

# Restructuring Today



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## Enforcement experts expect FERC to use new penalty powers

FERC's powers grew considerably with the ability to impose penalties for market manipulation and that's going to affect power markets, experts said at *Restructuring Today's* audio conference called "What FERC Market Manipulation Penalties Mean."

When speaker and former FERC Commissioner William Massey took his oath in 1993, the commission's enforcement role was minor compared to its efforts to restructure the industry.

It had modest penalty authority for sums that were "pocket change" to big firms, he added.

Towards the end of Massey's tenure on the commission, the California Energy Crisis hit and FERC certainly could have used the authority then.

Chairman Joseph Kelliher lobbied hard to get more enforcement abilities and Congress gave them to him in the Energy Policy Act of 2005.

FERC's Office of Enforcement is better funded and more able to do its mission than ever before, said Sheila Hollis.

She's a partner and chair of the Duane Morris Law Firm's Washington DC office and was the first director of FERC's Office of Enforcement, establishing the office and its policies and procedures from 1977 to 1980.

With its powers expanded into previously unregulated areas and those under the province of the Commodity Futures Trading Commission, FERC is likely to exhibit a new-car mentality, said Hollis.

She expects the commission to take its new powers out for a spin.

The consumer's voice should be heard loud and clear as prices continue to rise in energy markets, she added.

FERC hasn't been mute on its enforcement practices, communicating

with market players through its NOPRs, orders and associated comments, said William Hederman, director of the Morgan Lewis Energy Group and former director of the commission's office of market oversight.

The message is clear. FERC isn't going to act like a friendly beat cop who might let you off but rather a state trooper who always needs to write more citations, said Hederman.

ELCON applauded that FERC stepped up to the job of enforcing the power markets, said its CEO John Anderson.

But the commission wouldn't have to use its powers as much if it improved market design so manipulation was less of a possibility in the first place, he added.

FERC's Advanced NOPR on wholesale market reform could present significant steps in that direction, said Anderson.

## SaveOnEnergy.com opens retail exchange website for Texas

SaveOnEnergy.com officially launched a first-of-its-kind commercial retail exchange portal to serve the Texas market yesterday.

The exchange portal lets businesses of all sizes get direct competitive bids for their power service from up to eight energy suppliers.

Cirro Energy, Commerce Energy, Direct Energy, Hudson Energy Services, MX Energy, Reliant Energy, Spark

Energy and SUEZ Energy Resources sell power through the portal.

"Ranging from large, incumbent utilities to smaller, successful start-ups, the eight suppliers listed on our exchange portal represent a true picture of the varied and competitive deregulated Texas Energy market," said CEO of SaveOnEnergy.com Brent Moore.

The suppliers compete head to head for a customer's business. Shoppers

to enter energy use data and company details and power firms get it in real time.

The suppliers evaluate the data they get and contact the customer directly.

SaveOnEnergy.com doesn't use an internal direct sales force any more since the portal became a clearinghouse where suppliers compete directly for a customer's business.

The firm plans to take the portal model to another four states in 2008.

## APPA, NRECA urge district court to keep Amaranth from dodging FERC fines

The US District Court for the Southern District of New York shouldn't stop FERC's proceeding that could impose \$259 million in fines for gas trader Amaranth, wrote APPA, NRECA and the American Public Gas Assn in an amicus curiae brief last week.

Amaranth wants the court to stop FERC from going ahead with its action

because it believes the commission is overstepping its boundaries and treading on the toes of the Commodity Futures Trading Commission.

"Amaranth should not be permitted to execute an end run around FERC's enforcement action by seeking to enjoin the proceeding," the filers wrote.

It's not uncommon for an action to

be policed by two different agencies if it violates two separate laws, said the filers.

The entity accused of market manipulation shouldn't be allowed to pick the agency that prosecutes it, they added.

If the court sides with Amaranth, it would be tantamount to a declaration that Congress tasked FERC with policing

natural gas markets but hamstrung its ability to do so.

The enforcement powers were first given to the commission by the Energy Policy Act of 2005 and if the case against Amaranth goes ahead, it would be their first exercise.

The CFTC holds sway over the NYMEX gas markets that Amaranth

allegedly manipulated -- but those markets affect the physical ones FERC is policing.

The closing price of the contract affects gas-fired generator fuel costs and since the generators are often on the margin, they set the price for all generators on the spot market.

