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United States General Accounting Office
Washington, DC 20548

July 15, 2002

The Honorable Patrick H. Wood III
Chairman
Federal Energy Regulatory Commission

Subject: *Federal Energy Regulatory Commission's Compliance With Requirement to Adjust Civil Monetary Penalties for Inflation*

Dear Mr. Wood:

Earlier this year, we initiated a governmentwide review of the implementation of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended ("Inflation Adjustment Act").¹ The Inflation Adjustment Act required each federal agency to issue a regulation adjusting its covered maximum civil monetary penalties for inflation by October 23, 1996, and to make necessary adjustments at least once every 4 years thereafter. During our review, the Federal Energy Regulatory Commission's (FERC) Office of the General Counsel indicated that four of the agency's civil penalties are covered by the act but the agency had not adjusted them for inflation. This report is intended to bring this matter to your attention and to recommend corrective action.

FERC Identified Four Civil Penalties That Are Covered by the Inflation Adjustment Act

Section 3 of the Inflation Adjustment Act defines a covered civil penalty as any "penalty, fine, or other sanction that ... is for a specific monetary amount as provided by Federal law" or "has a maximum amount provided for by Federal law," and "is assessed or enforced by an agency pursuant to Federal law" and "is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts." FERC's Office of the General Counsel provided us with a list of civil penalties that it considered covered by the Inflation Adjustment Act. Table 1 lists those penalties as well as their maximum penalty amounts, assessment methods, and the dates that the penalties were last set or adjusted.

¹The Inflation Adjustment Act is codified at 28 U.S.C. 2461 note. The 1990 act was amended in 1996 by the Debt Collection Improvement Act, which added the requirement for agencies to adjust their civil penalties by regulation (Pub. Law 104-134, Sec. 31001, 110 Stat. 1321-373).

Table 1: FERC Civil Penalties Covered by the Inflation Adjustment Act

U.S.C. citation	Description of violation	Maximum penalty/forfeiture amount	Assessment method	Date penalty was last set or adjusted
15 U.S.C. 3414 (b)(6)(A)(i)	Knowing violation of any provision of any rule or order under the Natural Gas Policy Act.	\$5,000	Per violation	1978
16 U.S.C. 825n(a)	Willful failure to comply with any order, rule, or regulation by the Commission or failure to submit any required document or information or to appear in response to a Commission subpoena in relation to the Federal Power Act.	\$1,000 (in addition to any other penalty)	Per violation	1935
16 U.S.C. 823b(c)	Failure to comply with any rule, regulation, condition of a license, permit, or exemption under subchapter 12 of the Federal Power Act (Regulation of the Development of Water Power and Resources).	\$10,000	Per day	1986
16 U.S.C. 825o-1(b)	Violation of sections 824(j) (wheeling authority), 824(k) (orders requiring interconnection or wheeling), or 825(m) (sales by exempt wholesale generators) of the Federal Power Act.	\$10,000	Per day	1992

Source: FERC's Office of the General Counsel.

FERC's Office of the General Counsel told us that the agency has several other statutory penalties that appear not to be covered by the Inflation Adjustment Act (e.g., criminal penalties, civil penalties that are assessed by the President, and penalties that are recoverable only in civil suit brought by a U.S. Attorney).

FERC Has Not Adjusted Its Covered Civil Penalties for Inflation

Under the Inflation Adjustment Act, FERC (like other covered federal agencies) was required to publish a regulation by October 23, 1996, adjusting its maximum civil penalties for inflation. The amount of the adjustment was to be based on changes in the Consumer Price Index (CPI) between June of the calendar year in which the penalty was last set or adjusted and June of the year prior to the adjustment (i.e.,

June 1995 for adjustments made in October 1996). However, the statute limited the first adjustments of the agencies' penalties to 10 percent of the penalty amounts. Because the CPI had increased by more than 10 percent since three of the four civil penalties in table 1 were last set or adjusted, FERC should have published a regulation in the *Federal Register* by October 23, 1996, increasing each of these three covered penalties by 10 percent. One of the penalties was last set or adjusted in 1992 (16 U.S.C. 825o-1(b)). The CPI increased nearly 9 percent between June 1992 and June 1995. Therefore, FERC could have increased this penalty as well.

The Inflation Adjustment Act also required FERC to examine its civil penalties by October 23, 2000, and, if necessary, make a second round of inflation adjustments. The calendar year 2000 adjustments were to be based on changes in the CPI between June of the year in which the penalties were last adjusted (which should have been done in 1996) and June of the year prior to the adjustment (1999). Because the CPI increased by about 6 percent during that period, FERC could have increased its penalty amounts again.

However, our review of the *Federal Register* for calendar years 1996 through 2001 did not reveal any FERC regulations that increased the agency's civil penalties for inflation. FERC's Deputy General Counsel confirmed that FERC had not published any penalty adjustment regulations pursuant to the Inflation Adjustment Act, but was not aware why the agency had not done so.

Recommendation for Executive Action

We recommend that the Chairman of FERC initiate a regulatory action to adjust for inflation all of the agency's civil penalties that are covered by the Inflation Adjustment Act.

Agency Comments and Our Evaluation

On June 28, 2002, we provided a draft of this report to the Chairman of FERC for his review and comment. On July 8, 2002, the Chairman responded by letter indicating that he was directing his staff to prepare a draft regulation that would adjust the agency's civil penalties by 10 percent—the maximum allowed by the statute for a first-time adjustment. He also noted that the draft regulation would provide for periodic adjustments thereafter as required by law.

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We are sending copies of this report to the appropriate congressional committees, and it will be available on GAO's homepage at <http://www.gao.gov>. If you or your staff have any questions on the matters discussed in this letter, you may contact Curtis Copeland or me at (202) 512-6806.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Victor S. Rezendes". The signature is fluid and cursive, with the first name "Victor" being the most prominent.

Victor S. Rezendes
Managing Director
Strategic Issues