FEDERAL MARITIME COMMISSION

FACT FINDING INVESTIGATION NO. 30

COVID-19 IMPACT ON CRUISE INDUSTRY

INTERIM REPORT: REFUND POLICY

July 27, 2020

Table of Contents

I. Summary

In April, the Federal Maritime Commission (Commission) initiated a fact-finding investigation (Fact Finding Investigation No. 30 or FF30). The Order of Investigation[1] directed Commissioner Louis E. Sola to investigate and respond to the current challenges impacting the cruise industry and the U.S. ports that rely on it. Commissioner Sola, as the Fact Finding Officer has been engaging cruise industry stakeholders, including passenger vessel operators (PVOs), passengers, and marine terminal operators, in public or non-public discussions to identify possible solutions to COVID-19-related issues that interfere with the operation of the cruise industry. In order to carry out the fact-finding, Commissioner Sola established consultative panels comprised of representatives from various port authorities, marine terminal operators, cruise lines, trade associations, consumer advocates and the financial industry. Early in the Fact Finding, the attention of these consultative panels turned toward a review of the ticket refund practices exercised among the members of the cruise industry.

On March 13, 2020, members of the Cruise Lines International Association (CLIA) announced a pause in the operations of its members in order to assess and address the risks posed by the COVID-19 pandemic. The next day, the Centers for Disease Control and Prevention (CDC) issued a No Sail Order and Suspension of Further Embarkation instructing PVOs whose vessels carry 250 or more persons on overnight or 24 hour voyages to cease all operations.[2] On April 9, 2020, the CDC extended the termination date of the order to July 24, 2020. On June 19, 2020, CLIA announced that the major cruise lines have agreed to voluntarily extend a suspension of operations out of U.S. ports until September 15, 2020. On July 16, 2020, the CDC extended the termination date of its order to September 30, 2020. As a result of the cessation of operations, thousands of customers were placed in the unenviable position of having paid for services they would not receive. This, of course, led to demands for refunds of monies paid. In many cases, accommodations were made to the satisfaction of the customer, however, in other circumstances complaints were filed with various governmental agencies. In those cases where the complaints were presented in inappropriate forums, the matters were forwarded to the Commission. As a result of these complaints and the numerous stories being circulated in the public square, questions arose as to the overall impact of the current pandemic on cruise passengers, the cruise industry, and the ports that host them.

It was determined that an examination of this issue was warranted. To this end, a questionnaire concerning current practices related to ticket refund practices was distributed to a randomly selected representative group of PVO equally divided among large and small carriers. The data points collected from these questionnaires were combined with information related to ticket refund policies from PVO websites. Among the more significant observations was the lack of consistency among the PVOs when it came to their ticket refund practices. Also of note, though

[1] Order of Investigation, Fact Finding Investigation No. 30, COVID-19 Impact on Cruise Industry (FMC April 30, 2020), https://www2.fmc.gov/readingroom/docs/FFno30/ffno30_ord.pdf/.

[2] The CDC No Sail Order applies to vessels with a capacity to carry 250 passengers and crew anticipating to stay overnight or for over 24 hours. The Commission's requirements apply to vessels with berth/stateroom capacity to carry 50 or more passengers. So, there could be small PVOs the Commission regulates that are not subject to the CDC No Sail Order (with vessels carrying more than 50 passengers but less than 250 passengers and crew).

not always the case, was the recognition that said practices were not always easily discernable by the consumer. After a review of this data, discussions were had with the various members of the consultative panels, staff at the Commission, and staff with other Federal partners. Additional research was conducted into how other federal agencies address similar issues and if those approaches could and should be utilized by the Commission vis-a-vis PVO ticket refund policies.

II. Investigatory Method

Commissioner Sola met with several PVOs of varying sizes, individually and with a group.

The Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS) provided statistics about complaints received, and several complaints were also sent directly to the Fact Finding 30 email account.

In order to better understand the current situation related to the refund policies maintained by the PVOs, questionnaires regarding refund policies and practices were sent to representative carriers. These questionnaires were sent out to 9 PVOs of varying sizes with a 100% response rate. Questions focused on:

- Refund policy for reservations affected by COVID-19.
- Whether refunds are automatic or need to be requested.
- Length of time for customers to receive a refund.
- If any passengers received less than a full refund.

