



## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

**[Docket No. AD25-12-000]**

#### **Referrals for Potential Criminal Enforcement; Guidance**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This notice describes the Commission's plans to address criminally liable regulatory offenses under recent Executive Order 14294, Fighting Overcriminalization in Federal Regulations, consistent with the Commission's existing policy.

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

#### **FOR FURTHER INFORMATION CONTACT:**

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#### **SUPPLEMENTARY INFORMATION:**

1. On May 9, 2025, President Trump issued Executive Order 14294, titled Fighting Overcriminalization in Federal Regulations (EO 14294). Among other things, and as discussed below, the EO requires agencies to undertake certain actions, including issuing guidance to be published in the Federal Register. In this Notice of Guidance (Notice), we provide guidance to the public on our existing policies consistent with EO 14294.

## **I. Background**

2. Under the Federal Power Act, 16 U.S.C. §§ 825m, 825o, Natural Gas Act, 15 U.S.C. §§ 717s, 717t, and Natural Gas Policy Act, 15 U.S.C. § 3414, the Commission is authorized to refer potential criminal conduct to the Department of Justice (DOJ). Those provisions indicate that criminal penalties may be assessed on a person who knowingly and willfully violates a Commission statute, rule, regulation, or order. The Commission may transmit such evidence as may be available concerning such acts or practices to DOJ, which, in its discretion, may institute criminal proceedings.<sup>1</sup>

3. In its 2005 Policy Statement on Enforcement, the Commission noted its authority to make criminal referrals to DOJ and the factors the Commission will consider in making those referrals. The Commission stated:

If the misconduct is serious enough, we may refer the matter for criminal prosecution to provide adequate punishment and deterrence. We will take all factors into account in deciding what cases should be referred for criminal prosecution, including the seriousness of the violation, the extent of the harm done, the evidence of willful behavior, and the strength of the evidence of wrongdoing.<sup>2</sup>

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<sup>1</sup> Such referrals by the Commission are rare, with only two instances over the past 15 years.

<sup>2</sup> *Enf't of Statutes, Orders, Rules & Reguls.*, 113 FERC ¶ 61,068, at P 15 (2005) (Policy Statement on Enforcement); *see also Enf't of Statutes, Reguls., & Orders*, 123 FERC ¶ 61,156, at P 49 (2008) (Revised Policy Statement on Enforcement).

## II. Notice Providing Guidance

4. Consistent with the requirements of EO 14294, the Commission advises the public that by May 9, 2026, the Commission, in consultation with the Attorney General, will provide to the Director of the Office of Management and Budget a report containing: (1) a list of all criminal regulatory offenses<sup>3</sup> enforceable by the Commission or DOJ; and (2) for each such criminal regulatory offense, the range of potential criminal penalties and the applicable mens rea standard for a violation.<sup>4</sup>

5. This Notice also announces a general policy, subject to appropriate exceptions and to the extent consistent with law, that when the Commission is deciding whether to refer alleged violations of criminal regulatory offenses to DOJ, the Commission and its staff should consider, among other factors: (1) the harm or risk of harm, pecuniary or otherwise, caused by the alleged offense; (2) the potential gain to the putative defendant that could result from the offense; (3) whether the putative defendant held specialized knowledge, expertise, or was licensed in an industry related to the rule or regulation at issue; and (4) evidence, if any is available, of the putative defendant's general awareness of the unlawfulness of his conduct as well as his knowledge or lack thereof of the regulation at issue.

6. The Commission will continue to follow its longstanding policy regarding criminal referrals to DOJ as set forth in the Policy Statement on Enforcement. Consistent with this Notice, the Commission will consider the factors set forth in EO 14294 that are

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<sup>3</sup> “Criminal regulatory offense” means a Federal regulation that is enforceable by a criminal penalty. EO 14294, § 3(b).

<sup>4</sup> “Mens rea” means the state of mind that by law must be proven to convict a particular defendant of a particular crime. EO 14294, § 3(c).

discussed above. We note that the factors listed in section 7 of EO 14294 largely overlap with the factors the Commission already considers under the Policy Statement on Enforcement. As noted above, in considering whether to make a criminal referral to DOJ, the Commission's policy has been to consider factors including: the seriousness of the violation; evidence of willful behavior; and the strength of the evidence of wrongdoing.<sup>5</sup> The factors listed in the EO are consistent with the above factors that the Commission considers under its existing policy.

### **III. Document Availability**

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

8. From the Commission's Home Page 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.

9. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto: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](mailto:public.referenceroom@ferc.gov).

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<sup>5</sup> See P 3 *supra*.

**Debbie-Anne A. Reese,**

*Secretary.*

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