

FERC's Office of Market Oversight and Investigations

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Office of Market Oversight and Investigations

- In 2002, FERC announced the establishment of OMOI to oversee and assess the operations of the Nation's gas, oil pipeline and electricity markets.
- FERC has asked for increased budget authority of \$7 million to hire 50 FTE in order to build its investigations capability.
- Most OMOI staff already on board. FERC has also hired consultants to aid investigations.

Office of Market Oversight and Investigations

- William Hederman appointed Director of OMOI. Hederman comes to FERC from LECG, an energy and finance consulting group.
- Dennis O'Keefe named Deputy Director, Investigations and Enforcement. Prior to joining OMOI, O'Keefe served 20 years with the CFTC, including 16 years as assistant director of the Enforcement Division.

What will OMOI do?

- Identify and remedy problems concerning market structure.
 - *FERC will perform twice-yearly Seasonal Market Assessments.*
- Investigate and remedy individual market participant behavior.
 - *FERC intends to devise remedies that include mitigation, prohibitions and penalties.*

Why OMOI?

- FERC trying to restructure the industry but also attempting to restructure itself as well.
 - Industry restructuring through:
 - Formation of RTOs
 - *Pro Forma* Generator Interconnection Agreement
 - FERC restructuring through:
 - market investigations through OMOI and MMUs. FERC has already begun discussions with MMUs to try and coordinate action.

FERC's White Paper

- On April 28, 2003, FERC released its white paper on Wholesale Power Market Platform
- The key elements reflect a retreat from some elements contained in the SMD NOPR.
- The White Paper does not retreat from FERC's firm belief that market monitoring and mitigation are necessary elements of the wholesale market platform.

Federal Legislation

- Senate Energy Committee approved energy bill on April 30 on a 13-10 vote.
 - Bill would require FERC to issue new NOPR.
 - No SMD Final Rule before July 1, 2005.
 - Senate will try to finish energy bill by Memorial Day recess.
- House passed Energy Policy Act on April 6 by a vote of 247-175.
 - House bill contains native load preference provision.

What does it mean for OMOI?

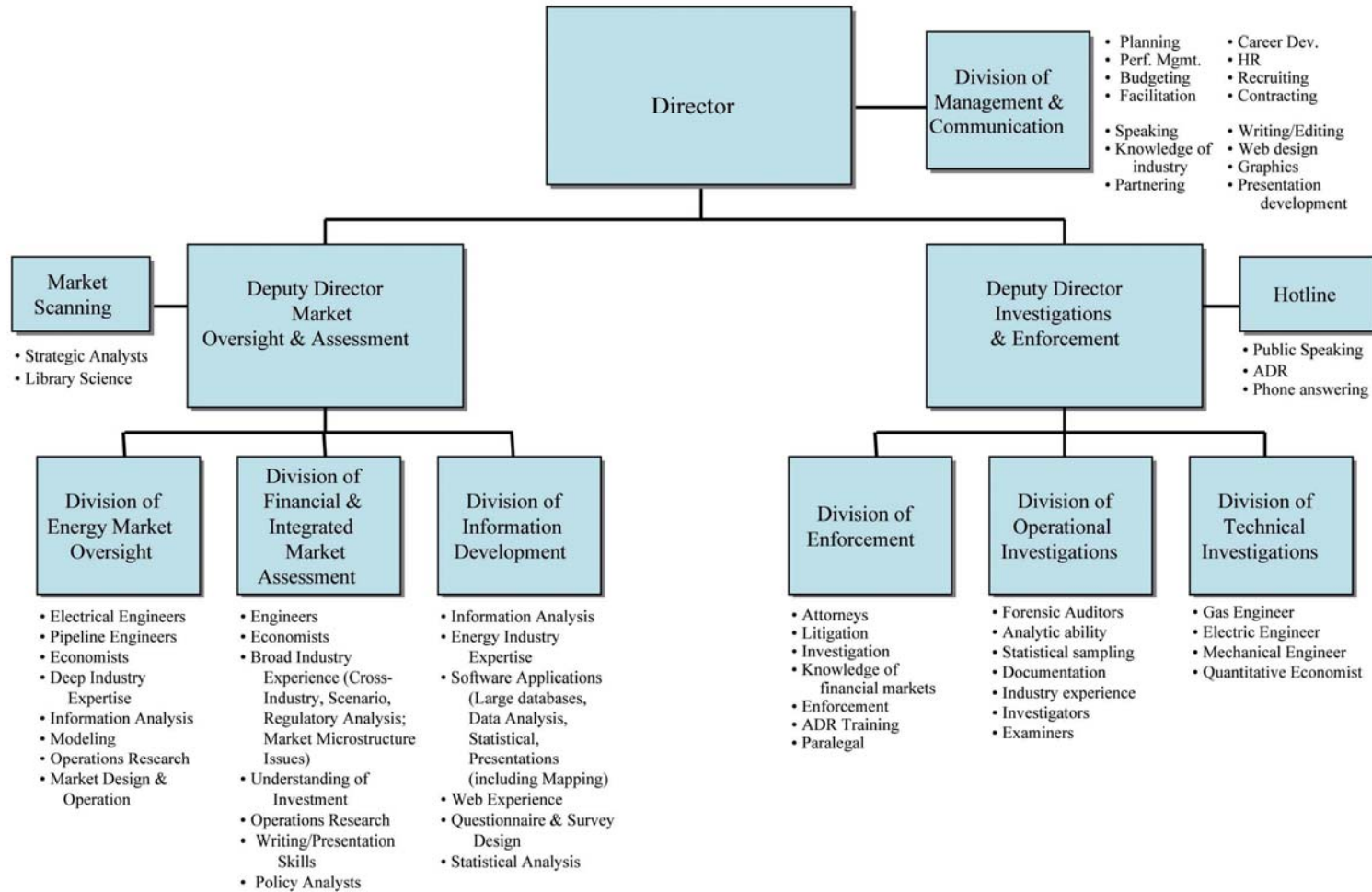
- Actions taken by Congress have delayed SMD indefinitely, but FERC's most recent white paper demonstrates a shift away from SMD toward regional RTO development.
- Although regional flexibility is the key, the white paper clearly sees market monitoring and mitigation as key to the formation of regional power markets