Questionnaires sent out previously to 9 PVOs about financial responsibility also included responses addressing refunds and refund policies.

Responses to questions sent out by another U.S. government entity were voluntarily provided by two large PVOs.

Finally, PVO websites were reviewed for additional information.

Information received from questionnaires and in meetings have been provided in confidence and as such, specific PVOs are not being named. However, information from public websites that can be retrieved by members of the public is being referenced. In some cases, the same PVO may be publicly referenced in one section of the report (information from a website) and not in another section (information from a questionnaire). Not all PVOs who filled out questionnaires have website information included in this report, and not all PVOs whose websites are referenced also filled out questionnaires. Some information received in confidence from PVOs is not being used due to PVO policy changes since the information was received, and instead, updated public information from their website is being used.

III. Preliminary Observations

A. Consumer Complaints

From February to July 14, 2020, the CADRS received 418 calls about PVOs. A significant number of these have been about PVOs refusing or failing to issue a refund in part or full, refusing or failing to issue credit in part or full, and delay or difficulty in obtaining a refund. Calls about delay or difficulty in obtaining a refund did not begin until April. It should be stated that not all calls received gave rise to a formal complaint being filed against a PVO. In many cases, the consumer elected to resolve their dispute in another fashion.

Several people emailed the Fact Finding 30 inbox with complaints. One person who requested a refund was frustrated that they were originally told they would be refunded within 60 days only to have the time extended. As such, this person has initiated a dispute with their credit card company. Another person complained that it had been 83 days and no refund. A third person complained about the refund process taking 30 to 60 days. The fourth complaint received was about a PVO refusing refunds to passengers. These complaints are examples of the types received.

B. Refund Policies

Refund policies have changed drastically over the past five months, often several times per PVO. Some changed their policies as early as February due to cruises being changed or cancelled. One PVO specified they have issued 200 separate communications to their customers and/or travel agents regarding changes to travel plans and options for customers.

One PVO, in January and February, as ports of call were changing, initially gave customers the option to cancel or keep their changed cruise. Those who kept the existing cruise were given a 50% Future Cruise Credit (FCC) and a refund of all fees associated with the port change(s); those who wished to cancel were given 100% FCC and a refund of port fees and taxes. This was prior to the CDC No Sail Order and PVOs cancelling any sailings. Later, as sailings were being cancelled, customers were informed to contact the PVO to notify them if they would like 100% FCC or 100% refund. Customers were also given an additional 25% FCC, and some customers were provided with financial assistance to offset the cost of changed flights. By the date of the CDC No Sail Order, the PVO was automatically crediting customers FCC, with a refund of port fees and taxes; customers could call the PVO prior to the original sailing date to request a refund instead. As of June, when the questionnaire response was submitted to the Commission, customers on cancelled cruises received a 125% FCC credit and refund of port fees and taxes automatically unless they fill out an online form. The FCC is now valid until December 2023 (earlier in the process it was December 2021), and customers may decide to request a refund any time up to when the FCC expires.

Another PVO's cancellation policy has evolved, and the policy applied is based on when the customer booked the cruise. Customers who booked their cruise on or before April 30, 2020, can cancel their cruise as long as the PVO has their cancellation in writing at least 24 hours prior to sailing. Customers who cancel their own cruise receive a FCC in the amount of the cancellation fee, any travel protection purchased through the PVO, and a refund of the cruise amount minus the cancellation fee (given in FCC). The FCC is good for two years from the date of issuance. Beginning with reservations made in May, customers with cancellations received by the PVO in writing at least 24 hours prior to sailing may choose between the standard cancellation policy being applied or a 100% FCC valid for two years after issuance, the FCC now being transferrable as well.

A third PVO provided links to three different policies; one for its Caribbean cruises, one for a specific ship sailing out of New York, and one for all other cruises.

