



# FEDERAL ENERGY REGULATORY COMMISSION

**Date** May 15, 2008

**Chairman Joseph T. Kelliher**

**Docket Nos.** PL08-3-000, PL08-2-000, RM08-8-000 and  
RM08-10-000

**Item Nos.** M-1, M-2, M-3 and M-4

## **Statement of Chairman Joseph T. Kelliher on Enforcement Package**

"Today, the Federal Energy Regulatory Commission approves an enforcement package designed to strengthen our enforcement program and assure that our program is dedicated towards firm but fair enforcement. The package achieves this by adopting and proposing reforms that should facilitate compliance, assure fairness, and protect the integrity of our conduct of investigations and enforcement actions. The package also provides greater clarity in our enforcement process, including how we conduct audits and investigations.

The modern FERC enforcement program is less than three years old. I believe we have properly exercised our new enforcement authority over this period, and believe we have shown appropriate discretion in determining penalty amounts. In only two instances have we proposed maximum or near-maximum penalties, in cases involving serious allegations of market manipulation. Most investigations have been resolved without the payment of any civil penalty. Roughly a quarter of our investigations have resulted in payment of civil penalties, penalties that do not approach maximum levels. These lower penalties are appropriate for less serious violations.

We are dedicated to continuous improvement in our enforcement program, as in other mission areas. The purpose of the November 2007 enforcement conference was to discuss possible improvements. We have studied other regulatory models for enforcement. We have been careful and deliberate in our approach to changes in our enforcement program. Today, we take an important step in the development of the FERC enforcement program.

I would like to discuss the major elements of the enforcement package:

### Compliance

The object of the FERC enforcement program is compliance, and my personal priority in this area is to strengthen the compliance programs within the regulated community. As an initial matter, I believe most members of the regulated community are trying to comply with our regulatory requirements, and it is only a distinct minority that is bent on evasion. Strengthening compliance programs will pay great dividends over time, as the incidence and seriousness of violations decrease. It will also allow FERC to dedicate more of its enforcement resources to identifying and punishing those companies determined to violate our rules.

The enforcement package reflects our commitment to strengthening compliance by the regulated community. The package includes a number of important changes to that end. We make it clear that the commitment of a company to compliance will be one of the two most important factors in our determination of civil penalty amounts, along with the seriousness of offense. I think that is a very significant policy change compared to the earlier Policy Statement.





If we are going to place such weight on the strength of a company's compliance program, we must provide guidance on what we consider to be best practices. We began to do that last November, when we reviewed the approach that Shell Energy Trading took in the development of its compliance program. We will take the next step this summer, with a workshop on regulatory compliance programs. This workshop will provide a forum for the regulated community and legal practitioners to share their perspectives and experiences on a number of topics related to the development of a model compliance program. The goal is to help companies develop and implement strong compliance programs. In this review we may look at best practices in other sectors, such as financial services.

If we are going to require compliance, and noncompliance is subject to significant civil penalties, we must be clear in our regulatory requirements. Our recent action on issuing a new Standards of Conduct proposed rule demonstrates that we know we have a duty to clarify ambiguous regulatory requirements. The enforcement package makes a number of changes to provide greater clarity, by expanding the scope of No Action Letters to a much broader range of FERC regulatory requirements, by noting the other means of seeking clarification of regulatory requirements, and by announcing the establishment of a help desk.

In addition, I believe it is appropriate to hold technical conferences on discrete areas of our regulatory requirements that are highly complicated, where there may be some ambiguity in our requirements, and where the regulated community is experiencing compliance problems. For example, we could hold a technical conference on compliance with section 203 merger and corporate review provisions, given the complexity in this area. It also may be appropriate to hold technical conferences on particular subjects if we see an increase in violations in those areas.

## Fairness and Integrity

We also adopt a number of important changes designed to assure fairness in our enforcement process and protect the integrity of our program. We clarify that subjects of investigations have the right to make written submissions to the Commissioners and Commission staff at any point during the investigation. We propose changes to existing rules to clarify that before the Commission considers a show cause order, the subject – as a matter of right – can present its case as to why the order should not issue. If timely received, that submission will be submitted to the Commission in conjunction with a report by Enforcement staff recommending enforcement proceedings and considered at the same time. We propose changes to rules governing separation of litigation staff to clarify that separation occurs upon issuance of a show cause order, instead of only when and if the Commission ordered a trial-type hearing. The net effect is a broader separation of litigation staff at an earlier stage than at most other agencies.

Importantly, we restate our commitment to the highest professional standards in the conduct of investigations and enforcement actions. The Commission and its Enforcement staff have a duty to enforce the law. As we carry out this duty, we recognize that confidence in our enforcement program is shaped both by the results of our actions as well as the manner in which we achieve results.

We also take steps to protect the integrity of our enforcement program. We establish a general policy to bar contacts between Commissioners and their advisors and the subjects of investigations after the commencement of an investigation. We do so to avoid appearance issues created by private meetings with individual Commissioners during the course of an investigation. However, we also clarify that the subjects of investigations can submit their views in writing directly to the Commissioners at any time during an investigation. This ensures that the Commission will have a complete record upon which to make decisions during the course of an investigation.

I support the package, and thank my colleagues for the collaborative approach they took in developing this set of orders."

