



Federal Energy Regulatory Commission
October 16, 2008
Open Commission Meeting
Staff Presentation
Item M-3

"Good morning Mr. Chairman and Commissioners. Agenda item M-3 is a draft Policy Statement that provides additional guidance to the public on the importance of good compliance practices by entities that are subject to the Commission's regulatory requirements. The statement draws upon the Commission's experience in utilizing its enhanced civil penalty authority and upon the dialogue at the staff workshop on compliance held July 8, 2008. This Policy Statement supplements the Policy Statement on Enforcement issued May 15, 2008, and underscores the Commission's central goal of achieving compliance.

The Commission has consistently emphasized the importance of good compliance practices. In the 2005 Policy Statement on Enforcement, the Commission encouraged companies to develop a culture of compliance and said that credit would be provided in determining penalties if the company had an effective compliance program. In the Revised Policy Statement earlier this year the Commission listed several actions that are indicative of a strong compliance culture and said that if a company in violation is found to have poor compliance practices, a condition of settlement may be a requirement to develop a comprehensive compliance program.

The present Policy Statement takes additional steps to encourage companies to be proactive and aggressive in adopting better internal compliance practices. First, the Policy Statement describes key factors related to effective compliance that the Commission will take into account in determining appropriate sanctions for violations. Second, the Commission explains the benefit to companies that embrace strong and effective compliance practices by stating that if a company has taken the initiative to adopt a strong compliance program but nonetheless has a violation, the Commission may reduce or even eliminate the civil penalty that otherwise would be imposed for the violation.

The four factors that characterize vigorous and effective compliance programs are: (1) active engagement and leadership by senior management; (2) preventive measures appropriate to the circumstances of the company that are effective in practice; (3) prompt detection of problems, cessation of misconduct, and reporting of a violation; and (4) remediation of the misconduct. Where a company's conduct shows it has embraced these key elements of effective compliance and acted accordingly when a violation nonetheless occurs, the Commission will in most cases provide substantial credit.

There is no magic formula for an effective compliance program. The Commission previously said that "no one size fits all" and again in this Policy Statement makes clear that each entity must determine the best approach to compliance given all the relevant factors, such as the size of the company and the nature and extent of its operations that are subject to Commission requirements. Good compliance programs can be resource intensive. Regardless of how companies approach their compliance activities, the Commission will consider the end result—whether the compliance program worked as it should.

With respect to the credit provided for effective compliance practices, the Commission retains discretion to apply all appropriate sanctions, including a civil penalty, depending on all of the circumstances of a violation. However, the Policy Statement provides that for violations that are not serious, that is, that do not involve significant harm, risk of

significant harm, or damage to the integrity of the Commission's regulatory program, and where the company has demonstrated all four elements of effective compliance practices, the Commission may reduce the civil penalty that would otherwise apply or even eliminate the penalty.

That concludes my presentation. I would be pleased to respond to questions."