Another PVO now offers three options online: a "Cancel My Cruise" option in which the passenger receives a FCC, a "Request a Refund" option, and a "Same Cruise, Same Price" option. The "Same Cruise, Same Price" option allows passengers to select a cruise of the same itinerary and length, request the same cabin category, and be within four weeks of the original sailing date the following year.[3] As of July 10, the "Same Cruise, Same Price" needs to be selected by August 1.[4]

One PVO has a new policy that any passenger cancellations made more than 48 hours prior to the cruise can receive a FCC; however, if the cancellation is made within 48 hours of the cruise, the cancellation policy in place at the time of booking applies. Another PVO specifies that customers whose cruise is not yet cancelled may cancel their cruise and either receive FCC or have the original cancellation policy applied. A different PVO allows passengers to cancel any cruise that sails through December 31, 2020 up to 48 hours in advance and receive 100% FCC; they also specify passengers must cancel at least 120 days prior to sailing to receive a full refund.[5]

One PVO specified it adopted their current refund policy keeping in mind that their "target customer is aged 55 or older, and many of our passengers are at higher risk due to age and other factors." The PVO does not further differentiate between customers who are high risk and those who are not. Several PVOs mentioned some customers who cancelled their cruise due to specific COVID-19 and/or health concerns before it was cancelled by the PVO were given consideration for refunds on a case by case basis.

Many customers cancelled their cruise before it was cancelled by the PVO or the CDC No Sail Order. PVOs vary in their response to this. Some PVOs are sticking to the policy that was in place at the time of the passenger cancellation; others refunded their customers the cancellation fee after the cruise was cancelled. One PVO reported passengers already cancelling cruises in 2021 and 2022.

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[3] Celebrity Cruises Start Your Request, https://cancellation.celebritycruises.com/?brand=C, retrieved July 10, 2020.
[4] Celebrity Cruises Cruise with Confidence, https://www.celebritycruises.com/cruise-with-confidence, retrieved July 10, 2020.
[5] Norwegian Cruise Line Peace of Mind with Safety and Flexibility, https://www.ncl.com/why-cruise-norwegian/book-with-confidence#freedom-flexibility, retrieved July 10, 2020.

Refund payments are provided in the same form they were received. One PVO specified they have refunded tens of millions of dollars in cruise fare refunds.

Payments made outside the cruise fare, including gratuities, shore excursions, and port fees and taxes are usually automatically refunded to customers. One PVO, however, specified that any shore excursion, dining packages, and other onboard packages purchased can be refunded at the customer's request; if not requested, 125% onboard credit is given. Another PVO specified on their website that as "cruise fare, shore excursions and pre-cruise onboard purchases are processed separately", passengers may not receive these refunds at the same time.[6]

Of the PVOs who were sent questionnaires, the most common FCC value, in lieu of a refund, is 125%. Some are including on-board credit. The highest FCC being offered in lieu of a refund is 200%.

Time allowed to use FCC

Initially, several PVOs required the FCC to be used by the end of 2021. Most PVOs have extended their FCC use window over the past several months. A variety of deadlines to book and use the FCC exist. Examples include:

- December 31, 2021.
- December 31, 2023.
- Up to 18 months from the customer's original sail date (some customers may have longer than 18 months).
- Booked within one year of the FCC issuance, but it must be used by December 31, 2022.
- Reservation made within two years of FCC issuance, but no date on when the cruise needs to be – some reservations may be two years out.

Opting for a refund instead of FCC

In the early days of cancelled sailings due to COVID-19, customers were asked to call PVOs to let them know if they wanted a refund, or in some cases, were expected to let the PVO know whether they chose a refund or a FCC. Currently, many PVOs have an online form for customers to request a refund. One small PVO stated that their reservations staff proactively contacted the customer to see which option (FCC or full refund) they would like. Some PVOs are accompanying a refund with a FCC as well, 25% being a common amount.

Time allowed for choosing refund over a FCC

PVOs have a wide variety of deadlines for choosing a refund over a FCC. One PVO notified customers about PVO/CDC-cancelled sailings via email describing their options, including a date in which to notify the PVO if they choose a cash refund. Two PVOs allow refunds to be requested any time before the FCC expires. Three PVOs have a deadline of December 31, 2020. Other policies/deadlines include:

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[6] Princess Cruise Line Refunds and Future Cruise Credit (June 22, 2020), https://www.princess.com/news/notices_and_advisories/notices/refunds-and-future-cruise-credits.html, retrieved July 10, 2020.

- Refund needs to be requested by November 30, 2020.
- Refunds need to be requested within two weeks following the cancellation of their cruise or FCC will automatically be applied.
- In the case of passenger cancellation for one PVO, refund or a FCC must be chosen at the time of cancellation.
- One PVO gives customers until December 31, 2021 to use the FCC. If the FCC is not used by then, a full refund is automatically given.

