GAS INDUSTRY STANDARDS BOARD: LEGAL CONSIDERATIONS IN THE STANDARD SETTING PROCESS

by
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I. INTRODUCTION

On December 23, 1993, the Federal Energy Regulatory Commission (FERC) issued Order 563,[1] a Final Rule adopting the agreements of informal industry-wide working groups to standardize information relating to pipeline capacity release programs mandated under Order 636.[2] The standards adopted in Order 563 were intended to facilitate access to capacity release information required to be maintained on pipeline Electronic Bulletin Boards (EBBs), but in a manner that does not require shippers (or other interested parties) to utilize pipeline EBBs as the exclusive means for accessing such information.[3] Generally, Order 563 adopts an industry-wide consensus to utilize Electronic Data Interchange (EDI)[4] as an alternative mechanism for the electronic exchange of capacity release information. It also adopts "datasets" developed by the working groups that specify the

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1. Order 563, *Standards For Electronic Bulletin Boards Required Under Part 284 Of The Commission's Regulations*, 65 F.E.R.C. ¶ 61,400 (1993).

2. *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, III F.E.R.C. STATS. & REGS. Preambles ¶ 30,939 (1992), 57 Fed. Reg. 13,267 (1992), *Order on reh'g*, Order No. 636-B, 57 Fed. Reg. 57911 (1992), 61 F.E.R.C. ¶ 61,272 (1992), *appeal pending sub nom.*, Atlanta Gas Light Co. & Chattanooga Gas Co. v. FERC, No. 92-8782 (11th Cir. 1992). Order No. 636, of course, created a new operating environment for the gas industry by requiring interstate pipelines to "unbundle" their gas commodity sales from their transportation services. It also introduced a mechanism that permits firm pipeline shippers for the first time to assign unneeded capacity rights to third parties, and required pipelines to establish EBB's to effect capacity release transactions.

3. The genesis of Order 563 may be traced to requests for rehearing of Order 636 by industrial end-users, power generators and others expressing concern about the proliferation of hardware and software required to access pipeline EBB's and the resources required to monitor numerous pipeline EBB's. These requests led to a technical conference in February 1993 in a new rulemaking proceeding in Docket No. RM93-4-000, which was followed on March 10, 1993, by a notice convening Staff-led "informal conferences" at which the working group approach was adopted. *See FERC Notice*, 58 Fed. Reg. 15,311 (1993).

4. As used by the working groups and as adopted by FERC, EDI-based transactions must comply with standards established by the Accredited Standards Committee (ASC) X.12 of the American National Standards Institute (ANSI). The Final Rule frequently refers to ANSI ASC X.12 standards in its discussion of EDI.

information to be included in EDI-downloadable files and the precise format of that information.

Significantly, the communications and information standards adopted in Order 563 are not reflected in any rule, but rather are maintained in a publication called "Standardized Data Sets and Communications Protocols" available from the Commission. Order 563 promulgates a new rule[5] that simply refers to this publication and requires pipelines to provide access to standardized information in compliance with the publication.

Order 563 is noteworthy not only for its reliance upon what may be fairly viewed as an unorthodox approach, but also for its reliance upon the industry (all segments of which were represented in the working group process) to develop consensus standards for Commission adoption. Indeed, the industry's success in reaching agreements on key communications standards issues spawned recommendations from the working groups to continue the development and maintenance of industry-wide standards through a permanent Gas Industry Standards Board (GISB).[6] Industry-wide meetings to settle upon, among other things, GISB's scope, its organization structure, member voting rights and funding have continued throughout the winter of 1994, under the informal auspices of the Natural Gas Council and other trade associations.

This article examines legal issues bearing on GISB's potential role in the regulatory process. Specifically, the article addresses constitutional and statutory considerations relating to the FERC's authority to delegate certain responsibilities to a voluntary, industry sponsored and supported private body such as that taking shape within the gas industry.

II. Discussion

A. Constitutional Limits

The Constitutional requirement that Congress and not some other body make the laws of the land forms a cornerstone of the American democratic system of government.[7] This principle has been invoked by the Supreme Court to invalidate statutes where Congress has essentially yielded its constitutionally defined legislative functions to the President or other officials within the executive branch.[8] It also has been invoked as a limit on Congress' ability to delegate legislative functions to private enti-

5. 18 C.F.R. § 284.8(b)(5) (1993) (Standardization of information provided on Electronic Bulletin Boards).

