



DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 1b

Docket No. PL24-2-000

Enforcement of Statutes, Orders, Rules, and Regulations

AGENCY: Federal Energy Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Federal Energy Regulatory Commission revises its process for resolving by settlement investigations pursuant to the Commission's regulations.

Pursuant to this policy statement, the Commission grants the Director of Enforcement the discretion to authorize Office of Enforcement staff to engage in settlement negotiations without first seeking settlement authority from the Commission. When Office of Enforcement staff receives a viable offer of settlement from the subject of an investigation, it will present that offer to the Commission for voting, as is the case now. While the new process grants Office of Enforcement staff new discretion to commence settlement negotiations, it does not change the fact that it is the Commission that ultimately determines whether any proposed settlement of an investigation is in the public interest.

DATES: This policy statement is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Policy Statement on Process for Resolving Investigations by Settlement

(Issued February 15, 2024)

1. The Commission issues this policy statement to provide updated guidance as to our enforcement process and policies concerning resolution by settlement of investigations that are initiated pursuant to part 1b of the Commission's regulations.¹ Based on our experience over the past 15 years operating pursuant to our existing settlement process as originally adopted in 2008,² consideration of other Federal enforcement program settlement processes, and related industry feedback, we have determined that the Commission's existing settlement process would benefit from certain enhancements. Specifically, and in recognition of the important role that settlements play in enforcement, the reforms discussed herein are designed to streamline the settlement process, to ensure that both the Commission and subjects of Commission investigations can resolve investigations efficiently.

2. As discussed in more detail below, pursuant to this Policy Statement, we replace the Commission's existing process whereby Office of Enforcement (Enforcement) staff must seek settlement authority from the Commission prior to engaging in settlement negotiations with the subject of an investigation, with a process where the Director of Enforcement has the discretion to authorize Enforcement staff to engage in such negotiations. Under this new process, formal settlement authority, with settlement terms pre-reviewed by the Commission, will not be a necessary precondition to the initiation of

¹ 18 CFR pt. 1b (2023).

² See *Enf't of Statutes, Reguls. and Ords.*, 123 FERC ¶ 61,156, at PP 33-34 (2008) (Revised Policy Statement on Enforcement).

settlement negotiations. Instead, with the Director of Enforcement's authorization, Enforcement staff will engage in negotiations with the subject of an investigation and, if and when Enforcement staff receives a viable settlement offer from the subject, it will negotiate the applicable terms and thereafter present the written Offer of Settlement to the Commission for formal voting. Importantly, while the new process grants Enforcement staff new discretion to commence and engage in settlement negotiations, it does not change the fact that it is the Commission that ultimately determines whether a settlement of an investigation is in the public interest and should be approved.

3. Given the significant role settlements play in the Commission's enforcement program, it is important to ensure that the policies and practices governing the settlement process are efficient and effective. Ensuring that the Commission moves expeditiously benefits the subjects of Commission investigations who want to resolve investigations early, as well as any market participants, customers, and the public who may have been harmed by the alleged violations and to whom disgorgement and restitution may be directed once settlement is achieved. The reforms adopted herein to the Commission's settlement process enhance both Enforcement staff's and investigative subjects' ability to negotiate settlements and reduce the time it takes to reach resolution by settlement. As a result, the Commission's settlement practices will better align with those of similarly situated Federal agencies which do not require that Enforcement staff request settlement authority prior to engaging in settlement negotiations with subjects of investigations.

I. Introduction and Background

A. Role of Settlements in Part 1b Investigations

4. Settlement is the preferred means for the Commission to resolve investigations that would otherwise result in a recommendation of remedial action.³ Settlements allow the Commission to devote its limited resources to investigating other cases, rather than expending significant resources in protracted litigation, which supports our mission of ensuring the jurisdictional markets remain free from fraud, manipulation, and anti-competitive conduct.⁴ The Commission has explained that “the public interest is often better served through settlements because we are able to ensure that compliance problems are remedied faster and that disgorged profits may be returned to customers faster.”⁵ In addition, while the Commission does not make findings as to whether a violation occurred in an order approving or rejecting a settlement offer,⁶ early and transparent publication of settlements permits the Commission to expeditiously alert other market participants to potential compliance pitfalls and helps avoid repetition of unlawful conduct.