Another PVO specified that a FCC must be forfeited to receive a refund, and customers cannot receive a refund if the FCC has been used (e.g. customer cannot use part of their FCC and be refunded the rest).

Refund processing time

Refund time varies greatly between PVOs. Many PVOs specified that under normal operating conditions, with a normal amount of cancellations, refunds are provided quickly.

Several PVOs, both large and small, have pointed out they face two major obstacles when refunding customers: significant increase in volume of refund requests, and stay-at-home orders affecting employees processing requests. One PVO also explained their staff has been reduced. Another specified that in refunding passengers, they are dealing with 13 different currencies.[7]

One PVO, who offered refunds for customers wanting to cancel in February due to an itinerary change, was able to provide refunds to guests in just over a week after notification that a refund was available. However, with the "unprecedented" volume of cancellations, they are now estimating refunds 90 days from the cancellation date. This PVO pointed out that credit card processors are also struggling with volume and the stay-at-home order, contributing to delayed refunds for their credit card customers as well.

Another PVO did not start issuing refunds to customers impacted by COVID-19 until early May.

On the short end, one PVO stated "The average length of time it takes for the passenger to receive the refund is approximately 5-7 business days and the funds are returned to the passenger in the same form used by the passenger to pay for the cruise ticket at issue". They also specify, however, that the credit card issuer may also need time before the customer receives the funds.

On the long end, some PVOs said refunds are processed within 90 days.

One PVO specified that the average time it has taken to refund customers has been 58 days. Another PVO informs that customers refunds can take up to 90 days, but their current time to refund customers is 60 days. Another PVO stated that by April 30, "a substantial majority of customers cancelling in March 2020 had been refunded." They claim that refunds are generally processed within 21 days of the cancellation. As of June 22, one large PVO had made it through about 60% of their refunds.[8]

[7] Princess *supra*, note 6.
[8] Princess *supra*, note 6.

A small PVO adopted a 90-day refund process in March, but in June decided to move to a 30-day refund process, and anticipates it being fully implemented by mid-July. A large PVO, who has been notifying passengers that refunds take 30-60 days, has improved their system and is working towards issuing refunds within 30 days of processing the customer's request (as of early May, that "processing time" was 2-3 business days).

Less than full refund

The only cases indicated by the PVO questionnaire responses when customers did not receive full refunds when requested were when the customer cancelled the cruise. One PVO specified that a third of their customers had cancelled their reservation before the PVO cancelled the cruise and did not receive a full refund.

Several PVOs also now offer a FCC instead of charging the cancellation fee (i.e. if the passenger cancels and only receives 75% of the refund due to the cancellation fee of 25%, the passenger would in total receive 75% of the cruise fare in refund and 25% of the cruise fare in FCC). One PVO allows this up to 31 days prior to the sailing, another PVO allows up 48 hours prior to sailing. Some PVOs allow this to be retroactive before early March, while others do not.

Another PVO has explained that they have not changed their refund policy if the passenger cancels the cruise; the cancellation fee within 30 days of sailing is 100% of the cruise fare.

One additional fee that may or may not be refunded is travel insurance. One PVO explained the particular 3rd party travel insurance carrier the customer used determines whether customers are entitled to a refund of travel insurance. In some cases, customers may be allowed to transfer the travel insurance to a future cruise.

Several guest/passage contract *Terms and Conditions* were examined, and they consistently included that for events outside the PVO's control, the PVO is not required to refund the passenger.[9] [10] [11] [12] The Cruise Lines International Association (CLIA)'s Passenger Bill of Rights includes "The right to a full refund for a trip that is canceled due to mechanical failures, or a partial refund for voyages that are terminated early due to those failures,"[13] but makes no provision for industry-wide events such as the instant pandemic. One PVO, for cruises cancelled by the PVO, is crediting customers 125% as a FCC as well as giving them a 10% discount on a

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[9] Norwegian Cruise Line Guest Ticket Contract, https://www.ncl.com/sites/default/files/NCL_Guest_Ticket_Contract_041818.pdf, retrieved July 10, 2020

[10] Cunard Passage Contract, https://www.cunard.com/en-us/advice-and-policies/passage-contract, retrieved July 10, 2020.