6. Order 563 recognizes the industry's desire to establish such a body and notes the progress that has been made on GISB's formation. The order concludes: "The Commission remains interested in this [GISB] concept and looks forward to a detailed proposal. When the Commission receives a proposal, it will give close consideration to the effects of such an industry standardization effort on all facets of the gas industry, Commission regulation, and state regulation." 65 F.E.R.C. ¶ 61,400, mimeo at 61-2.

7. *See* Field v. Clark, 143 U.S. 649, 692 (1892); *see also* Panama Refining Co. v. Ryan, 293 U.S. 388, 421-22 (1935).

8. *See Panama Refining*, 293 U.S. at 432; Schechter Poultry Corp. v. United States, 295 U.S. 495, 537 (1935).

ties. As applied to delegations to private entities, the Court's disfavor with full delegation of legislative powers appears to be grounded in the danger that private individuals will abuse those powers.[9]

The principle that Congress may not completely defer to the private sector its legislative capacity does not foreclose Congressional delegation of limited authority to non-governmental bodies. Indeed, the Supreme Court has indicated that Congress may permissibly confer powers to private entities as long as the private bodies function subordinately to public officials or agencies possessing authority and engaging in supervision over the activities of the private entities. In *Sunshine Anthracite Coal Co. v. Adkins*,[10] the Supreme Court upheld the Constitutionality of the Bituminous Coal Conservation Act of 1937, finding that Congress may delegate authority for setting prices for coal sold in interstate commerce to the National Bituminous Coal Commission with cooperation of the bituminous coal industry. The Court specifically held that Congress had not delegated its legislative authority improperly to private industry because:

> [t]he Bituminous Coal Commission, not the Code Authorities [made up of representatives from private industry], determine the prices. And it [the Bituminous Coal Commission] has the authority and surveillance over the activities of these authorities. Since law-making is not entrusted to the industry, this statutory scheme is unquestionably valid.[11]

Similarly, Congress can properly prescribe that an order of an executive official may not become effective unless the order is also approved by a statutorily identified group of private individuals affected by the order. In *Currin v. Wallace*,[12] the Supreme Court found the requirement that tobacco quality inspection standards promulgated by the Secretary of Agriculture be approved through referendum by two-thirds of the tobacco growers does not involve any delegation of legislative authority. Rather, the Supreme Court held that Congress "merely placed a restriction upon its own regulation as to a given market 'unless two-thirds of the growers favor it.'"[13] The Supreme Court further stated that:

> [t]his is not a case where a group of producers may make the law and force it upon a minority [citations] or where a prohibition of an inoffensive and legitimate use of property is imposed not by legislation but by other property owners [citations]. Here it is Congress that exercises legislative authority in making the regulation and is prescribing the conditions of its application. The required favorable vote upon the referendum is one of these conditions.[14]

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9. In Carter v. Carter Coal Co., 298 U.S. 238, 311 (1936), the Supreme Court invalidated a statute that required coal producers to pay a 15 percent tax on the coal they produced unless they became members of a Bituminous Coal Code.

10. 310 U.S. 381, 398-99 (1940).

11. *Id.* at 399 (citing Currin v. Wallace, 306 U.S. 1, 15 (1939)).

12. 306 U.S. 1 (1939).

13. *Id.* at 15.

14. *Id.* at 16 (citations omitted).

In *United States v. Rock Royal Co-Operative*,[15] the Supreme Court upheld a provision of the Agricultural Marketing Agreement Act of 1937 authorizing the Secretary of Agriculture to fix and equalize minimum prices to be paid to producers for milk sold to dealers. Specifically, the Court upheld the constitutionality of a provision of that statute that made the Secretary of Agriculture's regulations contingent upon the Secretary of Agriculture's or the President's determination that the regulations are approved by two-thirds of the milk producers interested or by interested producers of two-thirds of the volume produced for the market of a specified production area.

