



Federal Energy Regulatory Commission
January 18, 2007
Open Commission Meeting
Discussion Item M-3

"Good morning, Mr. Chairman and Commissioners. My name is Robert Pease, Director of the Division of Investigations, in the Office of Enforcement. With me at the table is Lee Ann Watson, Deputy Director of the Division of Investigations, and behind us are other staff members whom I will introduce at the end of this presentation. Lee Ann and I are here to present stipulation and consent agreements the Office of Enforcement has reached with five electric companies, PacifiCorp, SCANA Corporation, Entergy Services, Inc., NorthWestern Energy, and NRG Energy, Inc. These settlements represent the first exercise of the enhanced civil penalty authority Congress granted the Commission under the Energy Policy Act of 2005. Together, the settlements call for \$22.5 million in civil penalties. They involve tariff, rule, standards of conduct and business practice standards violations.

In reaching the terms of these settlements, staff was guided by the mandates set forth in the Federal Power Act and in the Commission's Policy Statement on Enforcement, which was issued a little over a year ago to implement the Commission's enhanced penalty authority. The statute requires that the penalties take into account the seriousness of the violations and the company's efforts to remedy them in a timely manner. In weighing these elements, we looked to the detailed factors spelled out in the Policy Statement, which include such matters as whether the violation caused harm, whether the violation was the result of manipulation or deceit, whether the company has a history of violations, whether senior management was involved, whether the company has a compliance program, and whether the company took prompt action to address the violations.

In brief, the main features of the settlements are as follows:

- PacifiCorp agreed to pay a \$10 million civil penalty in settlement of 329 post-August 8, 2005 tariff violations, all of which involved the misuse of network transmission service to facilitate off-system sales. Additionally, PacifiCorp voluntarily paid \$884,000 to network transmission customers for foregone transmission revenues, and has made internal accounting transfers of its point-to-point revenues from its merchant function to its transmission function. These violations arose under prior ownership, and the new owner has committed to preventing any reoccurrences.
- SCANA Corporation agreed to pay a \$9 million civil penalty, \$1.4 million in disgorgement of profits and \$400,000 to retail ratepayers for foregone transmission revenues, in settlement of 49 post-August 8, 2005 tariff violations involving the misuse of network transmission service to facilitate off-system sales.
- Entergy Services, Inc. agreed to pay a \$2 million civil penalty in settlement of voluminous tariff and regulation violations involving the processing of transmission service requests, including the failure to post required information on its OASIS. In addition, it has agreed to contribute \$1 million to the Nike/Entergy Green Schools for New Orleans Partnership, which will build energy efficient green schools to

replace schools devastated by Hurricane Katrina. The inclusion of this feature in the settlement package is unusual, if not unique, and represents a recognition of the extraordinary challenges presented by that natural disaster.

- NorthWestern Energy agreed to pay a \$1 million civil penalty, in settlement of 39 post-August 8, 2005 tariff and business practice standards violations involving the failure to act on certain transmission requests within 30 days.
- Finally, NRG Energy, Inc. agreed to pay a \$500,000 civil penalty, in settlement of four tariff and rule violations involving the misrepresentation of a generating unit's availability. Although misrepresentation is a serious matter, our investigation disclosed that in this case the violations related to an isolated incident which was the decision of a single employee, and was contrary to NRG's practices and protocols.

In addition to these payments, all five companies have agreed to compliance plans, designed to ensure that the tariff and rule requirements that were violated will be correctly followed in the future.

Four of these investigations were triggered by self reports from the company, and the fifth by a Hotline complaint. Importantly, since the effective date of the Enforcement Policy Statement, the Commission has received over 40 self reports. The vast majority of these have been resolved without the imposition of penalties, and many without investigations. And, in the self-reported settlements before the Commission today, the dollar amounts staff sought were considerably less than they would have been had the companies not self reported.

Staff believes the settlements reached in these investigations represent fair and equitable resolutions of the violations involved, and we present them to you for your consideration.

I would like to introduce the staff members who worked on these investigations and ask them to please stand. On PacifiCorp: Martin Ramirez, Mark Higgins, Arnie Quinn and Jesse Halpern. On SCANA Corporation: Kathryn Kuhlen, Arnie Quinn and Jesse Halpern. David Tobenkin, who could not be here today, also worked extensively on this investigation. On Entergy Services: Todd Mullins, Demetra Anas, Helen Shepherd, Eugene Grace and Eric Hsieh, who is now with the Office of Energy Markets and Reliability. On NorthWestern Energy: Roger Morie, Kathryn Kuhlen and Arnie Quinn. We also received assistance from Gary Cohen and David Withnell from the Office of General Counsel. Marvin Rosenberg, who recently retired from the Office of Energy Markets and Reliability, also contributed significantly to this investigation. And on NRG Energy: Mary Kipp, Young Yoo and Julia Tuzun. I would like to personally thank staff for their hard work on these cases.

We would be pleased to respond to any questions you may have."