

125 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Compliance with Statutes, Regulations, and Orders

Docket No. PL09-1-000

POLICY STATEMENT ON COMPLIANCE

(Issued October 16, 2008)

1. The Commission believes it is in the public interest to encourage companies¹ subject to our regulatory requirements to develop rigorous compliance programs that will help minimize the potential for violations of applicable requirements, and to give significant weight to those programs when we determine whether to assess a civil penalty or other remedy for a violation. Achieving compliance, not assessing penalties, is the central goal of our enforcement efforts. Improved compliance as a result of a company's commitment to and successful implementation of a strong compliance program should result in fewer violations over time. In particular, improved compliance should result in a reduction of serious violations, that is, those violations that involve significant harm, risk of significant harm, or damage to the integrity of the Commission's regulatory program. Improved compliance by regulated companies will also improve the ability of the Commission to accomplish the public policy goals assigned to it by Congress.

2. Accordingly, the purpose of this Policy Statement is to provide additional guidance to the public on compliance with our governing statutes, regulations and orders. In response to input from participants in the Commission's July 8, 2008, staff workshop on compliance, and based on our experience in implementing our new civil penalty authority thus far, we discuss further some of the factors related to effective compliance that the Commission will take into account in considering whether to reduce or even to eliminate civil penalties for violations. These factors are: (1) the role of senior management in fostering compliance; (2) effective preventive measures to ensure compliance; (3) prompt detection, cessation, and reporting of violations; and

¹ For purposes of this Policy Statement, the term "company" or "companies" includes all entities and organizations subject to our regulatory requirements.

(4) remediation efforts. The Commission will provide additional guidance as necessary in the form of additional orders or periodic workshops.²

3. We also discuss the benefits of effective compliance efforts by companies subject to our statutes, regulations, and orders. For companies engaged in wholesale electric and natural gas market activities, the range of such requirements is substantial and the cost of implementing thorough systemic protections may be significant. Moreover, even when strong compliance measures are taken, violations may still occur. In order to demonstrate the benefits that inure to companies that undertake effective compliance programs, we describe in more detail the civil penalty credit we will provide, including complete forgiveness of civil penalties under certain circumstances.

4. This Policy Statement supplements the Revised Policy Statement on Enforcement issued May 15, 2008,³ which discussed various other factors, such as harm from the violation, seriousness of the offense, self-reporting, cooperation, and other available remedies, all of which are relevant, along with a company's compliance efforts, in determining whether a civil penalty is appropriate for a violation. As discussed further herein, our policy is that if a company acts aggressively to adopt, foster, and maintain an effective corporate culture of compliance, and has in place rigorous procedures and processes that provide effective accountability for compliance, but a violation nonetheless occurs, the Commission may provide a significant reduction in, or even in some cases the elimination of, the civil penalty that otherwise would be imposed.

I. Background

5. The Commission's interest in compliance is long standing, and relates to the statutory requirement that the Commission consider what efforts a company has made to remedy a violation in a timely manner.⁴ The importance of creating a strong atmosphere of compliance in a company—both to prevent violations in the first instance and to deal promptly and effectively with misconduct should it occur—was emphasized in the Commission's first Policy Statement on Enforcement, which listed a number of factors

² *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156, at P 59 (2008) (Revised Policy Statement). As discussed below in P 7, the Commission has already held one of these workshops.

³ Revised Policy Statement, 123 FERC ¶ 61,156 (2008).

⁴ Section 22 of the Natural Gas Act, 15 U.S.C. § 717t-1 (2006); section 316A of the Federal Power Act, 16 U.S.C. § 825o-1 (2006). *Cf.* Jennifer Arlen & Reinier Kraakman, *Controlling Corporate Misconduct: An Analysis of Corporate Liability Regimes*, 72 N.Y.U.L. Rev. 687, 688 (1997) (mitigation credit appropriate for companies with effective compliance programs).

that would be considered in determining whether to provide mitigation credit for compliance efforts in any penalty decisions.⁵ These factors include the nature and structure of a company's compliance program, the active support of senior management, the scope and depth of employee training, a process for auditing compliance, and the response of a company to misconduct by its employees.⁶

6. The Revised Policy Statement carries forward these elements and additionally emphasizes the importance of "(i) systems and protocols for monitoring, identifying and correcting possible violations, (ii) a management culture that encourages compliance among company personnel, and (iii) tools and training sufficient to enable employees to comply with Commission requirements," as well as the actions a company takes to correct the activity that produced the violation.⁷ Significantly, the Revised Policy Statement elevates the importance of compliance programs by making clear that, among all the factors considered, "the most important in determining the amount of the penalty are the seriousness of the offense and the strength of the entity's commitment to compliance."⁸ The Commission also suggested specific actions to aid companies in developing compliance programs, and recognized that each company's circumstances are unique and that no one size fits all.⁹

⁵ *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068, at P 21-23 (2005) (Policy Statement on Enforcement).

⁶ *Id.* P 22.

⁷ Revised Policy Statement at P 57.

⁸ *Id.* at P 54. In addition, at the time we issued the Revised Policy Statement, we also reviewed the various mechanisms by which those seeking assistance on compliance issues can obtain guidance from the Commission or our staff. These options include declaratory orders, no-action letter requests, General Counsel opinion letters, accounting interpretations, the Enforcement Hotline, the recently-created Help Desk, pre-filing meetings, and other informal contacts with staff. *Obtaining Guidance on Regulatory Requirements*, 123 FERC ¶ 61,157 (2008). We encourage companies to make use of the appropriate Commission resources as part of their compliance efforts. Each source of guidance is somewhat different, and those who seek guidance should select the mechanism that best fits the circumstances presented.