³ *Id.* P 33.

⁴ *Id.*

⁵ *Id.*

⁶ Rather, the Commission determines only whether the settlement is a fair and equitable resolution of the matters concerned and is in the public interest. *See, e.g., Todd Meinershagen*, 181 FERC ¶ 61,251, at PP 14-20 (2022); *ISO-New England, Inc.*, 180 FERC ¶ 61,223, at PP 88-95 (2022); *Enerwise Glob. Tech., LLC d/b/a CPower*, 180 FERC ¶ 61,126, at PP 17-18 (2022).

B. Revised Policy Statement on Enforcement

5. In 2008, the Commission issued its Revised Policy Statement on Enforcement to “provide guidance to the regulated community as to [its] enforcement policies concerning our governing statutes, regulations, and orders.”⁷ The Revised Policy Statement on Enforcement was designed to “give the industry a fuller picture of how our investigative process works, including the considerations Enforcement staff takes into account in determining whether to open an investigation and, once opened, whether to close it without further action or to recommend sanctions.”⁸ Consistent with this purpose, the Revised Policy Statement on Enforcement detailed the procedures the Commission, and in particular Enforcement staff, follow when initiating, conducting, and resolving an investigation.⁹

6. The Revised Policy Statement on Enforcement explained that, before recommending the Commission commence an enforcement proceeding, Enforcement staff will attempt to reach a settlement with the subject of an investigation. The Commission noted that this is valuable to the subjects of investigations, who benefit from

⁷ Revised Policy Statement on Enforcement at P 1. The Revised Policy Statement on Enforcement followed an earlier policy statement on Enforcement issued in 2005, following enactment of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAAct 2005). *See Enf’t of Statutes, Ords., Rules, and Reguls*, 113 FERC ¶ 61,068 (2005) (Policy Statement on Enforcement).

⁸ Revised Policy Statement on Enforcement at P 5.

⁹ *Id.* PP 20-71.

potentially lower negotiated penalties¹⁰ and avoiding the costs and risks of litigation.¹¹

Further, the Commission explained that resolution of investigations by settlement benefits the public interest, by ensuring the quick remediation of compliance problems and return to customers of any ill-gotten gains.¹²

7. With regard to process, the Revised Policy Statement on Enforcement set forth a means by which Enforcement staff would request settlement authority from the Commission, *prior to* engaging in settlement negotiations.¹³ It explained that Enforcement staff would seek “authority to negotiate within a range of potential civil penalties and/or disgorgement” and that this process would ensure that “the Commission, not staff, determines the appropriate range of remedies for purposes of settlement.”¹⁴ If Enforcement staff and the subject of an investigation reach a settlement in principle, the

¹⁰ In adopting and subsequently revising its Penalty Guidelines, the Commission formalized this financial benefit for settling parties, by providing a specific and transparent credit to subjects in the penalty calculation for resolving a matter without the need for a trial-type hearing. The Commission also separately provides credit for cooperating with Enforcement staff and for accepting responsibility. *See* FERC Penalty Guidelines Section 1C2.3(c) (detailing possible reductions to the culpability score, which is used to calculate the civil penalty guideline ranges for any particular violation of an organization).

¹¹ Revised Policy Statement on Enforcement at P 33.

¹² *Id.*

¹³ *Id.* P 34.

¹⁴ *Id.* (requiring Enforcement staff to provide the Commission with the subject’s written response to staff’s views, if submitted, so that the Commission has both the views of its staff and the subject before it determines whether to authorize settlement negotiations).