Spot market prices affect long-term contracts, too, the filers noted.

APPA, NRECA and APGA believe this court lacks the authority to enjoin a FERC proceeding since Congress was clear that only Courts of Appeals could do that.

One of Amaranth's employees named in FERC's Show Cause Order has such a case before the District of Columbia Court of Appeals.

## FERC dismisses 330 Fund's complaint against New York ISO

FERC dismissed 330 Fund's complaint against New York ISO yesterday, saying the system operator didn't violate its tariff in its notification of two gas generators' injection points being switched.

The complaint stemmed from transmission congestion contracts (TCC) 330 Fund bought that were adversely affected when the

generators moved.

NYISO should have done more to notify 330 Fund before it bought the contracts, the firm complained.

The ISO argued that it did its part and shouldn't be punished for the firm's bad business decisions.

NYISO has to notify participants of material changes to points of injection but this case was not a material change

since it didn't affect reliability, FERC ruled.

The 330 Fund also failed to establish that the NYISO broke its TCC auction rules by failing to post notice of the changes ahead of it.

NYISO hadn't heard of the outages that caused the change on the lines before the auction, making it impossible to notify participants.

## Ohio Consumers Counsel to reopen complaint call center

The Ohio Consumers' Counsel will be running its call center again starting this week after its authority was renewed by Gov Ted Strickland, D.

The restoration was in the state budget when Strickland repealed a 2005 decision to restrict the OCC's ability to intervene on behalf of consumers.

"When residential consumers have a utility complaint, they need to know that they have an advocate that is strictly on their side and will fight for them," said

Janine Migden-Ostrander, Consumers' Counsel.

"We are pleased to be once again working with consumers one-on-one and helping to resolve their complaints."

Since September 2005 the OCC's hotline continued to run as an educational resource for consumers but complaints were directed to the PUC.

During the previous two-year budget period, all utility complaints were handled by state utility regulators.

The OCC continued to answer questions and respond to educational requests through its toll-free hotline.

It monitored consumer's utility issues by reviewing information given by state regulators.

However, by talking with consumers one-on-one about complaints and disputes, the OCC can directly address concerns, helping to ensure a more positive outcome for consumers, said the OCC.

## Ohio energy bill looks for healthy ways to manage end of caps

An energy bill now before Ohio lawmakers is designed to create an energy efficiency standard requiring 10% of projected growth in power production come from efficiency upgrades.

The 58-page bill pushes for measures to be in place by 2025 and is called Energy, Jobs and Progress by Gov Ted Strickland, D.

The plan is driven in part by fears over what may come when price caps expire at the end of 2008 and is due in part to recent news from Illinois and Maryland.

Strickland hopes to:

- Establish a stable balance between regulatory protection and

competitive opportunity;

- Stimulate renewable and advanced-energy production;
- Include utilities and consumers equally in the rate-setting process;
- Modernize the state's power and natural gas infrastructure, and
- Include energy efficiency controls to address the future of power.

One mechanism would help firms comply with the 25% by 2025 standard.

The plan calls for the PUC to treat efficiency as a production cost based on hitting predetermined savings.

While incentives for firms are included, the PUC would develop penalties for utilities that fail to reach

benchmarks.

Regulators would have a tool to push a firm that fails to move toward efficiency goals.

As a last resort, the bill would let the PUC put a decoupling mechanism in place to separate revenues from sales.

The plan includes several tools to make sure rates don't skyrocket in 2009, in a large part based on fear.

Many of the state's largest employers are questioning how power prices will affect corporate bottom lines and the state's economy as a whole.

Could higher prices drive businesses out of the state or keep

others from moving in?

Strickland warned over the past couple of month of the experiences of other states when rate caps went away.

Those included Illinois where power bills reportedly jumped between 26% and 55% and Maryland where

Baltimore Gas & Electric rates reportedly jumped 50% after rate caps expired.

The Ohio Consumers' Counsel sees the energy efficiency, advanced metering and demand response sections of Strickland's proposal

as a benefit to consumers -- but has concerns over other elements.

Concerns include utilities boosting rates -- especially for new power plants, pollution controls and distribution costs to improve infrastructure.

## Maine shopping coasts along at less than 1% of load

Maine power shopping was relatively flat in August. Wins and losses of shoppers were counted mostly in the

single digits with the exception of Central Maine Power where residential and small C&I shoppers dipped by 39.