[11] Hurtigruten Terms and Conditions, https://www.hurtigruten.com/practical-information/terms-and-conditions/, retrieved July 10, 2020.

[12] Silversea General Cruise Information and Guidelines, Passage Contract, https://www.silversea.com/travel-informations/general-information.html, retrieved July 10, 2020.

[13] CLIA International Cruise Line Passenger Bill of Rights, https://cruising.org/en/about-the-industry/policy-priorities/cruise-industry-policies/other, retrieved July 10, 2020.

future cruise.[14] Refunds may be requested, and "all cases will be handled individually, and in accordance with the rules and regulations in force".[15] Fact Finding 30 received one complaint regarding a small PVO refusing to provide a refund (under its policy, the PVO was only offering a FCC). Most PVOs, however, are willingly providing refunds for sailing cancelled by the PVO or the CDC No Sail Order.

Credit cards

Four PVOs brought up the Fair Credit Billing Act and credit card refunds. When a cruise is cancelled by the PVO, fare deposits paid by credit card may be refunded by the credit card issuer.

One PVO mentioned that a vast majority of their customers pay with credit card; another specified that over 85% of their customers pay with credit card.

One PVO is having issues with many customers seeking a refund directly through both the credit card provider and the PVO. This has increased the administrative burden on the PVO to avoid double refunds. The PVO specified that they have successfully contested chargebacks with Visa and Mastercard; less so with American Express. The PVO stated that:

> numerous refund requests made by customers have been not in compliance with the Company's Terms of Passage (force majeure clause). It would be helpful that the FMC understands the impact of "acts of God" on cancelations ("nonperformance"). Perhaps an industry-wide agreement on the impact of non-performance and subsequent refunds resulting from "acts of God" would help add clarity to the industry in these times and clarify the passengers' rights regarding refunds for (temporary) non-performance.

C. Statutory Authority

During the course of Fact Finding 30, the question has arisen as to whether the Commission has the authority to issue an enforcement notice concerning sailings cancelled due to the CDC No Sail Order similar to the notice issued by the U.S. Department of Transportation (DOT) on April 3, 2020 related to the refund of air fares for flights cancelled due to the COVID-19 pandemic. A review of this question concluded that while the Commission does not possess the same type of direct authority over PVO policies that DOT has with respect to air carrier policies, the Commission does have authority over the information and financial instruments it accepts to satisfy the financial responsibility requirements under 46 U.S.C. ch. 441 and could establish requirements that make it easier for passengers to get refunds when PVOs fail to perform. Although the Commission also has some authority over PVOs under the Shipping Act, this authority is arguably more limited than 46 U.S.C. ch. 441.

Unlike DOT's statutory authority, the Commission has limited authority over PVO commercial practices, and 46 U.S.C. ch. 441 does not include a prohibition against unfair and deceptive

[14] Hurtigruten Rebooking Policy for Cancelled Voyages, https://www.hurtigruten.com/practical-information/coronavirus-update/cancelled/, retrieved July 10, 2020.
[15] Hurtigruten Feedback, https://www.hurtigruten.com/contact-us/feedback/, retrieved July 10, 2020.

practices akin to 49 U.S.C. § 41712. On the other hand, the Commission has wide discretion in establishing the information or type of bond or other security necessary to meet the financial responsibility requirements. The Commission could use this authority to facilitate passengers' ability to obtain refunds from a PVO's financial instrument when a PVO cancels a voyage, makes a significant schedule change, or significantly delays a voyage.

IV. Next Steps

As Fact Finding Officer, Commissioner Sola has concluded that additional specification is needed in determining whether a passenger is entitled to obtain refunds if a PVO cancels a voyage, makes a significant schedule change, or significantly delays a voyage.

Currently, the Commission's regulations do not adequately define what constitutes nonperformance of transportation. Section 540.1(a) of the Commission's regulation states that PVOs must "establish their financial responsibility or, in lieu thereof, file a bond or other security for obligations under the terms of ticket contracts to indemnify passengers for nonperformance of transportation to which they would be entitled." 46 C.F.R. § 540.1(a). Currently, these regulations are interpreted to require PVOs to indemnify passengers for nonperformance of transportation pursuant to the PVOs' ticket contract terms.