Lower federal courts have held that private bodies may properly play a subordinate role to independent federal agencies. For example, one court has concluded that a private organization permissibly plays a "participatory role" where a statute requires that an agency head obtain the concurrent approval of a private organization before a proposed regulation can be issued.[16] Similarly, where a statute authorizes an agency to set forth a "national consensus standard," an agency may choose from among a number of privately established standards for codification.[17] Private organizations also may assume ministerial and advisory duties in conjunction with the enforcement of a statutory scheme.[18] In each of these cases, as in the Supreme Court's *Sunshine Anthracite* opinion, constitutional challenges to a delegation of legislative authority were rejected based on the conclusion that the private body's activities were overseen by the agency.

Moreover, Congressional delegations of duties to public agencies have withstood the scrutiny of constitutional challenges even where Congress did not set out specific standards.[19] It appears that no statute since the one struck down in *Carter Coal*, which blatantly delegated complete authority to a private entity, has been invalidated by the Court.[20]

With regard to the subject matter of this article, it is submitted that there is no Congressional delegation of legislative authority at issue. To the extent that the GISB assumes responsibility for setting gas industry stan-

15. 307 U.S. 533, 577-78 (1939).

16. Corum v. Beth Israel Medical Ctr., 373 F. Supp. 550, 553 (S.D.N.Y. 1974) (authority of Surgeon General to promulgate regulations requiring concurrent approval of the Federal Hospital Council).

17. Noblecraft Indus. v. Secretary of Labor, 614 F.2d 199, 202-03 (9th Cir. 1980).

18. United States v. Frame, 885 F.2d 1119, 1128-29 (3d Cir. 1989) (affirming scheme entitling Cattlemen's Board to collect assessments and to take initiative in planning how collected funds will be spent under supervision of the Secretary of Agriculture).

19. The extent of the power of Congress to delegate without specific standards is described at length in the dissenting opinions of Justice Rehnquist in two major cases from the early 1980's. In Industrial Union Dep't v. American Petroleum Inst., 448 U.S. 607 (1980), and American Textile Mfrs. Inst., Inc. v. Donovan, 452 U.S. 490 (1981), Justice Rehnquist opined that Congress had not determined fundamental policy, and yet the Court had sustained the delegations without acknowledging the absence of Congressional policy determination.

20. Professor Gellhorn has commented that the non-delegation issue has not recently been addressed by the courts because the issue is merely one of mechanical arrangement where constitutional boundaries can be easily navigated. W. GELLHORN ET AL., ADMINISTRATIVE LAW CASES AND COMMENTS 71 n.4 (8th ed. 1987).

dards and the FERC relies upon those standards, the Commission itself would arguably be delegating such authority. This raises several questions, including the question whether an agency may permissibly delegate authority in the absence of explicit statutory authority to do so. We turn to these questions below. However, from a constitutional standpoint, the cases examined would appear to dictate that the FERC's reliance on standards developed by a private industry-sponsored body should be undertaken in a manner that preserves the FERC's oversight over the GISB. In short, preserving the FERC's involvement in the GISB's standards-setting process should provide the FERC with protection from challenges based on the non-delegation doctrine, to the extent the FERC relies upon GISB standards in its regulation of the natural gas industry.

B. Statutory Considerations

1. Agency Delegations in the Absence of Explicit Statutory Authority

While the principles discussed above provide guidance on Congress' ability to delegate authority to private entities, they do not speak directly to an agency's delegation of authority to private bodies. Indeed, in the absence of express Congressional authorization to delegate responsibilities to non-governmental bodies, concerns about abuse of power arising from an agency's delegation of authority to a private body would seem to make such delegations susceptible to challenge. However, our research reveals no judicial decisions in which an agency's reliance on actions taken by a private standards-setting organization was successfully challenged based on the absence of explicit statutory delegation authority. The cases do establish a general rule that agency delegations are impermissible where Congress has expressly prohibited agency delegation of responsibility, or where legislative history suggests a clear Congressional intent to limit delegation of authority.[21] Otherwise, express statutory authority does not appear to be a condition precedent for delegation by an agency.[22]

The securities industry offers two different examples involving the delegation of significant powers and functions to private organizations. In 1976, Congress passed the Maloney Act,[23] which authorized the SEC to register private organizations which have adopted rules designed to prevent fraud and other deceptive and manipulative practices pertaining to the

21. United States v. Giordaro, 416 U.S. 505 (1974); Cudahy Packing Co. v. Holland, 315 U.S. 357 (1942). In *Giordaro*, for example, the Supreme Court affirmed a Fourth Circuit opinion upholding the suppression of evidence obtained through use of a wiretap because the United States Attorney General had improperly delegated authority with regard to wiretaps to his Executive Assistant. The Court's opinion engaged in a lengthy examination of the legislative history of the relevant statute and concluded that, "Congress legislated in considerable detail in providing for applications and orders authorizing wiretapping," leading the Court to conclude that any delegation outside of that described in the statutory scheme is invalid.

