

Regulatory Tools for Strengthening Compliance and Enforcement

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Enhancing Regulatory Success

- Regulatory success is enhanced by
 - A comprehensive system of regulation, compliance and enforcement
 - Within the law
 - Clear to both regulator and regulated, and
 - Perceived as fair or as necessary
 - Consistently monitored
 - Consistently enforced

Comprehensive regulation

- Comprehensive system of regulation
 - Standards in laws or rules identify performance that is expected
 - Basic administrative process
 - Rulemaking authority
 - Agency inspection rights
 - To inspect facilities
 - To audit books and records

Regulatory tools

- Important regulatory tools include
 - Right to prescribe form of records
 - Right to demand annual and other reports of operations
 - Right to review property transactions
 - Right to review securities issuances
 - Right to Investigate facilities, records, operations

Regulatory Tools II

- Important Regulatory tools include
 - Right to set and collect regulatory fees
 - Right to review, reject, condition or adjust transactions with affiliated interests
 - Right to set rates of monopoly services and review rates of competitive services
 - Forbid unjust, unreasonable, unjustly discriminatory, unduly preferential monopoly rates
 - Forbid anticompetitive rates and practices by competitive companies
 - Define tariff process, requirements, and effects
 - Tariff filing requirements defined
 - Tariff modification process defined
 - Require charging published rates
 - Authorize banded rates

Agency Rules

- Commission rules
 - Identify specific ways to comply with the law
 - What reports to file
 - What to say in the reports
 - Specific ways to comply with general terms in the statutes
 - Identify additional requirements that the laws allow the Commission to impose

Consistent Monitoring

- Regular monitoring helps regulator and regulated
 - Regulator can identify problems before they get big
 - Regulated companies keep up to date consistently
 - Agency staff is familiar with issues at the regulated company
 - Company staff with questions know who to ask
 - Companies less likely to believe they can cheat

Reports and Inspections

- Annual reports of required information
 - Basis for assessment of regulatory fees
 - Assist in monitoring other operations, including generation or transmission facilities
- Regular inspections of property, audits of financial records
 - Prioritize according to need and agency budget
 - Verify existence of expenses and revenues
 - Verify existence and condition of assets
 - Identify areas for further inquiry

Consistent enforcement

- Consistency is important
 - Staff and regulated companies know what to expect and how to comply
 - Staff training ensures consistent application of requirements
 - Provide training for company staff, if needed
 - Interpretive statements or responses to general questions
 - How-to-do-it pamphlets for regulated companies as needed
 - Apply penalties consistently with perceived harm of the violation and with penalties imposed on others

Aids to Compliance

– Credibility

- Most U. S.-regulated companies often comply with regulations they see as reasonable, fairly enforced, and consistently monitored
- Agency staff disrespect of company or its staff can cause ill will, reluctance to comply
- Human problems are the basis of many larger disputes
 - First mediation challenge is to overcome anger so parties realize that it is in their interest to resolve the dispute

Regulatory Rewards

- Rewards are often difficult to identify and quantify
 - “Reward” is a sensitive term
 - “Rewards” may be illegal unless available to all similarly-situated companies
 - Incentives and disincentives may be set out in the law
 - Investment in renewable energy may be entitled to an extra return
 - Other regulatory incentives are possible
 - » Choice of rate of return
 - » Discretion in review of income or expenses

Regulatory Rewards II

- Sharing of earnings” may be allowed for superior performance in limited situations
 - Usually, company is entitled only to a fair return
 - Sharing of earnings would allow company to “keep” a portion of excess earnings over allowed return
 - Example: performance power supply costs and off-system sales
- Subtle benefits of compliance
 - Regulator trust allows fewer hassles
 - Paperwork may be processed more quickly because of agency trust
 - Violations may not be cited if agents know they are inadvertent or isolated
 - If violations are cited, agency might not impose penalties, or penalties may be less than the maximum allowed

Regulatory Rewards III

- Excess earnings may not cause a complaint
 - Complain for excess earnings, to lower rates and refund part of excess
 - Agency may choose not to prosecute a complaint
 - Costs and other demands on resources, other priorities
 - Company's attitude may make it lower priority
- Public recognition
 - Recognize companies for exceptional performance – response to storm damage, for example
 - Avoid seeming to favor any company unfairly

Penalty Progression

- Penalty progression helps encourage compliance
 - Very serious violations must be addressed
 - Serious safety violations
 - Financial violations indicating fraud or intentional untruths
 - Progression allows education and working together
 - First violation – education, no penalty, promise of compliance
 - Second violation – minor penalty and reminder
 - Third violation – penalty nearer maximum

UTC Penalty Options

- \$100 penalty per violation, per day
 - May be assessed without prior hearing
 - Number of violations is within staff discretion
 - Allows formal or informal response
 - Pay the penalty
 - Mitigate – say “I did it but I don’t deserve a penalty,” with or without a hearing
 - Contest – say “I didn’t do it,” with a hearing

Penalty Options II

- \$1000 penalty per violation, per day
 - Penalty must result from a formal hearing and finding of violation
 - Amount of penalty is discretionary with Commission
 - Amount decided during hearing
 - Often in conjunction with non-penalty consequences

Non-penalty Options

- Formal complaint with hearing
 - Hearing increases costs, indicate seriousness
- Order company to do something
 - Action may be tailored to failures
 - Correct violations
 - Improve performance to specified levels
 - Specify milestones or intermediate steps

Non-penalty Options II

- Specify what or how to accomplish, if laws/rules are not clear
 - Order respondent to comply and stay compliant
 - Order improved performance to specific standards
- Compensation to customers
 - Order compensation for violations affecting customers (as, late for service appointment) – not a penalty
- Order is independently enforceable (additional penalties or enforcement action)