

By the Commission.

**Linda Mitry,**

*Deputy Secretary.*

### Appendix A—Protocols on MMU; Referrals to the Commission for Enforcement

1. In the Market Behavior Rules Order, the Commission concluded that it is appropriate for ISOs/RTOs to administer certain matters that concern market behavior (with appeal rights to the Commission) if the behavior is objectively identifiable and set forth in the ISO/RTO tariff and for which the violations have clear Commission-approved sanctions that are set forth in the tariff.<sup>7</sup> All other aspects of tariff related enforcement, as well as enforcement of the Market Behavior Rules,<sup>8</sup> are the responsibility of the Commission.<sup>9</sup> The Commission also stated that it is the obligation of the MMU to inform the Commission of potential Market Behavior Rule violations and any violations of the ISO/RTO tariff that the Commission has not allowed the ISO/RTO to resolve in the first instance.<sup>10</sup> In that regard, the Commission further noted that the Commission Staff would develop “appropriate triggers for referring compliance issues to the Commission.”<sup>11</sup>

2. In addition to providing that the Commission will enforce the Market Behavior Rules, the Market Behavior Rules Order placed a 90-day time limit on responding to allegations of violations of the Market Behavior Rules.<sup>12</sup> The Commission must act, by initiating an investigation, within 90 days “from the date it knew of an alleged violation of its Market Behavior Rules or knew of the potentially manipulative character of an action or transaction.”<sup>13</sup> Knowledge on the part of the Commission is defined as including a call to the Commission’s Hotline alleging inappropriate behavior or communication with the Commission’s Enforcement Staff.

3. The following protocols are for the purpose of implementing and effectuating referrals by the MMUs to the Commission of: (1) Alleged tariff violations that the Commission has not allowed the ISOs/RTOs to administer and resolve in the first instance; and (2) alleged violations of Market Behavior Rules.<sup>14</sup> It is important to understand that the referral protocols set

forth below are not intended to affect, and should not affect in any manner, the regular and ongoing communications and dialogue that the MMUs have with Commission Staff about a variety of market-related matters and issues, including the status of the markets and activities of the market participants.<sup>15</sup> In addition, ongoing communications between the ISO/RTO staff and Commission Staff who are on-site at the various ISOs/RTOs, as in the case for California ISO, Midwest ISO and Southwest Power Pool, should not be affected. These protocols are solely addressed to referrals to the Commission of Market Violations. As is the case with any matter that may be the subject of an investigation, the Commission will determine whether and to what extent to conduct an investigation.

#### Protocols:

4. *Protocol No. 1.* An MMU should make a referral to the Commission in all instances where the MMU has reason to believe that a Market Violation may have occurred. While the MMU need not be able to prove that a Market Violation has occurred, the MMU should provide sufficient credible information to warrant further investigation by the Commission. Once the MMU has obtained sufficient credible information to warrant referral to the Commission, the MMU should immediately refer the matter to the Commission and desist from independent action related to the alleged Market Violation[s].<sup>16</sup>

5. *Protocol No. 2.* All referrals to the Commission of alleged Market Violations should be in writing, whether transmitted electronically, by fax, mail, or courier. The MMU may alert the Commission orally in advance of the written referral, but the Commission will not act without a written referral.

6. *Protocol No. 3.* The referral should be addressed to the Commission’s Director of the Enforcement Division of the Office of Market Oversight and Investigation, with a copy also directed to both the Director of the Office of Market, Tariffs and Rates and the Commission’s General Counsel.

7. *Protocol No. 4.* The referral should include, but is not limited to, the following information:

(a) The name[s] of and, if possible, the contact information for, the market participants that allegedly took the action[s] that constituted the alleged Market Violation[s];

(b) The date[s] or time period during which the alleged Market Violation[s] occurred and whether the alleged wrongful conduct is ongoing;

<sup>15</sup> *Id.* at P 184.

<sup>16</sup> It is noteworthy that the Commission’s 90-day time period in which to open an investigation regarding a Market Behavior Rule violation may begin with a communication other than a referral from the MMU since, as noted earlier, a call to the Hotline or any communication with the Commission’s Enforcement Staff alleging a Market Behavior Rule violation will start the 90-day time period. (See Market Behavior Rules Order at P 148). If, however, the triggering communication was from the MMU, the MMU should make a referral, to the extent it determines one is warranted, as soon as practicable so that Enforcement has the benefit of the referral prior to the time it must take action—*i.e.*, within the 90 days of the initial communication.