22. *See* Tabor v. Joint Bd. for Enrollment of Actuaries, 566 F.2d 705, 708 n.5 (D.C. Cir. 1977)(rejecting claims that an agency cannot delegate any responsibility without express statutory authority to do so).

23. 15 U.S.C. § 780-3(a-b).

trading of securities. In addition, the Maloney Act provided that these registered organizations may institute proceedings to enforce their rules and gave these organizations the power to discipline members who fail to conform to standards of conduct established by the organization.[24] The courts have consistently held that the Maloney Act's express delegation of authority to private self-regulatory organizations (SRO's) does not violate the non-delegation doctrine because the Maloney Act also retained the SEC's ultimate authority over the actions of the registered body.[25] Of course, the SEC's delegation of authority pursuant to the Maloney Act does not raise the threshold issue facing the FERC, namely, delegation without express statutory authority.

The second SEC example is more pertinent to the issues raised by the FERC's reliance on the GISB. In addition to its reliance on SRO's, the SEC relies upon accounting standards promulgated by the Financial Accounting Standards Board (FASB), an independent body designated by the American Institute of Certified Public Accountants in 1972 to establish accounting standards and principles. In contrast to the explicit statutory provision contained in the Maloney Act authorizing the SEC's reliance upon registered, private SRO's to set standards of conduct for securities dealers, the SEC's reliance upon FASB is grounded in the agency's general statutory authority to prescribe methods to be followed in the preparation of accounts and the form and content of financial statements to be filed under the various act administered by the SEC.[26] Congress did not explicitly authorize the SEC to rely upon FASB accounting standards in administering its duties under various Securities and Exchange Act provisions. Yet, the SEC has relied upon FASB standards for more than twenty years.

Given the effect that FASB accounting standards can have on the financial health of publicly held corporations, it is difficult to imagine a more compelling case for application of a rule or principle limiting delegations to those explicitly sanctioned by Congress. Yet, no such rule or principle was advocated with respect to the SEC's reliance upon FASB, and there are no judicial decisions invalidating the SEC's statements for constitutional infirmities.[27]

The Natural Gas Act (NGA) gives the FERC plenary authority over, among other things, the manner in which information is maintained and made available by interstate pipelines,[28] and in addition empowers the FERC to perform any and all acts as it may find necessary or appropriate

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24. 15 U.S.C. § 78o-3(h) (1988).

25. For example, the SEC can approve or disapprove of the association's rules, make de novo findings, and make independent findings as to violations and penalties. R.H. Johnson v. SEC, 198 F.2d 690, 695 (2d Cir. 1952); Todd & Co. v. SEC, 557 F.2d 1008, 1012 (3d Cir. 1977); *see also* First Jersey Sec. v. Bergen, 605 F.2d 690, 697 (3d Cir. 1979).

26. Account. Series Release No. 150, 3 SEC Docket 275 (December 20, 1973).

27. The SEC's pronouncements concerning FASB *were* challenged as being in violation of the notice and comment provisions of the Administrative Procedure Act, and in contravention of the constitutional non-delegation principle. However, the challenge was dismissed for lack of standing. Arthur Andersen & Co. v. SEC, 1978 WL 1073 (N.D. Ill. 1978)(unreported).

28. 15 U.S.C. § 717g(a) (1988) provides:

to carry out the provisions of the Act.[29] Arguably, these NGA provisions are counterparts to the provisions of the Securities and Exchange Act which support the SEC's reliance on FASB standards.[30]

2. The Significance of OMB Circular No. A-119

It can also be argued that public policy supports the permanent establishment of the GISB. Specifically, strong Executive Branch initiatives applicable to all administrative agencies, including the FERC, are consistent with the permanent establishment of the GISB.