Revised Policy Statement on Enforcement provides that staff will submit an executed Stipulation and Consent Agreement to the Commission for its consideration.¹⁵

C. Current Policies and Practices Regarding Settlement of Part 1b

Investigations

8. Since issuance of the Revised Policy Statement on Enforcement in 2008, Enforcement staff has followed the process detailed therein whereby it seeks settlement authority from the Commission prior to entering into settlement negotiations with the subject of an investigation. Pursuant to this process, after commencing an investigation under part 1b of the Commission's regulations and engaging in initial discovery, but before any formal settlement negotiations take place, Enforcement staff presents to the Commission its views, as developed to that date by the investigation,¹⁶ and a recommended range of potential civil penalties¹⁷ and/or disgorgement. The subject's response to Enforcement staff's preliminary findings, if available, is also provided to the Commission.¹⁸ The Commissioners then determine whether to approve, modify, or deny

¹⁵ *Id.*

¹⁶ If at any time Enforcement staff determines that no violation has occurred, the evidence is insufficient to warrant further investigation, or no further action is otherwise called for based on a totality of the circumstances, it closes the investigation. *Id.* P 31. Enforcement staff's annual Reports on Enforcement detail examples of cases that Enforcement staff closes without taking action. *See e.g.*, 2023 Report on Enforcement, Docket No. AD07-13-017, at 19 (Nov. 16, 2023).

¹⁷ The civil penalty range for organizations is informed by the Commission's Penalty Guidelines. Penalties for individuals are determined on a case-by-case basis. *See* FERC Penalty Guidelines Section 1A1.1, Application Note 1.

¹⁸ *See* Revised Policy Statement on Enforcement at P 32 (describing the process by which Enforcement staff shares its preliminary findings with investigative subjects and provides them the opportunity to respond).

the settlement authority, or provide alternative direction on how to proceed with the investigation.

9. Settlement authority is not pre-approval of any settlement ultimately reached between Enforcement staff and an investigative subject consistent with the authority granted. Any settlement reached after obtaining settlement authority must still subsequently be approved by the Commission to be effective, based on a finding that the settlement is in the public interest. Thus, while Enforcement staff can recommend a settlement to the Commission, it cannot guarantee that the Commission will approve a recommended settlement, including the specific terms and conditions of the final stipulation and agreement. After Enforcement staff reaches a proposed settlement with a subject, it submits a Stipulation and Consent Agreement—executed by both the subject and the Director of Enforcement—to the Commission for formal voting. The Stipulation and Consent Agreement, as well as the related order approving the settlement, are generally released publicly upon approval.¹⁹

II. Discussion

A. Need for Reform

10. The Commission's existing process for settling cases, which requires staff to seek settlement authority from the Commission in all cases prior to engaging in settlement negotiations, would benefit from certain improvements in light of both Enforcement staff's increased and broad experience investigating violations and recommending appropriate sanctions for such violations, and inefficiencies that the

¹⁹ *Id.* P 34.

current authorization process can present in many cases for the Commission, Enforcement and other Commission staff, and investigative subjects.

11. The existing settlement authority process was adopted in the 2008 Revised Policy Statement on Enforcement, as part of the Commission's efforts to provide guidance to the regulated community as to our enforcement policies in light of the enhanced enforcement tools created by EAct 2005.²⁰ At the time of issuance of the 2008 Revised Policy Statement on Enforcement, the Commission had little experience implementing its new enforcement authorities²¹ and had not yet adopted the Penalty Guidelines.²²

12. Over the past 15 years, the Commission has gained significant experience implementing its enhanced enforcement authorities. Since 2007, Enforcement staff has negotiated over 150 settlements, pursuant to which investigative subjects have agreed to pay almost a billion dollars in civil penalties and over a half a billion dollars in disgorgement.²³ The breadth and diversity of matters investigated and settled has allowed Enforcement staff to gain broad experience, which informs settlement

²⁰ See generally Revised Policy Statement on Enforcement.

²¹ Revised Policy Statement on Enforcement at PP 10-11 (noting that from the time of EAct 2005 going into effect through the issuance of the 2008 Revised Policy Statement on Enforcement, the Commission had only resolved 14 investigations by settlement and had only issued two Orders to Show Cause, which at that time remained pending proceedings).

