



Federal Energy Regulatory Commission
March 18, 2010
Open Commission Meeting
Staff Presentation
Item M-1

"Good morning Mr. Chairman and Commissioners.

Agenda item M-1 is a policy statement promulgating a set of Penalty Guidelines to be used in Commission enforcement actions. These Guidelines are modeled on the sections of the United States Sentencing Guidelines that apply to organizations in federal criminal cases. This proposal would be the most recent in a line of policy statements and initiatives the Commission has implemented since passage of the Energy Policy Act of 2005 to add greater fairness, consistency, and transparency to our enforcement program. While application of these Guidelines in a given case would be discretionary and not mandatory, staff believes the Guidelines will promote transparency by providing organizations more notice and certainty as to how the Commission will determine civil penalties.

The Commission's approach to determining penalties has evolved during the four-and-a-half years since EAct 2005 first went into effect in August 2005. The Commission has carefully considered how to determine penalties, weighing the costs and benefits of different approaches and closely examining how other federal agencies calculate civil penalties. In particular, the Commission has paid attention to the United States Sentencing Guidelines because they rely on many of the same factors that are at the core of our enforcement program. For example, the Sentencing Guidelines consider the seriousness of an offense by calculating the gain to the organization or the loss caused by the misconduct. The Sentencing Guidelines also consider the organization's culpability, including whether the organization has a prior history, whether the organization has self-reported the offense, and the presence or absence of an effective compliance plan. These factors have also been key aspects of the Commission's penalty determinations so far.

Staff now believes that it is in the public interest to advance our past use of the Sentencing Guidelines' principles by formally implementing a Guidelines approach patterned after the Sentencing Guidelines, which apply these factors in a transparent and focused manner while still allowing for the discretion to depart from the indicated penalty where necessary.

I'll now turn to Jeremy to discuss in more depth the policy reasons supporting the adoption of a Guidelines approach.

This proposal reflects an ongoing effort to bring greater fairness, consistency, and transparency in the enforcement program. The adoption of a Guidelines approach promotes greater fairness and proportionality by explicitly indicating how penalties will be adjusted for misconduct of differing severity. Using Guidelines to determine penalties also promotes consistency by basing the penalty calculations on a set of uniform factors that are weighted similarly for similar types of violations and similar types of violators.

Additionally, using Guidelines provides greater transparency by providing notice to entities as to how we will determine civil penalties in enforcement actions. This additional transparency will add to the regulated communities' confidence in the fairness and consistency of our enforcement program. This approach also avoids potential confusion in the industry regarding the bases behind particular penalties. Finally, organizations will gain a greater understanding of which types of violations the Commission views as most important. This, in turn, will help organizations best allocate resources to the most

important compliance objectives, leading to more robust and effective compliance.

In order to answer questions from industry and other members of the public on the interpretation and application of the Guidelines, Staff will hold a workshop on April 7 at 9 a.m. in the Commission meeting room.

That concludes our presentation. We would be pleased to respond to questions.”