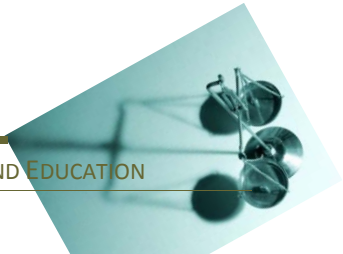


IPU **ONSITE:** FEDERAL ENERGY LAW

MICHIGAN STATE UNIVERSITY ■ INSTITUTE OF PUBLIC UTILITIES REGULATORY RESEARCH AND EDUCATION



PURPOSE

The Institute of Public Utilities at Michigan State University is pleased to offer this essential one-day workshop on **Federal Energy Law**. The workshop can be scheduled at a time and location of your convenience. It is designed in particular for the commissioners and staff of the state public utility commissions. Legal (CLE) and other continuing education credits can be arranged. Each numbered program module is designed for approximately one hour of instruction. The program can be readily customized to meet needs. The program can also be provided jointly with additional one-day seminars on **Electricity Economics** and **Electricity Engineering**. For more information, please contact Ligita Nelson at 517-355-1876 or ligita@msu.edu.

INSTRUCTOR



HARVEY REITER is a partner at Stinson Morrison Hecker, LLP, and represents clients in the natural gas, electric utility and communications industries, primarily before the Federal Energy Regulatory Commission, the Federal Communications Commission and the federal appellate courts. His clients have included natural gas distributors, governmental agencies, the World Bank, electric utilities, cogenerators, gas and power marketers and Internet service providers. He has provided legal counseling, litigation, appellate, transactional and other legal services, including over twenty oral arguments before various federal circuit courts of appeal. Mr. Reiter has been an instructor at the Annual Regulatory Studies Program (“Camp NARUC”) and has also taught energy regulation at Vermont Law School. Prior to entering private practice, Mr. Reiter was a staff attorney and then later Special Assistant to the Deputy General Counsel for Litigation with the Federal Energy Regulatory Commission. Mr. Reiter earned a B.A. in Economics from Michigan State University with high honors in 1972, and a J.D. from Boston University in 1975.

1. OVERVIEW OF FERC RESPONSIBILITIES

Hydro Projects 16 USC §§ 1-10

- Licensing of Hydro projects
- Dam Safety Inspection

Electric Utilities 16 U.S.C. § 824 et seq.

- Regulation of Interstate Electric Service and Exemption of Government-owned Utilities & Rural Electric Cooperatives
- Regulation of Electric Mergers - FPA § 203
- Regulation of Interlocking Directorates – FPA § 305
- Regulation of Cogeneration and Small Power Production Under PURPA
- Regulation of Transmission Siting in “National Interest Corridors”
- Regulation of Reliability of Bulk Power System

Natural Gas Pipelines 15 U.S.C. § 717 et seq.

- Regulation of Interstate Natural Gas Pipeline Rates
- Regulation of Natural Gas Pipeline Certificates and Abandonments
- Deregulation of Natural Gas Prices

Interstate Oil Pipelines

- Regulation of Oil Pipeline Rates

Origin of FERC Responsibilities and Relationship to Role of State Commissions

Public Utility Holding Company Act of 1935 (PUHCA)

Elimination of “Regulatory Gap” (Attleboro)

What Does FERC Approval or Acceptance of a Federally-Regulated Rate Mean for State Jurisdiction of Utilities that Pay that Rate?

- The *Narragansett* Doctrine and the *Pike County* Exception
- The Filed Rate Doctrine And Its Relationship to the *Narragansett* Doctrine
- The *Mobile Sierra* Doctrine And Its Relationship to the *Narragansett* Doctrine

Where Does FERC Jurisdiction over Rates End and Where Does State Jurisdiction Begin?

- What is interstate?
- The "bright line" separation between retail and wholesale sales.

2. STATUTORY EXEMPTIONS FROM FERC REGULATION – LOCAL DISTRIBUTION, GENERATION, GOVERNMENTAL ENTITIES AND RURAL ELECTRIC COOPERATIVES

What is local distribution?

- FERC's Seven Factor Test
- Disposition of distribution Assets

FERC vs. State Jurisdiction Over Corporate Regulation

- Interlocking directorates
- Mergers, Acquisitions, Consolidations
- Issuance of Securities

Entities Exempt from FERC rate regulation

- Rural Electric Cooperatives
- Federal, state and municipal utilities

FERC vs. State Regulation of Reliability

- FERC Jurisdiction over Transmission Grid Reliability
- State Control over Distribution Reliability

FERC Preemption Authority Under PURPA

State vs. Federal Control over Generation Adequacy

- FERC Jurisdiction Over Regional Capacity Requirements

Jurisdictional Status of Regional State Committees (RSCs)

- Funding of RSCs
- Can FERC Delegate Authority to the States?