In areas where a federal agency seeks to establish highly complex technical standards, delegation of participatory authority to private institutions is encouraged by OMB Circular No. A-119 (revised).[31] This circular authorizes the President to "evaluate and develop improved plans for the organization, coordination, and management of the executive branch."[32] It recognizes the fact that many standards are available from private voluntary standards bodies which are readily adaptable for use by the federal government.[33] The Executive Office of Management and Budget (OMB) hoped that this initiative would help reduce the costs attendant to the government having to develop its own standards and thus promote administrative efficiency and economy.[34] The circular also encourages actual participation by federal officials in the proceedings of private standard setting bodies, although this is not required.[35]

In a typical application of Circular A-119, an agency relies on its general powers to promulgate regulations.[36] After the agency makes a determination that standards should be set forth in the Code of Federal Regulations (CFR), the agency conducts a preliminary investigation to ascertain what voluntary standards already exist that are suitable for codifi-

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[e]very natural gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulation prescribe as necessary or appropriate for purposes of administration of [the NGA].

29. 15 U.S.C. § 717o provides that:

the Commission shall have the power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of [the NGA]. Among other things, such rules and regulations may define accounting, technical, and trade terms. . . .

30. *See* 15 U.S.C. § 78q(e) (1988) (requiring financial information relating to SEC-regulated firms to be filed).

31. 47 Fed. Reg. 49,496 (1982) (Circular A-119). Circular A-119 provides policy and administrative guidance to Federal agencies on using voluntary standards for procurement and regulatory purposes, on participating with private sector organizations to develop such standards, and coordinating Executive Branch participation in the development of voluntary standards. Circular A-119 states that "[p]articipation by agency representatives should be aimed at contributing to the development of voluntary standards that will eliminate the necessity for development or maintenance of separate Government standards."

32. 31 U.S.C. § 1111 (1988) (authorizes issuance of circular).

33. Circular No. A-119 at 49,497.

34. *Id.* at 49,498.

35. *Id.* at 49,498-99.

36. *See* NRC Proposed Rule, 53 Fed. Reg. 8460 (1988).

cation or adoption by reference. Where such standards do not exist, the agency may issue a public notice indicating that it desires that certain organizations develop and submit voluntary standards for subsequent codification.[37] Afterwards, the agency institutes a standard section 553 rulemaking procedure[38] in which it examines the proposed rule as if it had been contemplated by the agency itself.[39] If a voluntary standard is actually adopted but the private organization subsequently modifies the standard, the agency may be required to recodify or reincorporate it by reference.[40]

3. The Requirements of the Administrative Procedure Act

All agencies must comply with the procedural requirements of the Administrative Procedure Act[41] (APA), when adopting new rules. In addition to rulemaking authority, agencies may rely on *ad hoc* adjudication of disputes to formulate new standards of conduct.[42] In recognition of the fact that "not every principle essential to the effective administration of a statute can or should be cast into the mold of a general rule", the Supreme Court has stated that the choice made between proceeding by general rule or by individual ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency.[43]

In at least two instances, both occurring before the issuance of Circular A-119, agencies have attempted to approve standards set by private organizations by issuing policy statements to that effect, rather than through notice and comment or formal rulemaking procedures. In 1972, the SEC rejected a proposal to institute a rulemaking proceeding to promulgate accounting regulations in favor of a policy statement deferring to accounting standards adopted by the newly created FASB.[44] Moreover, the SEC policy statement said that it would continue to look to the private sector for leadership in establishing and improving accounting principles and standards. The policy statement gave effect to private sector standards by deeming compliance with FASB principles, standards and practices to be evidence of "substantial authoritative support" for any disputed accounting practice followed in a particular case, such support serving to allow disclo-

37. *See* HUD Notice, 53 Fed. Reg. 4463 (1988).

38. Under 5 U.S.C. § 553 (1988), the agency must issue a notice of proposed rulemaking in the Federal Register outlining the proposed substance of the new rule and reference to the legal authority under which the rule is being proposed. A notice and comment period then ensues, during which interested persons are given an opportunity to make written submissions of their views and opinions with respect to the proposed rule. These comments are then considered by the agency officials before a final rule is issued.

39. 53 Fed Reg. at 4464.

