

# Now & Next

## Energy Alert

December 5, 2025

### **FERC terminates proposed uniform “duty of candor” rulemaking**

By Maxwell Multer

FERC withdrew its proposed expanded candor rule but warns that existing accuracy and transparency requirements will be enforced.



#### **What’s the impact?**

- Current candor and anti-manipulation rules will continue to be strictly enforced.
- Entities should maintain robust verification, due diligence, and training to avoid compliance risks.

Concluding that existing regulations and enforcement tools are sufficient to address inaccurate or misleading statements, the Federal Energy Regulatory Commission (FERC or Commission) formally terminated its 2022 Notice of Proposed Rulemaking (NOPR) proceeding that would have imposed an expanded, cross-industry duty of candor in communications about matters within the Commission’s jurisdiction. Accuracy and truthfulness in communications with the Commission and certain specified entities will continue to be governed by the current patchwork of statutes and regulations identified in the NOPR.

As is clear from the recently issued [2025 Annual Report on Enforcement](#), the Commission continues to vigorously enforce the existing duty of candor requirements, particularly with respect to electric market-based rate sellers under 18 C.F.R. § 35.41(b) (2025). FERC's comments in connection with the termination of the NOPR indicate that this will continue to be the case.

## **Background: The NOPR and stakeholder response**

In July 2022, FERC issued a NOPR proposing to add a new section to its regulations establishing a comprehensive duty of candor applicable to "any entity" communicating about jurisdictional matters with the Commission and specified counterparties, including regional transmission organizations or independent system operators (RTO/ISOs) and their market monitors, jurisdictional transmission and transportation providers, and the North American Reliability Corporation (NERC) and its regional entities. The proposed regulation would have required that communications be accurate and factual, and not false or misleading, including by omission, with a due diligence safe harbor. FERC positioned the proposed rule as a uniform standard intended to harmonize a "patchwork of different standards of care" imposed under different circumstances, pursuant to various statutes, regulations, and precedent.

The proposal drew significant stakeholder comment. Common themes included concerns about breadth (covering informal as well as formal communications), the lack of explicit materiality or intent standards, potential chilling effects on voluntary engagement, and questions regarding statutory authority and necessity, given existing tools, such as the electric market behavior rule, the anti-manipulation rules, and federal false-statement laws.

## **Termination of the NOPR**

At its November 2025 open meeting, FERC voted to withdraw the NOPR and terminate the rulemaking. In its order, the Commission stated that, after reviewing the record, it would not move forward with a new, universal candor obligation. It emphasized two points:

- / Existing regulations already address untruthful, inaccurate, or incomplete communications in many contexts, and FERC will continue to enforce those rules.
- / Withdrawing the NOPR does not diminish current obligations; regulated entities must continue to comply with all applicable candor and accuracy requirements.

Although a new uniform rule will not be issued, FERC has well-established avenues to police inaccurate or misleading statements. These include:

- / The electric market behavior rule, requiring market-based rate sellers to provide accurate and factual information to RTOs/ISOs and FERC and prohibiting false or misleading statements, including by omission
- / Anti-manipulation rules that capture deceptive practices in connection with jurisdictional

transactions

- / Oath requirements for a variety of sworn submissions and independent federal false-statement statutes
- / Requirements for NERC compliance and reliability-related reporting obligations to NERC and regional entities

FERC enforcement has repeatedly leveraged these authorities, particularly the electric market behavior rules (18 C.F.R. § 35.41(b)) and anti-manipulation authorities, to pursue enforcement involving incomplete or misleading communications to RTO/ISOs and market monitors. Indeed, according to FERC's recently released *Annual Report on Enforcement for Fiscal Year (FY) 2025*, fully five of the eleven settlements resolving FERC investigations in FY 2025 involved allegations of inaccurate communications to such entities.

## Practical considerations for regulated entities

The Commission's order terminating the NOPR reiterates its intent to diligently enforce the numerous existing regulations that prohibit untruthful, inaccurate, or incomplete communications to the Commission and related organizations. Year after year, including in FY 2025, FERC's *Annual Report on Enforcement* continues to show that accuracy and truthfulness in communications to the Commission, NERC, and ISO/RTOs are an enforcement priority. Entities subject to these rules should consider the following:

- / Maintaining enhanced verification and documentation protocols for data and narratives provided to FERC, RTOs/ISOs, market monitors, jurisdictional transmission/transportation providers, and NERC/regional entities
- / Calibrating internal "due diligence" practices to ensure that statements are accurate and not misleading by omission, with attention to context and foreseeable reliance by counterparties
- / Refreshing training for commercial, operations, compliance, and regulatory personnel on existing candor and anti-manipulation standards and on escalation pathways when data quality or uncertainty issues arise

Bottom line: while the universal duty of candor rulemaking will not move forward, FERC's expectation of candor persists. Existing tools remain active and available, and the Commission has reiterated its intent to use them.

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