Overall for the month, CMP lost 37 shoppers while Maine Public Service -- the smallest of the three marketers -- lost a pair of shoppers.

Bangor Hydro-Electric stayed at 1,009 for the third straight month -- with migration from residential and small C&I matched by signups at by C&I customers.

Medium C&I load served by competitive suppliers ranged from 23.7% at MPS to 43% at BHE while large load ranged from 69.3% at MPS to 94.4% at CMP.

The ranges in July stretched from 25.9% to 44.1% for medium C&I while large C&I ranged from 68.4% to 94.1%.

Competitive supply load for residential and small C&I was less than 1% for all three suppliers in August, the same as in previous months.

### Maine Power Shopping - August 2007

	Res/Small	Med C&I	Large C&I	Feb 2007	Total Aug 2006	Aug 2005
<b>Central Maine Power</b>						
Customers	2,889	2,856	334	5,917	5,405	4,949
Load Served	0.9%	39.5%	94.4%	37.5%	35.9%	41.0%
<b>Bangor Hydro-Elec</b>						
Customers	565	418	26	986	870	851
Load Served	0.6%	43.0%	78.5%	29.1%	23.7%	32.0%
<b>Maine Public Service</b>						
Customers	126	34	10	285	412	1,769
Load Served	0.4%	23.7%	69.3%	31.7%	35.1%	41.0%
<b>Statewide</b>						
Customers	3,580	3,308	370	7,188	6,687	7,569
Load Served				36.0%	34.2%	41.0%

Source: Maine PUC

## 6 stories in 2 minutes

### ACEEE calls PG&E programs 'exemplary:'

The American Council for an Energy Efficient Economy recognized 16 of Pacific Gas & Electric's efficiency programs as "exemplary" or worth an honorable mention, the utility said yesterday. Such programs are important because they save customers money and cut greenhouse gas emissions, said ACEEE.

### How will wind affect

#### Iowa utility's rates:

Interstate Power & Light filed an application with the Iowa PUC for rate guidelines for 200 mw of wind generation planned for the state. As part of IPL's long-term generation plan, the firm wants to expand its renewable energy

portfolio in Iowa. IPL is requesting a 12.3% return on equity as part of the filing.

### ConEd to sell CFL

**bulbs for a buck:** In an effort to curb energy use, Commonwealth Edison is helping to make 1 million compact fluorescent light bulbs available for 99¢/each. A similar program last year saw over 1.2 million CFL bulbs sold. DOE and EPA report the bulbs use 75% less power than incandescent bulbs.

### WWF lauds Centrica

**as climate leader:** Centrica was recognized as a leader in tackling climate change following a ranking assessment of the "big six" UK power generators, said the firm. The report is called "UK Power Giants Generating

Climate Change" and was created for World Wildlife Fund-UK by Innovest. It focused on a range of criteria including actual practice, performance against regulatory standards and coherence of carbon management and strategy. It compares the carbon profiles of the firms by assessing portfolios, emissions over time, performance against renewables and energy efficiency commitments and company initiatives. The report and a companion survey study are available at the WWF website (<http://wwf.org.uk/researcher/issues/climatechange/>).

### New York frequency

**plant planned:** Beacon Power plans to build a 20-mw flywheel-based frequency regulation plant in New York State. The firm pushes

**6 stories in 2 minutes**

its business as designing and developing advanced products to support a more efficient and reliable power grid. The Small Generator Interconnection application filed Friday includes site-specific information such as electrical drawings, site specifications, descriptions of circuit breakers and

relay equipment and other supporting technical data. The design work was partially funded by the US DOE.

**Sierra Pacific forms**

**geothermal panel:** Sierra Pacific Resources -- the firm that owns Nevada Power -- formed the

Nevada Geothermal Technical Advisory Panel, it said Monday. The panel will review and evaluate geothermal prospects and geothermal development opportunities, said Tom Fair, Sierra Pacific Executive for Renewable Energy. The group is expected to meet quarterly.

**Tell us what you think.** We want to hear from you. Send your comments, questions and suggestions about today's RT to [editor@restructuringtoday.com](mailto:editor@restructuringtoday.com).

**Abbreviations:** To see a glossary of RT's abbreviations, go to [www.restructuringtoday.com/about/glossary.html](http://www.restructuringtoday.com/about/glossary.html).

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