PVOs' ticket contract terms, however, may vary from PVO to PVO. Even under a specific PVO's ticket contract, what constitutes a nonperformance of transportation under the Commission's current interpretation of the regulations depends on how the PVO defines nonperformance in its ticket contract.

Therefore, it is proposed that the Commission: (1) interpret "nonperformance of transportation" to include cancelling a sailing or delaying passenger boarding by twenty-four (24) hours or more; and (2) modify the appropriate provisions of the Commission's PVO regulations to make clear how passengers may obtain refunds under the PVOs' financial instruments:

1. When a sailing is cancelled or consumer boarding is delayed by twenty-four (24) hours or more for any reason other than due to a government order or declaration in paragraph 2 below, full refunds must be paid within sixty (60) days following a passenger refund request.

2. When a sailing is cancelled or consumer boarding is delayed by twenty-four (24) hours or more due to a governmental order or declaration, full refunds must be paid within one hundred eighty (180) days following a passenger refund request. This includes all consumers who, at their own discretion, cancelled their booking within sixty (60) days prior to said governmental action and commensurate cancelled or delayed sailing.

3. If, following a declaration of a public health emergency, any consumer cancels a cruise booking of a sailing that may be affected by such emergency after the PVO's refund deadline, but the sailing is not cancelled, the PVO will provide a credit for a future

cruise equal to the consumer's amount of deposit. In all other cases in which a consumer cancels and embarkation and sailing occur within the prescribed timeline, the cruise line's rules for cancellation will apply.

4. A PVO may set a reasonable deadline for a consumer entitled to a refund to request the refund which shall not be less than 6 months after the scheduled voyage.

5. Refunds should include all fees paid to carrier by consumer to include all ancillary fees remitted to the carrier by the consumer.

6. Refunds to be given in same fashion as monies were originally remitted to the carrier. The PVO will be deemed to have made a refund payment if the deposited revenue as to a passenger requesting a refund is remitted by the PVO in the same manner as the passenger’s original payment, by: (1) mailing a check payable in immediately available funds to the passenger at an address furnished by the passenger, (2) issuing an electronic funds transfer, including wire transfer, automated clearinghouse (ACH) or other electronic means, in immediately available funds, or (3) posting of a credit to the credit card processor for the benefit of the credit card account used by passenger to make payments to the applicant. The refund will be deemed timely notwithstanding that passenger may not immediately have access to the transferred funds in its account or any credit card account due to rules and processes of any third-party services provider.

7. Nothing in this rule shall be interpreted to preclude the consumer and the PVO from entering into an alternative form of compensation in full satisfaction of a required refund, such as a future cruise credit.

Should the Commission adopt the foregoing interpretation of the PVO regulations, when a sailing is cancelled or when a cruise vessel fails to board consumers within twenty-four hours of its contracted and posted departure time, such failure to sail shall be considered nonperformance of transportation as such term is utilized in 46 U.S.C. ch. 441 and 46 C.F.R. part 540. Consequently, in the event of any refusal to grant[16] a requested refund of monies remitted for said nonperformance in accordance with the terms heretofore provided may be considered by the Commission in determining whether the PVO satisfied its financial responsibility requirements and whether the PVO’s Certificate (Performance) should be suspended or revoked.

The members of the collaborative panels have also suggested that the Commission consider future action to mandate that the PVOs be required to provide passengers with clear instructions for applications for refunds, and readily available methods for such applications. The first step toward achieving that goal would be to mandate that all PVOs provide such information on their respective websites and to submit to the Commission an up-to-date link to said information so that such links may be provided on the Commission’s website for quick public access. The Commission is therefore encouraged to include this requirement into any proposed rule that may be generated as a result of this report.

[16] Any possible rulemaking would only be applicable prospectively at the time of adoption.

V. Conclusion

As Fact Finding Officer, Commissioner Sola believes that by issuing the above referenced requirements through the rulemaking process, both the industry and the consumer will be well served. A clear and consistent policy toward ticket refunds as well as the financial responsibility requirements will eliminate uncertainty on the part of the consumer and will provide clear terms upon which industry may plan for future operations. Commissioner Sola encourages the Commission to instruct staff to initiate the rulemaking process codifying the proposed requirements and filing an appropriate notice in the Federal Register within 60 days of Commission action upon this proposal.

Commissioner Sola will continue to move forward with Fact Finding 30 and will report back to the Commission with additional observations and recommendations.