office of Enforcement investigative staff submit their report, designated staff members will become non-decisional employees for purposes of participating in the remainder of that enforcement proceeding, including any hearing or other procedures used by FERC to resolve the proceeding. If FERC finds that such action is warranted, it may attach the report to a show cause order to respond to the recommended findings. It will not make any findings, preliminary or otherwise, at least until it has considered the response.

"We believe these steps, although not required as a matter of law, will provide additional due process," FERC said in the order. The steps also will allow FERC to benefit from the expertise of the Office of Enforcement and will give FERC the ability to timely pursue enforcement actions.

These changes were made in response to FERC's enforcement policy conference last month. At the conference, the Commission explained its enforcement policy, proposed a number of possible changes and invited suggestions from the regulated community and the public on further changes.

Also today, FERC rejected the request of Energy Transfer Partners, L.P. (ETP) for a rehearing of the July 26 order to show cause and notice of proposed civil penalties regarding allegations of violation of FERC's Market Behavior Rule 2, the NGPA and the NGA.

FERC rejected ETP's argument that it is entitled to *de novo* review in district court for any civil penalties assessed under the NGA, and held that the company instead may seek U.S. court of appeals review of any NGA-related civil penalty after FERC makes a final ruling. FERC also stated that for NGPA civil penalties it may institute its own procedures prior to *de novo* review in district court.

In response to ETP's arguments that FERC has prejudged ETP's actions in the order to show cause, FERC found that the order to show cause was a presentation of evidence collected at that point and not a prejudgment of the ultimate resolution of whether a violation has occurred.

