

COMPLIANCE ENFORCEMENT DEVELOPMENTS

Infocast Conference

FERC Compliance Tutorial 2008

January 17-18, 2008 - Washington D.C.

Stephen M. Spina

Office of Enforcement

- OE has been very active on multiple fronts. The major developments involved OE investigations of Amaranth and Energy Transfer Partners.
- However, OE has also been very active in auditing compliance with FERC regulations.
- The approach appears to be focused on transparency issues, *i.e.* meeting the reporting requirements established by FERC.

Amaranth and Energy Transfer Partners

- In Amaranth and Energy Transfer Partners, the Commission for the first time used its new enforcement authority to prosecute market manipulation.
- FERC issued show cause orders that made preliminary findings of market manipulation and proposed civil penalties totaling \$458 million in the two investigations.

Amaranth Advisors, LLC

- Case involved manipulation of the final, or “settlement,” price of the NYMEX Natural Gas Futures Contract by selling large amount of these contracts during the last 30 minutes of trading with the purpose of driving down the settlement price.
- Based on the facts and circumstances and the absence of any material mitigating factors, the Commission is recommending penalties of \$200 million for Amaranth, \$30 million for Hunter and \$2 million for Donohoe. The Commission also proposes that Amaranth disgorge more than \$59 million in unjust profits, plus interest.

Amaranth Advisors, LLC

- Amaranth and Brian Hunter sought injunctive relief and a temporary restraining order to stop FERC enforcement.
- FERC's jurisdictional argument:
 - EAct 2005 granted FERC broad authority to police market manipulation by “any entity” who engages in conduct “in connection with” any jurisdictional transaction.
 - By selling a large amount of NG Futures Contracts during the last 30 minutes of trading, Amaranth traders drove down the settlement price. This had a significant impact on physical markets given the impact of the futures settlement price on physical market price formation.

Energy Transfer Partners, LP

- This case, which came to the Commission's attention through its enforcement hotline, involves manipulation of wholesale natural gas markets at Houston Ship Channel and Waha, Texas, trading hubs on various dates from December 2003 through December 2005.
- The Commission's investigation found that ETP violated FERC's Market Behavior Rule when it artificially lowered the price for prompt month gas at the Houston Ship Channel to the benefit of its physical and financial positions.
- By lowering the price, ETP suppressed the *Inside FERC* Houston Ship Channel index on which the pricing of many physical natural gas contracts and financial derivatives are based.
- The Commission proposes to assess ETP civil penalties totaling \$97.5 million, and total disgorgement of \$69.9 million in unjust profits.

Energy Transfer Partners, LP

- In its request for rehearing, ETP argues that an adjudication of civil penalties under either the NGA or the NGPA should proceed in a *de novo* trial in federal district court.
- 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.

Division of Audits – Approach to Compliance

- Over the last year, the Division of Audits (DA) has focused primarily on transparency issues:
 - Standards of Conduct and OATT compliance
 - Capacity Release Requirements
 - Reporting Requirements (EQRs, IDs)
 - Records Retention Requirements
 - Price Index Reporting

Division of Audits

- Types of Audits (FA)
 - Calculation and Assessment of Annual Charges
 - Electric: FERC Form 1 and FERC 582 Report
 - Gas: FERC Form 2
 - Oil: FERC Form 6
 - Review included RTOs and ISOs as well as utilities
 - A number of utilities and pipelines were issued a clean bill of health in Letter Orders; others were told to correct minor deficiencies.

Division of Audits

- Types of Audits (FA) (cont'd):
 - Compliance with Holding Company Requirements
 - Part 366: Public Utility Holding Company Act of 2005
 - Part 367: Uniform System of Accounts
 - Part 368: Preservation of Records
 - Audit tested service company allocation methodologies and charges billed by service companies to associate public utilities.
 - Audit also evaluated utility accounting for these costs.

Division of Audits

- Types of Audits (FA) (cont'd):
 - Calculation of Wholesale Fuel Adjustment Clause
 - Audit focused on whether utility has been complying with Commission's accounting and reporting regulations as they relate to the calculation of the wholesale fuel adjustment clause.

Division of Investigations

- Commission ordered certain companies to show cause why they had failed to file certain financial forms.
 - FERC Form 1 and Form 1-F (Electric Utilities)
 - FERC Form 2 and Form 2-A (Gas Companies)
 - FERC Form 6 (Oil Pipelines)
 - Many entities made compliance filings to settle cases.

Division of Investigations

- Commission issued several orders with civil penalties for “shipper must have title” violations.
 - **Bangor Gas Company, LLC (\$1 million)**
 - OE found that Bangor did not profit from its violations and staff identified no financial harm to third parties caused by Bangor’s violations.
 - In addition to the civil penalty, the Stipulation and Consent Agreement requires Bangor to submit semi-annual reports with OE for a period of one year.
- Bangor Gas Company, LLC, 118 FERC ¶ 61,186 (2007)*

Division of Investigations

- “shipper must have title” violations (cont’d):
 - **Calpine Energy Services, L.P.**
 - Calpine agreed to unsecured claim in its bankruptcy proceeding of \$4.5 million.
 - Commission found CES acted quickly to investigate further, self-report its violations, and take corrective action.
 - No harm to the market.
- Calpine Energy Services, L.P.*, 119 FERC ¶ 61,125 (2007)

Division of Investigations

- “shipper must have title” violations (cont’d):
 - BP Energy Company (\$7 million)
 - In addition to “shipper must have title” violations, BP had multiple violations of regulations related to posting and bidding of released capacity and the prohibition on buy-sell transactions.
 - OE cited BP’s exemplary cooperation and self-reporting as factors in dramatically reducing possible penalty.
 - MGTC, Inc. (\$300,000)

Division of Investigations

- Commission approved a Stipulation and Consent Agreement requiring Columbia Gulf Transmission Company to pay a civil penalty of \$2 million.
- Agreement resolved an investigation into whether Columbia Gulf violated Commission orders by failing to allow Tennessee Gas Pipeline Company to construct a receipt point interconnection to a natural gas complex.
- OE found that Columbia Gulf actions created “unwarranted obstacles” and did not “meaningfully” work with Tennessee to implement FERC orders.

Columbia Gulf Transmission Co., 119 FERC ¶ 61,174

Division of Investigations

- Commission approved Stipulation and Consent Agreement requiring Cleco Power to pay a civil penalty of \$2 million to resolve an investigation into whether it violated its code of conduct and a 2003 Commission-approved settlement.
- OE found that Cleco's regulated electric utility and its exempt wholesale generators violated the 2003 settlement and their code of conduct by sharing six operating personnel and market information from the summer of 2003 to as late as the winter of 2005.

Cleco Power, LLC, 119 FERC ¶ 61,271