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*FERC's Authority to Impose Monetary Remedies for Federal Power Act and Natural Gas Act Violations: An Analysis*

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Abstract by Beatriz Ivanova

The author questions the authority of the Federal Energy Regulatory Commission (FERC) to act as a market overseer by promoting competitive markets. The article begins by explaining that the FERC's predecessor was originally established solely to authorize hydroelectric projects, but was later given authority to regulate rates under the Federal Power Act (FPA) and Natural Gas Act (NGA). The author argues that this authority provides the FERC with a very weak basis on which to justify their increasing reliance on competitive markets to regulate rates, especially when issuing monetary penalties as remedies and punishments for FPA and NGA violations. The article endeavors to clarify certain risks for the buyers and sellers of the wholesale electric and natural gas industries by defining the scope of the FERC's regulatory authority.

The first part of the article explains that the FERC relies primarily on its *implied* general enforcement authority under the FPA and NGA because neither Act *expressly* permits it to impose monetary sanctions. The second part of the article uses the D.C. Circuit court's decision in *Niagara Mohawk Power Corporation v. FPC* to argue that the FERC's remedial authority should extend solely to the seller's unjust enrichment rather than the buyer's harm. The third part contends that factors such as whether a regulated entity violated any statutory provision, and whether the requirement violated was clear, affect the FERC's discretion to order monetary remedies. The fourth part discusses the FERC's new "Market Behavior Rules" and argues that only those entities that have purchased service from, or are competitors of, a seller should be eligible to receive statutory violation funds. The fifth part concludes that an expansion of the FERC's civil penalty authority would not decrease its already established power to order restitution for statutory violations under the FPA or NGA because civil penalties are paid directly to the federal government and not to private injured parties.