²² See *Enf't of Statutes, Ords., Rules, and Reguls.*, 132 FERC ¶ 61,216 (2010) (Revised Policy Statement on Penalty Guidelines) (adopting the FERC Penalty Guidelines, which are modeled on the United States Sentencing Guidelines).

²³ See 2023 Report on Enforcement at 19. During this time, Enforcement has also initiated and subsequently closed without further action hundreds of investigations.

negotiations by allowing Enforcement staff to compare factual circumstances to prior matters when considering appropriate remedies in those negotiations.²⁴ Similarly, in recent years the Federal courts have issued opinions interpreting the Commission's enforcement authorities. These Federal court cases shed light on legal principles, which in turn can help guide and inform settlement negotiations by giving insight into the strength of Enforcement staff's legal claims, for example.

13. Further, in 2010, after adoption of the existing settlement authority process, the Commission adopted its Penalty Guidelines to “add greater fairness, consistency, and transparency to our enforcement program.”²⁵ The Penalty Guidelines assign specific and transparent weight to each factor taken into consideration in calculating a proposed penalty, allowing organizations to know with more certainty and in advance how each factor will be applied in any particular case, thereby allowing an organization to evaluate how much risk it could face in light of an investigation of potential violations.²⁶ Since their adoption, Enforcement staff has used the Penalty Guidelines to analyze and calculate an appropriate penalty range for any alleged violations of organizations being investigated, thus ensuring consistency and transparency across investigations. Given

²⁴ *See id.* at 20-22 (describing the types of violations Enforcement staff has resolved by settlement, including violations of: the Federal Power Act, Natural Gas Act, and Interstate Commerce Act; RTO/ISO tariff provisions; the Reliability Standards; the Anti-Manipulation Rule and the Commission's market behavior rules; Commission orders; amongst others).

²⁵ Revised Policy Statement on Penalty Guidelines at P 2.

²⁶ *Id.* PP 2, 5 (“[T]he Penalty Guidelines . . . provide more clarity and consistency by assessing civil penalties based on objective characteristics and a uniform set of factors weighted similarly for similar violations and similar violators. . . . [T]he Penalty Guidelines . . . provide transparency by describing the factors we consider in our penalty determinations and the weight afforded to each factor.”).

this experience, Enforcement staff need not obtain express sign-off from the Commission on a particular settlement range prior to engaging in settlement negotiations.²⁷ Similarly, Enforcement staff has also gained experience recommending civil penalties for individuals and settling such matters²⁸ and the Commission has precedent assessing civil penalties against individuals.²⁹

14. We note also that one of the only stated justifications for adopting the existing settlement authority process in the 2008 Revised Policy Statement on Enforcement was that it would “ensure[] that the Commission, not staff, determines the appropriate range of remedies for purposes of settlement.”³⁰ Under the revised settlement process the Commission will continue to determine the appropriate remedy for purposes of

²⁷ The Commission retains the discretion to depart from the Penalty Guidelines, based on an individualized assessment of the facts presented in any case, when appropriate. *Id.* PP 2, 5, 19. However, it is worth noting that departures from the Penalty Guidelines are uncommon. In the context of settlement negotiations, Enforcement staff will inform the subject of the investigation of any departures from the Penalty Guidelines it will recommend to the Commission. *Id.* P 32 n.51.

²⁸ *See, e.g., Todd Meinershagen*, 181 FERC ¶ 61,251.