OMOI Centers of Activity

- OMOI will consist of three centers of activity:
 - An oversight and assessment group made up of economists and engineers to analyze markets.
 - An investigations and enforcement section made up of primarily attorneys and auditors.
 - A management and communications division that will coordinate with state regulators, consumer groups and market monitors.

OMOI Organization Chart

- Skillsets -



The OMOI Model

- FERC has acknowledged that OMOI will conduct investigations “of the sort that are routine at agencies such as the CFTC.”
- CFTC model based upon the SEC model.
- Basic investigation: Informal at first, *i.e.* call and a follow-up letter. If SEC does not sense that the company is cooperating, it becomes a formal investigation.

Example of OMOI Enforcement Action

- On May 16, FERC issued order approving stipulation and consent agreement executed by OMOI and Idaho Power Company.
 - IP will pay \$203,318 to entities harmed by IP's incorrect use of the native load priority;
 - IDACORP Energy to transfer to Idaho Power the net revenue derived relative to certain contract that were not filed with FERC (\$5.8 million);
 - IP will pay \$118,200 to address § 203 violations

Example of OMOI Enforcement Action

- In addition to the financial sanctions, IP must also:
 - appoint compliance officers; and
 - retain an independent firm to audit compliance with its standards of conduct and to file an audit report with the Commission.
- Commission noted that it has no civil penalty authority to address the violations.

FERC's New MBR Condition

*"If you don't make it illegal, you can't
prosecute it."*

Richard O'Neill,
FERC Office of Economic Policy

FERC's MBR Condition

Securities Regulation - Rule 10b-5:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

- a. To employ any device, scheme, or artifice to defraud,
- b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

FERC's MBR Condition

- FERC's Proposed MBR Condition:

As a condition of obtaining and retaining market-based rate authority, the seller is prohibited from engaging in anticompetitive behavior or the exercise of market power. The seller's market-based rate authority is subject to refunds or other remedies as may be appropriate to address any anticompetitive behavior or exercise of market power.

FERC's MBR Condition

- What will be deemed illegal behavior?
 - Illegal behavior will be determined after the fact.
 - The condition outlaws anticompetitive behavior and the exercise of market power without specifying what that entails.
 - This is FERC's version of the SEC's Rule 10b-5 – a catchall provision, although one that targets less specific behavior than 10b-5.

FERC's MBR Condition

- FERC has indicated that physical or economic withholding of generation is anticompetitive.
- That is, it is anticompetitive for a generator to withhold output from the market, either by not committing a unit to run or by bidding into a market at too high a price.

Conclusion

- FERC has begun the process of transforming itself into a proactive vs. reactive agency.
- The old way of doing business will give way to the new enforcement model: RTO MMUs working in conjunction with OMOI.

Conclusion

- Process is similar to SEC enforcement model with NASD acting as the first line of defense against potential market abuse and the SEC acting as the ultimate oversight authority.
- Companies will be subject to greater scrutiny than ever before, with potentially much more serious consequences.