40. *See* NRC Proposed Rule, 53 Fed. Reg. 8460, 8463 (1988).

41. 5 U.S.C. § 551 (1988).

42. Indeed, the adjudicatory approach affords agencies greater flexibility than rulemaking and is especially useful in resolving conflicts in unusual or unforeseeable situations. *See, e.g.*, SEC v. Chenery Corp., 332 U.S. 194, 202 (1946); NLRB v. Bell Aerospace, 416 U.S. 267, 292-93 (1974).

43. *Bell Aerospace*, 416 U.S. at 293. However, the Court has expressly encouraged agencies to proceed through rulemaking where appropriate. *See Chenery*, 332 U.S. at 202.

44. SEC Accounting Series Release No. 150, 3 SEC Docket 275, 276 (1973); LOUIS LOSS, FUNDAMENTALS OF SECURITIES REGULATION 160 (2d ed. 1989).

sures of the practice in lieu of correction of the financial statements themselves.

In 1980, the Food and Drug Administration (FDA) proposed to "endorse" professionally established standards for certain medical devices.[45] While the FDA ultimately withdrew this proposal after receiving comments from the industry evidencing a lack of support for reliance upon such standards, the FDA, like the SEC, made known that the standards developed by private organizations would not constitute binding authority, but would be considered substantial authority in individual adjudicatory hearings.[46]

IV. CONCLUSION

There appears to be no legal impediment, including the antitrust laws,[47] which precludes the FERC from relying upon a private, industry-sponsored board for the development of technical standards governing the electronic exchange of information and electronic consummation of business transactions among natural gas industry trading partners. Constitutional concerns could be satisfied by preserving the FERC's oversight and authority over GISB and the subordinate nature of the GISB. Preserving the FERC's involvement in GISB's standards-setting process also may insulate the agency from challenges based on the Constitutional non-delegation doctrine.

Because the NGA gives the FERC plenary authority over, among other things, the manner in which information is maintained and made available by interstate pipelines, establishment of standards relating to the electronic exchange of such information appears to be within the agency's statutory responsibility. The absence of explicit statutory authority for the FERC to delegate its responsibilities does not bar the FERC from relying upon Board standards, just as the absence of such explicit authority does

45. *See* FDA Notice, 50 Fed. Reg. 43,060-61 (1985).

46. 50 Fed. Reg. at 43,064. Two other federal statutes may provide a statutory foundation for FERC's reliance on GISB-approved standards. The Federal Advisory Committee Act, Pub. Law 92-463, 86 Stat. 770 (1972) (FACA), empowers agencies to rely upon independent boards, councils or committees as a means of furnishing expert advice, ideas and opinions. The Alternative Dispute Resolution Act, 5 U.S.C. § 581 (1988), provides for agency use of alternative dispute resolution techniques.

47. In general terms, antitrust laws are in place to prohibit anti-competitive behavior. Various methods such as joint action for purposes of rationalizing a market have been recognized as means competitors can employ to promote fluid markets. L. SULLIVAN, HANDBOOK OF THE LAW OF ANTITRUST § 106, at p. 103 (1977). Also, standardization has been recognized as bringing about greater market integration. *Id.* It is well established that it is not an antitrust offense to organize an exchange or market where no purpose or effect to restrain trade is discernible. United States v. New York Coffee and Sugar Exch., 263 U.S. 611 (1924); National Collegiate Athletics Ass'n v. Board of Regents, 469 U.S. 101 (1983). Moreover, efforts to bring about more transactions into a single market are inherently procompetitve. Chicago Bd. of Trade v. United States, 246 U.S. 231 (1917). As long as the standard setting process is open to all interested parties, antitrust problems can be awarded. Silver v. New York Stock Exchange, 371 U.S. 341 (1963). Finally, valid agency action adopting GISB-developed standards will provide further antitrust protections. Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961).

not bar the SEC from relying upon FASB accounting principles. Moreover, the policies reflected in OMB Circular A-119 further buttress the FERC's reliance upon a private industry-sponsored standards-setting body.

The APA does not require the FERC to issue rules establishing the GISB, or relating to standards adopted by the GISB. Instead, the FERC's reliance on GISB standards should be based on the FERC's adjudicatory function, and should therefore be articulated through the vehicle of policy statements.