3. JURISDICTIONAL OVERLAPS AND INTERSECTIONS

Purpose of PURPA

Scope of FERC PURPA Jurisdiction and Relationship to the States

FERC's Responsibility to Consider Retail Rates in Setting Wholesale Rates

How do differences in Regulatory Methodologies Between FERC and State PUCs Affect Utility Cost Recovery?

State Participation in FERC Proceedings

- Interventions and Notices of Intervention by State Commissions
- Complaint proceedings
- Rulemaking proceedings versus hearings
- Hearings and Settlements
- FERC Investigations

Feed-in Tariffs – Jurisdictional Questions

- Is a sale of power from renewable resources to a utility a sale for resale subject to FERC regulation?
- Is a sale of power from renewable resources to a utility subject to PURPA avoided cost rules?
- Can a state require the utilities it regulates to purchase power from, or to construct and operate particular types of resources?
- Are sales for resale over local distribution facilities to FERC-jurisdictional utilities sales for resale in interstate commerce?

4. FERC RATEMAKING RESPONSIBILITIES UNDER THE FEDERAL POWER AND NATURAL GAS ACTS

The Difference between Review of Rate Filings under FPA § 205 (and NGA § 4) and Investigations under FPA § 206 (and NGA § 5).

FERC's Refund Authority Regarding Rate Increases Under FPA § 205 (and NGA § 4) and Its Refund Authority Related to Rate Investigations under FPA § 206 (and NGA § 5)

The Filed Rate Doctrine and the Rule Against Retroactive Ratemaking

- Application of Filed Rate Doctrine to Formula and Market-based Rates.

The Mobile Sierra Doctrine

Cost-based, Market-based and Incentive Rates

Relationship of FERC Ratemaking Authority to Regulation of RTOs.

Joining an RTO: When is it voluntary and when is it mandatory?

5. TRANSMISSION SITING AND COST ALLOCATION

Federal Regulation of Transmission Siting under The Energy Policy Act of 2005 (EPAAct 2005)

- FERC's Authority to Preempt State Transmission Siting Decisions
 - Limitations on FERC's Transmission Siting Authority
 - Interstate Compacts
 - The Role of State and Local Permits in the FERC Siting Process under FERC Order No. 689
 - Coordination Between FERC and State Agencies

Transmission Cost Allocation

- FERC Jurisdiction
- Precedent on Direct Assignment, "Rolled-in" or "Socialized" costs, Incremental pricing
- Relationship to transmission planning and FERC Order No. 890

6. TRANSMISSION INVESTMENT, INCENTIVE RATES, RELIABILITY REGULATION AND CRITICAL ENERGY INFRASTRUCTURE

Section 1241 of EPAAct 2005 added new Section 219 to FPA to respond to lack of sufficient investment in transmission infrastructure

- Scope of Incentives Under Order No. 679
- Implementation of FERC's Incentive Rate Policy
 - Risk Reducing Incentives
 - Return Enhancing Incentives
 - Treatment of Routine Investments
 - Treatment of Incentive Requests for Advanced Technologies
 - RTO Participation Incentives
- Reexamination of FERC's Incentive Rate Policy

Reliability Regulation

- Role of the ERO under EPAAct 2005
- Scope of FERC Jurisdiction
- Enforcement of Reliability Rules
 - Regional Reliability Entity Enforcement
 - ERO Enforcement
 - FERC Enforcement
- Delegation Agreements Between the ERO and Regional Reliability Entities
- Treatment of Critical Energy Infrastructure

7. FERC ENFORCEMENT: MARKET MANIPULATION & PENALTIES

Statutory Framework

- Market manipulation in markets for electricity and natural gas is unlawful under § 222 of the Federal Power Act (FPA) and § 4A of the Natural Gas Act (NGA), respectively.
 - What types of conduct comprise market manipulation subject to FERC regulation?
 - The “in connection with” standard
 - Defining fraudulent conduct
- Prohibition Against Reporting of False Data Under § 221 of the FPA.

FERC's Penalties Authority

- Enforcement Tools
 - Criminal and Civil Penalties under the NGA
 - Criminal and Civil Penalties under the FPA
 - Disgorgement of Unjust Profits
 - Compliance Plans
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FERC's Policy Statements on Enforcement

The Role of Internal Compliance Programs

The Role of Self Reporting

The Role of Cooperation in Enforcement Investigations

For more information, please visit ipu.msu.edu.

The Institute of Public Utilities supports informed, effective, and efficient regulation of the infrastructure-intensive network industries providing vital utility services - electricity, natural gas, water, and telecommunications.