(c) The specific Market Behavior Rule[s] and/or tariff provision[s] that were allegedly violated;

(d) The specific act[s] or conduct that allegedly violated the Market Behavior Rule or tariff;

(e) The consequences in the market resulting from the act[s] or conduct, including, if known, an estimate of economic impact on the market;

(f) If the MMU believes that the act[s] or conduct constituted manipulative behavior in violation of Market Behavior Rule 2, a description of the alleged manipulative effect on market prices, market conditions, or market rules;

(g) Any other information that the MMU believes is relevant and may be helpful to the Commission.

8. *Protocol No. 5.* Following a referral to the Commission, the MMU should continue to notify and inform the Commission of any information that the MMU learns of that may be related to the referral, but the MMU should not undertake any investigative steps regarding the referral except at the express direction of the Commission Staff. However, this does not mean the MMU cannot continue its monitoring functions and make recommendations to the ISO/RTO, stakeholders, and the Commission on tariff changes that may be necessary.

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## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6664–5]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 1, 2005 (70 FR 16815).

#### Draft EISs

*EIS No. 20050142, ERP No. D–NOA–K39092–CA, Programmatic—Montrose Settlements Restoration Program (MSRP) Draft Restoration Plan, To Restore Injured Natural Resources, Channel Islands, Southern California Bight including Baja California Pacific Islands, Orange County, CA*

*Summary:* EPA expressed concerns about direct and indirect impacts, the feasibility of the artificial reef projects, and their inclusion in the alternatives,

<sup>7</sup> Market Behavior Rules Order at P 182.

<sup>8</sup> See *id.* at Appendix A. The six Market Behavior Rules adopted in the Market Behavior Rules Order address: (1) Unit operations; (2) market manipulation; (3) communications; (4) reporting; (5) record retention; and (6) tariff-related matters.

<sup>9</sup> *Id.* at P 185. If, however, the Market Behavior Rules overlap with clearly stated tariff provisions for behavior which is objectively identifiable and for which the violations have Commission-approved sanctions, then the Commission will defer to the MMU in the first instance, subject to possible review.

<sup>10</sup> *Id.* at P 184.

<sup>11</sup> *Id.* See also California Indep. Sys. Operator Corp., 106 FERC ¶ 61,179 at PP 44, 101 (2004).

<sup>12</sup> *Id.* at P 148.

<sup>13</sup> *Id.*

<sup>14</sup> We will, hereinafter, refer to both these alleged tariff violations and alleged Market Behavior Rules violations as “Market Violations.”

and requested additional information regarding the selection of evaluation criteria, cumulative impacts to injured resources, and impacts to endangered species. Rating EC2.

*EIS No. 20050143, ERP No. D-FHW-G40184-00*, I-69 Corridor—Section of Independent Utility (SIU) No. 14, Construction from Junction 1-20 near Haughton, LA to U.S. 82 near EL Dorado, AR, Bossier, Claiborne and Webster Parishes, LA and Columbia and Union Counties, AR.

*Summary:* EPA has no objections to the project as proposed. Rating LO.

*EIS No. 20050158, ERP No. D-AFS-L65482-ID*, Aspen Range Timber Sale and Vegetation Treatment Project, Proposal to Treat Forested and Nonforested Vegetation, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou County, ID.

*Summary:* EPA expressed environmental concerns about potential adverse impacts to surface water quality and habitat from sediment produced from roads, and silviculture activities, and recommends conducting timber harvest during winter months and applying BMPs immediately after harvest. Rating EC2.

#### Final EISs

*EIS No. 20050125, ERP No. F-NPS-E61074-00*, Big South Fork National River and Recreation Area, General Management Plan, Implementation, Resources, Roads and Trails, McCreary, Ky and Fentress, Morgan, Pickett and Scott Counties, TN.

*Summary:* EPA has no objections to the project as proposed.

*EIS No. 20050171, ERP No. F-AFS-K65256-NV*, Jarbidge Canyon Project, Road Management Plan, Implementation, Water Projects Construction along Charleston-Jarbidge Road and South Canyon Road Reconstruction, Humboldt-Toiyabe National Forest, Jarbidge Ranger District, Elko County, NV.

*Summary:* The Final EIS was responsive to the primary objections raised on the Draft EIS on CWA Section 404-issues and water quality mitigation. EPA continues to have concerns about the Selected Alternative due to its presence within the flood plain and low-water crossings. EPA recommended additional water quality mitigation measures and strong enforcement of both seasonal use and the forest closure order.

