

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Technical Conference on Penalty Guidelines

Docket No. PL10-4-000

SECOND NOTICE OF TECHNICAL CONFERENCE ON PENALTY GUIDELINES

(October 27, 2011)

On September 21, 2011, the staff of the Federal Energy Regulatory Commission (Commission) issued a Notice of Technical Conference on Penalty Guidelines to be held on November 17, 2011. The conference will be held from 1:00 p.m. to 4:30 p.m. Eastern Standard Time in the Commission Meeting Room at the Commission's headquarters located at 888 First Street, NE, Washington, DC 20426.

The purpose of the conference is to discuss the impact of the Penalty Guidelines, which the Commission issued on September 17, 2010,¹ on compliance and enforcement matters. The schedule and topics for the conference are as follows:²

1:00 p.m. – 1:30 p.m.	Opening Remarks by Commission Members
1:30 p.m. – 2:45 p.m.	First Panel— <i>Compliance Efforts Since Issuance of Penalty Guidelines</i>
2:45 p.m. – 3:00 p.m.	Break
3:00 p.m. – 4:15 p.m.	Second Panel— <i>Various Issues Affecting Penalty Calculations</i>
4:15 p.m. – 4:30 p.m.	Closing Remarks by Commission Members

The first panel will focus on organizations' compliance efforts since issuance of the Penalty Guidelines. Section 1B2.1 of the Penalty Guidelines provides guidance to industry on compliance, describing seven elements organizations should follow to establish effective compliance programs. This panel will explore whether and how this guidance has helped organizations prioritize their compliance efforts. It will also discuss steps organizations have taken to modify their compliance programs in light of the

¹ *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 (2010).

² A list of panelists is included in the attached agenda.

Penalty Guidelines. Finally, this panel will provide an opportunity for industry to raise comments and questions for staff and the Commission on specific aspects of the compliance-related sections in the Penalty Guidelines.

The second panel will focus on certain issues affecting penalty calculations under the Penalty Guidelines. In particular, it will address three issues that have received significant attention since the Penalty Guidelines were issued. First, this panel will examine the function and usefulness of Penalty Guidelines section 2B1.1(b)(2), which accounts for the scope of violations by considering the volume of energy involved in a violation as well as the violation's duration. As part of this examination, the panel will consider whether volume and duration are already sufficiently accounted for in the "loss" calculation contained in section 2B1.1(b)(1). Second, this panel will discuss whether the Penalty Guidelines should account for situations in which the entity that committed a violation passed any of the gain it received from the violation to its ratepayers. Third, this panel will address the treatment of multiple violations under section 1A1.1, which states: "Where an organization has engaged in multiple acts of fraud, anti-competitive conduct, or other rule, tariff, and order violations . . . or made multiple misrepresentations or false statements . . . each act will be treated as a separate violation. But in calculating the harm for purposes of determining the penalty, it is the cumulative harm of the multiple violations that is taken into account." Specifically, this panel will explore whether penalties should be calculated based on each separate act or based on the conduct as a whole—or whether it should depend on the type of violation or the particular facts and circumstances of the investigation.

The Commission will accept comments related to the Penalty Guidelines and their application for thirty days after the conference.

A revised notice will be issued before the conference if there are changes to the conference format, schedule, or panelists. All interested persons are invited to attend the conference, and there is **no** registration and no fee to attend. The conference will not be transcribed but will be webcast. A free webcast of this event will be available through www.ferc.gov. Anyone with Internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers access to the meeting via phone bridge for a fee. If you have any questions, you may visit www.CapitolConnection.org.

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Questions about the technical conference may be directed to Jeremy Medovoy by email at Jeremy.Medovoy@ferc.gov or by telephone at 202-502-6768, or to David Applebaum by email at David.Applebaum@ferc.gov or by telephone at 202-502-8186.

Kimberly D. Bose,
Secretary.

AGENDA

- 1:00 p.m. – 1:30 p.m. Opening Remarks by Commission Members
- 1:30 p.m.– 2:45 p.m. First Panel—*Compliance Efforts Since Issuance of Penalty Guidelines*
- Andrew K. Soto – Senior Managing Counsel, American Gas Association
- Nancy Bagot – Vice President of Regulatory Policy, Electric Power Supply Association
- Shari Gribbin – Assistant General Counsel and Manager, FERC Compliance, Exelon Corporation; Member, Edison Electric Institute
- Susan N. Kelly – Vice President of Policy Analysis and General Counsel, American Public Power Association
- Richard Meyer – Senior Regulatory Counsel, National Rural Electric Cooperative Association
- Joan Dreskin – General Counsel, Interstate Natural Gas Association of America
- 2:45 p.m.– 3:00 p.m. Break
- 3:00 p.m.– 4:15 p.m. Second Panel—*Various Issues Affecting Penalty Calculations*
- Joseph T. Kelliher – Executive Vice President, Federal Regulatory Affairs, NextEra Energy, Inc
- William L. Massey – Partner, Covington & Burling LLP
- Max Minzner – Associate Professor of Law, University of New Mexico School of Law
- Frank R. Lindh – General Counsel, California Public Utilities Commission
- 4:15 p.m. – 4:30 p.m. Closing Remarks by Commission Members