²⁹ *See, e.g., Vitol Inc.*, 169 FERC ¶ 61,070 (2019) (assessing civil penalty of \$1,000,000 against Federico Corteggiano, a trader for Vitol Inc.); *Houlian Chen*, 151 FERC ¶ 61,179 (2015) (assessing civil penalty of \$1,000,000 against Houlian Chen, a trader for Powhatan Energy Fund, LLC, HEEP Fund, LLC, and CU Fund, Inc.); *Coaltrain Energy, L.P.*, 155 FERC ¶ 61,204 (2016) (assessing civil penalties of \$5,000,000 each against Peter Jones and Shawn Sheehan, co-owners of Coaltrain Energy, L.P., and \$1,000,000 against Robert Jones, \$500,000 against Jeff Miller, and \$500,000 against Jack Wells, traders for Coaltrain Energy, L.P.). Each of the aforementioned cases against individuals subsequently settled. *See Vitol Inc.*, 186 FERC ¶ 61,008 (2024); *Coaltrain Energy, L.P.*, 181 FERC ¶ 61,031 (2022); *Houlian Chen*, 177 FERC ¶ 61,076 (2021).

³⁰ Revised Policy Statement on Enforcement at P 34. Notably, this statement predates the Commission’s adoption of Penalty Guidelines for organizations, the existence of which now provides staff significant guidance in their determination of appropriate penalties in a given matter.

settlement. The Commission must approve any settlement Enforcement staff negotiates and find that the settlement and its terms are in the public interest. Giving Enforcement staff the discretion to initiate settlement negotiations does not affect the Commission's ability to ultimately consider, discuss, and approve or reject the proposed resolution of any matter.

15. Further, in addition to developments over the past 15 years, the Commission has also found that, in its experience, requiring pre-authorization to engage in settlement negotiations in all cases—regardless of the seriousness of the alleged violation or the complexity of the case—creates unnecessary burdens on Commission staff and investigative subjects who are seeking prompt resolution of investigations.

16. The existing settlement authority process can result in an inefficient allocation of limited agency resources. Under the existing process, in all cases Enforcement staff and other Commission program offices invest significant time in seeking approval to commence negotiations, no matter how likely the prospects of settlement are. However, after all the time and effort spent on pre-authorization to engage in settlement negotiations, the parties may not agree to the terms of a settlement.³¹ In these cases, the Commission resources and time spent pre-authorizing settlement authority could have instead been expended on other Commission priorities.

³¹ Sometimes the subject of an investigation may not want to engage in settlement negotiations at all. Even in situations where Enforcement staff thinks settlement is unlikely, under the existing process it still requests settlement authority from the Commission. In such situations, this process ends up being a mere formality.

17. Investigative subjects have also expressed frustration at the time it can take to complete the settlement authority process in some cases. Enforcement staff has found that increasingly subjects are inclined to try to resolve investigations quickly through settlement, particularly in cases where there are no factual disputes. Moreover, prolonging the settlement process by requiring authorization to negotiate can result in added burden and expense on investigative subjects. As a result, investigative subjects are often ready to begin negotiations and determine whether a settlement is attainable, and the existing settlement authority process represents a delay—sometimes of several months or more—in getting to this step.

18. Finally, the prolonged settlement authority process also delays public dissemination of information about the alleged misconduct. Transparency can help prevent further misconduct by sending a message of deterrence. Moreover, expedient resolution of investigations by settlement ensures that ill-gotten gains are returned to harmed market participants and consumers as quickly as possible.

19. Both the experience Enforcement staff has gained investigating and settling diverse cases over the past 15 years and the adoption of, and experience applying, the Penalty Guidelines have created a strong framework for Enforcement staff to evaluate whether settlement of an investigation, and on what terms, can be recommended to the Commission to be found to be in the public interest. Further, we find that the existing settlement authority process is inefficient, in that it unnecessarily consumes limited agency resources and potentially delays resolution of investigations by settlement. These factors weigh heavily in favor of streamlining the settlement process to eliminate the unnecessary intermediate step of getting settlement authority.

B. Streamlined Settlement Process

20. In light of our experience and also feedback received from the regulated industry and subjects of Commission investigations, we hereby revise our existing process for settling investigations initiated pursuant to part 1b of the Commission's regulations. Specifically, we will no longer require Enforcement staff to obtain settlement authority from the Commission prior to initiating and negotiating a potential settlement of an investigation. Instead, we hereby grant the Director of Enforcement the authority to authorize Enforcement staff to commence settlement negotiations and/or respond with counteroffers to settlement negotiations initiated by a subject. The Director of Enforcement retains the existing discretion to engage with the Commission for feedback prior to authorizing staff to engage in such settlement negotiations on any particular investigation.