*EIS No. 20050172, ERP No. F-NRC-G06013-AR*, Generic—License Renewal of Nuclear Plants, Arkansas Nuclear One, Unit 2 (Tac. Nos. MB

8405) Supplement 19 to NUREG-1437, Operating License Renewal, Pope County, AR.

*Summary:* No formal comment letter was sent to the preparing agency.

*EIS No. 20050183, ERP No. F-NOA-K91013-HI*, Seabird Interaction Mitigation Methods, To Reduce Interaction with Seabird in Hawaii-Based Longline Fishery and Pelagic Squid Fishery Management, to Establish an Effective Management Framework for Pelagic Squid Fisheries, Fishery Management Plan, Pelagic Fisheries of the Western Pacific Region, Exclusive Economic Zone of the U.S. and High Sea, HI.

*Summary:* EPA's concerns have been addressed with the creation of a new seabird action preferred alternative in the FEIS; therefore, EPA has no objections to the proposed action.

*EIS No. 20050184, ERP No. F-NOA-L91021-AK*, Essential Fish Habitat Identification and Conservation, Implementation, North Pacific Fishery Management Council, Magnuson-Stevens Fishery Conservation and Management Act, AK.

*Summary:* EPA continues to express concerns about rescinding HAPC status without appropriate evaluation.

Dated: June 14, 2005.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

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#### ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6664-4]

#### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 06/06/2005 Through 06/10/2005 Pursuant to 40 CFR 1506.9.

*EIS No. 20050231, Draft EIS, AFS, MT*, Gallatin National Forest, Proposed Travel Management Plan, Implementation, Forest Land and Resource Management, Madison, Gallatin, Park, Meagher, Sweetgrass and Carbon Counties, MT, Comment Period Ends: 08/01/2005, Contact: Steve Christiansen 406-587-6750.

*EIS No. 20050232, Final EIS, FHW, OR*, Newberg-Dundee Transportation Improvement Project, (TEA 21 Prog.

#37), Proposal to Relieve Congestion on OR-9W through the Cities of Newberg and Dundee, Bypass Element Location (Tier 1), Yamhill County, OR, Wait Period Ends: 07/18/2005, Contact: Alan J. Fox 503-986-2681.

*EIS No. 20050233, Final EIS, FHW, MI*, I-75 from M-102 to M-59 Proposed Widening and Reconstruction, Transportation Improvements, Funding, NPDES Permit and U.S. Army COE Section 404 Permit, Oakland County, MI, Wait Period Ends: 08/05/2005, Contact: Abdelmoez Abdalla 517-702-1820.

*EIS No. 20050234, Draft EIS, FHW, LA*, Interstate 69, Section of Independent Utility (SIU) 15 Project, Construct between U.S. Highway 171 near the Town of Stonewall in DeSoto Parish, and Interstate Highway 20 (I-20) near the Town of Haughton in Bossier Parish, LA, Comment Period Ends: 08/01/2005, Contact: William C. Farr 225-757-7615.

*EIS No. 20050235, Draft EIS, NPS, IN*, Lincoln Boyhood National Memorial General Management Plan, Implementation, Lincoln City, Spencer County, IN, Comment Period Ends: 08/16/2005, Contact: Nick Chevance 402-661-1844.

*EIS No. 20050236, Draft EIS, AFS, MT*, Rocky Mountain Ranger District Travel Management Plan, Proposes to Change the Management of Motorized and Non-Motorized Travel, Lewis and Clark National Forest, Glacier, Pondera, Teton and Lewis and Clark Counties, MT, Comment Period Ends: 08/16/2005, Contact: Dick Schwecke 406-791-7700.

*EIS No. 20050237, Final EIS, NOA, 00*, Bottomfish and Seamount Groundfish Fisheries Conservation and Management Plan, Implementation, U.S. Economic Zone (EEZ) around the State of Hawaii, Territories of Samoa and Guam, Commonwealth of the Northern Mariana and various Islands and Atolls known as the U.S. Pacific remove Island areas, HI, GU and AS, Wait Period Ends: 07/18/2005, Contact: William Robinson 808-973-2937.

*EIS No. 20050238, Final EIS, AFS, UT*, Monticello and Blanding Municipal Watershed Improvement Projects, Implementation, Manti-La Sal National Forest, Monticello Ranger District, San Juan County, UT, Wait Period Ends: 07/18/2005, Contact: Greg Montgomery 435-636-3348.

*EIS No. 20050239, Draft EIS, CGD, 00*, Main Pass Energy HUB Deepwater Port License Application, Proposes to Construct a Deepwater Port and Associated Anchorages, U.S. Army