Records and Information Management: Why Should I Care?

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FERC Records Requirements

§ 366.2 Commission access to books and records.
In general, unless otherwise exempted by Commission rule or order, each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

§ 367.3 Records.
(a) Each service company must keep its books of account, and all other books, records, and memoranda that support the entries in the books of account, so as to be able to furnish full information on any item included in any account. Each entry must be supported by sufficient detailed information that will permit ready identification, analysis, and verification of all facts relevant and related to the records.
(b) The books and records referred to in this part include not only accounting records in a limited technical sense, but all other records, such as minutes books, stock books, reports, correspondence, and memoranda, that may be useful in developing the history of or facts regarding any transaction.
(c) Each service company may destroy any books or records unless the destruction is permitted by the rules and regulations of the Commission.
(d) In addition to prescribed accounts, clearing accounts, temporary or experimental accounts, and subaccounts of any accounts may be kept, provided the integrity of the prescribed accounts is not impaired.
(e) The arrangement or sequence of the accounts prescribed in this part must not be controlling as to the arrangement or sequence in report forms that may be prescribed by the Commission.
FERC Records Requirements

18 CFR § 125.1 Preservation of Records of Public Utilities and Licensees

18 CFR § 125.3 Schedule of records and periods of retention

18 CFR § 126.3 Schedule of records and periods of retention

18 CFR § 366 PUCHA 2005 Accounting and Recordkeeping

FERC Standards of Conduct
§ 358.7 Transparency rule.
(h) Exclusion for and recordation of certain information exchanges.
The transmission provider shall make the record available to the Commission upon request. The record may consist of hand-written or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like, and must be retained for a period of five years.

(i) Posting of waivers.
A transmission provider must post on its Internet Web site notice of each waiver of a tariff provision that it grants in favor of an affiliate, unless such waiver has been approved by the Commission. The posting must be made within one business day of the act of waiver. The transmission provider must also maintain a log of the acts of waiver, and must make it available to the Commission upon request. The records must be kept for a period of five years from the date of each act of waiver.

NERC Reliability Standards (excerpts from Rules of Procedure)
The Registered Entity’s data and information must show compliance with the Reliability Standards that are the subject of the Compliance Audit for the entire period covered by the Compliance Audit.

If a Reliability Standard specifies a document retention period that does not cover the entire period described above, the Registered Entity will not be found in noncompliance solely on the basis of the lack of specific information that has rightfully not been retained based on the retention period specified in the Reliability Standard.

(BOLD added for emphasis)

FERC Audits

2017 Report on Enforcement
Docket No. AD07-13-011 issued Nov. 16, 2017

- No mention of record-retention audits or issues
- In 2017, Division of Audits and Accounting responded to 102 accounting inquiries from jurisdictional entities and other stakeholders on dozens of accounting and financial topics
- Inquiries made via:
  - Compliance Help Desk
  - Accounting Inquiries phone line and email
  - Direct contacts with staff.

- Inquiries made included seeking information on records-retention requirements

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FERC Audits

2016 Report on Enforcement
Docket No. AD07-13-010 issued Nov. 17, 2016
Division of Audits and Accounting

Record Retention: DAA has identified instances in which companies have failed to retain records in compliance with Commission regulations. In some cases, DAA determined that companies have failed to obtain records from the original owner when acquiring jurisdictional assets. DAA also identified instances in which inadequate records management programs led to premature destruction of records. Failure to maintain adequate records can impact the Commission’s regulatory and enforcement activities and ultimately impact an entity’s ability to receive and maintain licenses on these assets.

Under Part I of the FPA, hydro-power licensees must maintain records that may be used in determining the actual legitimate original cost of and net investment in a licensed project in the event that the Commission opts to take over a hydro-power project or another entity wants to take over the license.

Potential FERC Audit Questions

- What policies, procedures, and controls does the entity have in place regarding the preservation of records?
- What is the process to preserve records?
- Who is responsible for administering the records retention program?
- Where is that group located in corporate organization?
- Describe the organization of the area administering the records retention program.
- How is that organization staffed?
- Who supervises the company’s preservation or destruction of its records?
- Do you have a process for the destruction of records?
- What documents, policies or procedures do you have overseeing the destruction of company records?
- Has the entity prematurely destroyed or lost a record before the expiration of the prescribed period of retention?
- If yes, provide the notification filed at FERC?
- How does the entity utilize electronic messages such as IM, voice recordings or emails?
- How does the entity record energy trades and how does it preserve those records?
What's the “visual” of RIM Compliance in your organization?
RIM Compliance Program Structure

Governance - Records & Information Management Compliance
- Resides in Ethics & Compliance organization (within Office of General Counsel)
- Owns and administers the corporate policy and companion standards
- Maintains an in-house Record Retention Schedule application
- Over 900 record types
- Responsible for overall Records governance (except for Nuclear)
- Manages/facilitates Enterprise Records Destruction (Purge, Pitch & Delete and Records Center Destruction) Initiative
- Assuming Corporate Policy Management – 2017/2018

Operations - Enterprise Records Center
- Resides in Administrative Services organization
- Owns and administers Records box inventory
- Maintains an in-house application: Records Center Application
- +146,000 boxes
- Maintains contract with commercial vendor in 7 cities