21. After engaging in settlement negotiations, should an investigative subject submit a viable Offer of Settlement,³² Enforcement staff will submit the Offer of Settlement to the Commission for voting, along with any other information that might aid the Commission's determination as to whether to accept the Offer of Settlement, including for example, details about the specifics of the alleged violation(s), facts developed by the investigation to date, and/or the relevant law. Enforcement staff will also submit the subject's response to any preliminary findings issued by Enforcement staff, when available. The Offer of Settlement will be executed by the subject of the

³² By "viable" we mean a settlement offer that Enforcement staff, in its considered discretion, believes is sufficient to recommend to the Commission for approval based on Commission precedent, the facts of the case, and review of the Penalty Guidelines.

investigation and will remain non-public unless and until it is approved by the Commission.³³

22. The major benefit of this approach to settlement negotiations is that it will greatly improve the efficiency of the settlement process, thereby allowing Enforcement staff to devote time that would otherwise be spent seeking settlement authority to other Commission investigations or proceedings. Further, unlike the existing settlement authority process, this new process ensures that Commission staff and the Commissioners are only investing time analyzing settlement terms that are known to be acceptable to the subject of the investigation, as they have been presented in an Offer of Settlement. We expect that these efficiency gains will lead to speedier resolutions of investigations, which will better serve the subjects of investigations, as well as the public who will see the benefits of required remediation faster. We also note that the approach to settlement negotiations set forth in this policy statement aligns with other similarly situated Federal agency enforcement programs, including the Securities and Exchange Commission and the Commodity Futures Trading Commission.

23. Further, as previously stated, this new process does not change the fact that it is the Commission, not staff, that ultimately determines whether or not any settlement of an investigation is in the public interest. Consistent with our existing process, an Offer of Settlement, as well as the related order approving the settlement, will generally be released publicly upon approval.

³³ This replaces the existing process whereby Enforcement staff typically submits for voting a Stipulation and Consent Agreement executed by both the subject of the investigation and the Director of Enforcement.

C. Other Considerations and Clarifications

24. The settlement authority process and enhancements detailed in this policy statement apply only to the process by which the Commission resolves investigations conducted by Enforcement staff pursuant to 18 CFR part 1b, including investigations that relate to violations of the mandatory Reliability Standards. The reforms discussed herein do not change the process by which parties to a docketed proceeding pending before the Commission or set for hearing submit settlements to the Commission for consideration,³⁴ nor do they affect the process by which the Commission reviews proposed penalties (including those agreed to by settlement) imposed by NERC and/or the Regional Entities for violations of the Reliability Standards.³⁵

III. Conclusion

25. As a Commission, we are always striving to responsibly implement our enforcement authorities, and to that end, to continually improve and enhance our enforcement policies and procedures to better serve the public. Consistent with that goal, we issue this policy statement and hereby streamline our settlement process by eliminating the requirement that Enforcement staff seek settlement authority from the Commission prior to initiating settlement negotiations, and instead grant new discretion to the Director of Enforcement to authorize the commencement of settlement negotiations. We believe these reforms will result in more effective and efficient resolutions of part 1b investigations by settlement.

³⁴ See 18 CFR 385.602 (2023). For example, the reforms we announce today will not affect the settlement process during an Order to Show Cause proceeding stemming from a Part 1b investigation.

³⁵ See generally, *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062 (2006).

IV. Document Availability

26. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested parties an opportunity to view and/or print the contents of this document via the Internet through the Commission's homepage (<https://www.ferc.gov>).

27. From the Commission's homepage on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

28. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

V. Effective Date

29. This policy statement is effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

By the Commission.

Issued: February 15, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

