Proactive compliance: A brief review of experience and ideas

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Purpose

• Provide insight on how utilities and energy companies can be proactive with their compliance efforts by identifying areas of regulatory risk and anticipating requirements before enforcement.

• Provide a quick overview of FERC enforcement development.

• Provide a sense of recent industry opinions regarding FERC regulation.

• Discuss selected historical examples of proactive compliance.

• Summarize selected current proactive compliance initiatives.
Electricity market enforcement evolution

- Pre-2000  Infancy
- 2000-2002  Crisis
- 2002-2005  Enhanced oversight, selective enforcement
- 2005-2008  Enhanced penalty authority, law-and-order emphasis, de-emphasizing oversight
- 2009-present  Professionalization of enforcement and oversight, emphasis toward analysis/audit combination
Mid-2012 snapshot of industry on FERC compliance

Frequency of compliance information to Board
- Annually
- Monthly
- Quarterly
- Other

FERC compliance budget change
- Increase (0-20%)
- Increase (> 20%)
- No change
- Other

Compliance training metric
- Testing
- Attendance
- Other

Most compliance risk
- FERC
- CFTC
- NERC
- Other

Source: Deloitte Compliance Survey 2012
Mid-2012 snapshot of industry on FERC compliance (cont’d)

FERC regulations clear and understandable

- Agree
- Disagree
- Neutral

Assessment of new enforcement measures

- Problem
- Improvement
- Other
- Remains to be seen

Biggest FERC concern

- Enforcement tariff forms
- Enforcement/market manipulation
- Reliability
- Other
- No answer

Source: Deloitte Compliance Survey 2012
Illustrative pro-active compliance initiatives

- NERC (pre-/post EPAct 2005)
  - Regional
- NEI (post-TMI)
- ASME (PolytechnicClub (1857))
- Gas Price Reporting Coalition/SafeHarbor
- Energy Dodd-Frank Coalition (notional value)
- Committee of Chief Risk Officers
- Keynote Address to the World Energy Council London, UK (October 2, 2006)
  - http://www.worldenergy.org/documents/lpsf06_WH.pdf
Company-specific pro-active compliance initiatives

Being proactive in regulatory compliance efforts:

• Red flag screens
  – Theory of market manipulation
  – Techniques
• Compliance culture formation
• Safe Harbors
• Implementation
  – Individual
  – Cooperative
  – Formal/informal
  – Leading practices/common practices
Company-specific pro-active compliance initiatives (cont’d)

• Validation
• Uncertainty
• Safety nets?/Insurance?
Closing thoughts

• Proactive Compliance may serve
  – Transparency
  – Market integrity
  – Risk-management

• Regulator reaction matters
  – Unclear/ambiguous
  – Supportive
  – Collegial (MPRAC, ICE)
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