RIM Compliance Program Overview

- One of 21 compliance areas at Duke Energy
- 2 FTEs
  - Records Coordinator network – 190 (approx)
  - RIM Strategy Team – Legal, IT architecture, SharePoint team
  - Heavy intranet presence
  - Recurring Enterprise Records Destruction Initiative
  - Quarterly Records Coordinator Newsletter
  - Outlook mailbox: RIMcompliance@duke-energy.com
- Training
  - RIM Overview: eLearning (primarily for new employees)
  - Records Coordinators – "RIM Lite": in-person
  - Targeted Topics: GoAnimates

RIM Compliance Program: Key FERC Components

- Foundationally built on FERC and respective state commission requirements, and other regulatory bodies (SEC, Dodd-Frank, etc.)
- FERC provides guidance under the Preservation of Records for Public Utilities, Natural Gas Companies, and Holding/Services Companies (18 CFR 125; and 18 CFR 368)
- FERC requirements included in FERC Compliance Manual

RIM Compliance team:
- Communicates key FERC Record requirements to business: Index of Records, Conversion requirements, and premature destruction/loss of Records
- Completes annual review of Enforcement Reports for insight
- Coordinates/facilitates Records inquiries related to regulatory investigations, data requests, or premature destruction/loss of Records
Keys to maintaining an “effective” and “sustainable” RIM compliance program:

1. Garner support from leadership and promote the importance of a strong RIM compliance program
2. Partner with stakeholders to build alliances and champion similar causes
3. Recognize that there are various levels of understanding of RIM compliance
4. Inform, engage and equip Records Coordinators and key business contacts
5. Develop key and meaningful messages and effectively deliver based on audience and topic (yes, “messaging” means training!)
6. Develop an Enterprise Records Destruction Initiative plan and stick to it
7. Regularly assess your RIM compliance program
8. Offer effective tools for retaining Records (e.g. FileNet, SharePoint Records Manager)
and strive for automation to make processes/procedures more user-friendly
9. Connect with peers (URIM user’s group, ARMA) to share best practices
10. Incorporate monitoring and oversight (especially, with electronic data)

RIM Compliance: What's next?

- Records & Information Management transitions to Information Governance
- Transition from paper to electronic Records
- Cyber security...moving to the Cloud
- RIM Compliance Program expands role to include “active” governance (monitoring and oversight)
- Continued strengthening of strategic partnerships to ensure success
- Need for RIM professionals to become even more tech savvy
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**Corporate Compliance Program**

**Current Org Structure**

- Board of Directors
  - Chairman & CEO
  - SVP – General Counsel & Chief Compliance Officer
  - VP – Governance and Corporate Secretary
  - Director of Corporate Compliance
  - FERC Compliance
  - Records Compliance
  - Code of Business Conduct
  - NERC
  - NERC CIP
  - Environmental
  - Safety / MSHA / OSHA
  - HR / EEOC / Other

- Board of Directors Audit Committee
  - Corporate Compliance Program Manager
  - Corporate Compliance Program Analyst

- Records Management Department
  - Director of Corporate Compliance
  - Records Manager
  - Sr. Records Analyst
  - Records Analyst

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**Where we started**

- 2007 Department Created
  - Policy and Retention Schedule
  - Centralized Physical Records Process and Software Solution
  - Physical Records Cleanup Project
  - Centralized Scanning Program
  - Electronic Records Solution
Records and Information Management: Why Should I Care?

Where we are today:
- Acquisitions / Divestitures
- Automated Physical Records Management & Disposition
- Mature Records Program
- Communications & Training
- Electronic Records Management Solution
- Online training and resources

Long-term Vision | What’s on the Horizon

Collaboration
- Online training and resources
- Online training and resources

Information Governance as a Business Process
- Online training and resources
- Online training and resources

Cloud vs. On-Premise
- Online training and resources
- Online training and resources
Mergers / Leadership Changes / Regulatory Emphasis

Nuances at every company that easily are highlighted as companies integrate or any other changes occur.

Where should the organization reside?
- Governance vs. Operations
- Centralized / De-centralized / Hybrid

Resources – Internally and Externally
- Data Governance Committee
- Industry Groups
- Consultants and law firms

Company Policies and Procedures
- Documentation for department procedures and instructions
- Data Privacy

Emphasis on Records
- Information Ownership
- Classification of Information
- Information Disclosure
- Information Storage
- Email retention
- Destruction procedures

At KCP&L - Created a brochure created and posted throughout company
- Providing details on asset classifications and records management

Controls
- Detailed work orders for offsite storage/transportation of records
- Transmittal forms for releasing physical records
- Confidential records require approval prior to release
- Quarterly custody audits – identification of any potentially lost records
- Critical Infrastructure Information (CII) or CIP-related records have additional scrutiny and approvals
- Legal holds

Information Governance
- Consider including in your Information Governance policy:
  - Information Ownership
  - Classification of Information
  - Information Disclosure
  - Information Storage
  - Email retention
  - Destruction procedures
  - At KCP&L - Created a brochure created and posted throughout company
  - Providing details on asset classifications and records management

Policy C201 – Preservation of Records
Records Management includes the documented retention periods, age restrictions and classifications of Information Assets.

To assist employees in determining how long to retain records, the KCP&L Records Retention Schedule is available online on the Records Management website. The Records Retention Schedule lists specific Company retention periods, and the Information Asset classifications and availability classifications for each record series.