



Federal Energy Regulatory Commission
May 15, 2008
Open Commission Meeting
Discussion Items M-1, M-2, M-3 and M-4

"Good morning, Mr. Chairman and Commissioners. Together we present to you four draft orders addressing issues and concerns raised at the Conference on Enforcement held by the Commission in November of 2007. I will present two of the four draft orders of our enforcement package, the Revised Policy Statement on Enforcement, Item M-1, and the Final Rule amending 18 CFR § 1b.19, Item M-4.

The Revised Policy Statement supersedes the Commission's previous Policy Statement on Enforcement, issued shortly after enactment of the Energy Policy Act of 2005. It reflects the experience the Commission has gained with the enhanced enforcement tools granted by that Act, and also responds to concerns from regulated entities for more transparency in our enforcement activities.

The draft statement describes the processes both of an audit and an investigation. It presents the considerations staff employs in deciding whether to open an investigation and to close an investigation without action. In those cases where further action is warranted, it discusses the two options available, settlement or show cause proceedings. It also presents the factors considered in determining the appropriate remedy to apply in a given case.

Finally, the draft statement notes the Commission's intention to issue an annual report summarizing its enforcement activities for the preceding year, in order to give the regulated community a fuller picture of the work of the Office of Enforcement.

The draft Final Rule amending 18 CFR § 1b.19 responds to concerns of regulated entities regarding their right to submit arguments to the Commission in the event staff makes a recommendation that an order to show cause should be issued. The amendment provides that, except in extraordinary circumstances, entities are to be notified ahead of time that staff intends to seek such an order. After notification, the entity will have 30 days to submit a response, which will be presented to the Commission at the same time as staff's recommendation.

That completes the presentation of Items M-1 and M-4.

Good morning Mr. Chairman, Commissioners. Item M-3 is a draft notice of proposed rulemaking that would solicit public comment on possible revisions to the Commission's rules on off-the-record, or ex parte, communications, separation of functions and intervention. These revisions would apply to proceedings arising out of investigations under Part 1b of the Commission's regulations.

Under the draft proposal, contacts between investigative staff or outside persons, on the one hand, and Commissioners and decisional staff, on the other, would be permissible under the Commission's regulations during an investigation. The cutoff point would be the Commission's decision, if it occurred, to initiate enforcement proceedings through an order to show cause or the initiation of a civil action. After such an issuance, investigative staff and outside parties would no longer be able to contact Commissioners or decisional staff. This would be true regardless of whether the Commission established a trial-type or paper hearing, something that is not clear under the current rule. From that point forward, certain employees within the Office of Enforcement will be designated as decisional for

purposes of the relevant proceeding, while all other Office of Enforcement employees will be non-decisional.

The draft proposal to revise the Commission's regulation on intervention is intended to clarify the application of that rule to proceedings arising from Part 1b investigations. The current regulations specifically cover only the investigation itself, not possible subsequent proceedings. The draft proposal seeks public comment on a revision that would state that intervention is not available as of right in enforcement proceedings arising from Part 1b investigations. This would leave the Commission with discretion to permit intervention in appropriate circumstances. An example would be a situation where a third party sought to determine the impact of the resolution of the proceeding on its own interests.

That concludes my presentation. Item M-2 will now be addressed.

Good morning, Mr. Chairman and Commissioners.

In addition to the matters addressed in Items M-1, M-3, and M-4, several commenters participating in the November Enforcement Conference also asked the Commission to provide additional mechanisms for obtaining staff guidance regarding potential compliance issues outside the context of the Commission's enforcement activities. The draft Interpretative Order presented as Item M-2 responds to these requests, expanding the existing opportunities for obtaining staff guidance and implementing a new Compliance Help Desk to assist the public in reaching the appropriate member of staff for guidance on a particular issue.

First, commenters requested that the Commission expand the No-Action Letter process. The draft order grants the requests, allowing No-Action Letter requests to be submitted for any issue that falls within the Commission's jurisdiction, except for matters related to the licensing of hydroelectric projects, certification of natural gas pipelines, and operation of LNG terminals, and issues related to the enforcement of electric reliability standards. The draft order concludes that alternative compliance programs in place for those particular subject matters provide adequate opportunities for obtaining guidance.

Second, the draft order provides for the creation of a Compliance Help Desk on the Commission's website. Through the Compliance Help Desk, persons or companies that are or may be subject to the Commission's jurisdiction, or that otherwise affected by jurisdictional activities, will be able to submit compliance-related questions that will be forwarded internally to the appropriate staff member for a response. This website feature will allow members of the public to easily reach Commission staff when compliance questions arise.

Third, the draft order directs staff to hold periodic workshops with the regulated community to discuss areas of concern regarding compliance. Through these workshops, the regulated community can help staff identify areas in which additional clarity is needed, and staff can provide advice regarding compliance pending further action by the Commission.

Finally, the draft order affirms and describes each of the additional, existing mechanisms available to those seeking guidance regarding compliance-related issues. These include petitions for declaratory orders, requests for General Counsel opinion letters and Chief Accountant accounting interpretations, Enforcement Hotline inquiries, and informal meetings and communications with staff.

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This concludes my presentation of Item M-2, and our joint presentation of the enforcement package. We are available to answer any questions you may have regarding these draft orders."