⁹ Revised Policy Statement at P 59. The actions noted by the Commission are:

- Prepare an inventory of current compliance risks and practices
- Create an independent Compliance Officer who reports to the Chief Executive Officer and the Board, or to a committee thereof

(continued...)

7. On July 8, 2008, the Commission's staff held a public compliance workshop, which was attended by more than 400 individuals. The workshop consisted of panel presentations by industry representatives with staff and audience questions and comments concerning the development of a sound compliance program. Many useful points were made, both at the workshop and in the comments filed after the workshop discussion. The Commission encourages all interested persons to continue to share appropriate compliance-related information and to work with industry associations to develop best practices and to facilitate adoption of effective compliance measures. The Commission also will consider whether to sponsor additional future workshops or other forums to encourage the continuing exchange of ideas and best practices among regulated companies and the Commission and our staff.

8. As discussed in the Policy Statement on Enforcement and emphasized in the Revised Policy Statement,¹⁰ the Commission places great emphasis on a company's efforts to assure compliance with all applicable regulatory requirements. Given the breadth of the Commission's responsibilities, the nature of these requirements vary significantly. Some areas lend themselves to very specific mandatory compliance measures, such as hydroelectric dam safety and pipeline and liquefied natural gas construction and environmental impacts, where the Commission has developed active and prescriptive compliance programs through the Office of Energy Projects. More

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- Provide sufficient funding for the administration of compliance programs by the Compliance Officer
 - Promote compliance by identifying measurable performance targets
 - Tie regulatory compliance to personnel assessments and compensation, including compensation of management
 - Provide for disciplinary consequences for infractions of Commission requirements
 - Provide frequent mandatory training programs, including relevant "real world" examples and a list of prohibited activities
 - Implement an internal Hotline through which personnel may anonymously report suspected compliance issues
 - Implement a comprehensive compliance audit program, including the tracking and review of any incidents of noncompliance, with submission of the results to senior management and the Board

Taken as a whole, these actions facilitate senior management's demonstration of commitment to compliance, make preventive measures more effective, encourage detection and reporting of violations, and should lead to prompt and effective remediation of violations.

¹⁰ Revised Policy Statement at P 57-60.

recently, through the Office of Electric Reliability, the Commission has addressed our new responsibilities to assure the reliability of the nation's bulk power system, including allowing the electric reliability organization and regional entities to use a matrix-based approach to civil penalties for violations of reliability standards.

9. Other areas where the Commission engages in economic regulation, including the reliance the Commission has placed in certain circumstances on open and competitive wholesale energy markets as a substitute for traditional regulation, are subject to a variety of requirements, including the recent rules prohibiting market manipulation.¹¹ In certain situations, companies are in the best position to determine the risks their activities entail and how best to train and monitor employees to assure compliance.¹² Moreover, an effective compliance program will differ based on the nature of the conduct regulated. A program designed to assure compliance with specific safety, reliability, or environmental conditions will differ from one designed to prevent market manipulation, which in turn will differ from one designed to prevent discrete tariff violations. This Policy Statement emphasizes the benefit to companies that take such compliance measures seriously and implement effective programs to assure compliance in their regulated activities.

10. The Commission expects companies to invest appropriate time and effort in the creation, monitoring, and growth of strong internal compliance programs. Depending on a company's size and organizational structure, the nature and complexity of the company's involvement in activities subject to Commission regulation, and the range of compliance risks resulting from those activities, a comprehensive and effective compliance program may be time and resource intensive. The needs and circumstances of each company are unique, and we recognize that a company may meet its compliance obligation with internal resources, outside assistance, or a combination of the two. Some workshop commenters agreed with our view that there is no one template or approach for a good compliance program, and that market participants are in the best position to assess their regulatory risks and to devise the optimum mix of measures that will provide the

¹¹ 18 C.F.R. Part 1c (2008). As we noted in the Revised Policy Statement, the Commission found it impractical to develop a penalty schedule or matrix at this time given that the "complex mix of requirements cannot neatly be reduced to a penalty schedule or matrix, at least not until the Commission develops more experience in reviewing matters involving its enforcement authority." Revised Policy Statement at P 53.

¹² Charles Walsh & Alissa Pyrich, *Corporate Compliance Programs as a Defense to Criminal Liability: Can a Corporation Save its Soul?*, 47 Rutgers L. Rev. 605, 636-37 (1995) (corporations, given their knowledge of their own businesses, are in the best position to detect and deter wrongdoing).

best conditions for ongoing compliance.¹³ The elements noted in the Revised Policy Statement can be helpful, but should be tailored, along with other appropriate measures, to create a compliance program that best fits the needs of each individual company.

11. We recognize that smaller companies have more limited resources. While all companies involved in activities subject to the Commission's jurisdiction should be proactive in developing appropriate compliance programs, there is no set amount that must be invested in compliance measures and no requirement to use outside resources to devise and implement compliance programs. At the same time, companies engaging in certain activities, such as construction and operation of hydroelectric facilities, or of interstate gas pipelines or liquefied natural gas facilities, must adhere to project-specific requirements regardless of the size of the company.

12. The Commission cannot spell out what constitutes a effective compliance program in all circumstances, but we can identify the compliance-related credit factors we will consider when companies, despite strong compliance efforts, have lapses that result in violations of Commission statutes, regulations, or orders.¹⁴ A proactive approach to correcting such violations and reporting them to the Commission is demonstrably beneficial. For example, in *NRG Energy, Inc.*, NRG self-reported an intentional misrepresentation of unit availability by plant employees acting contrary to established company protocol. NRG took disciplinary action against the employees and provided exemplary cooperation with the Commission. The relatively modest penalty amount (\$500,000) is directly attributable to NRG's proactive compliance actions.¹⁵ While all of the facts and circumstances of each situation must be evaluated to determine the

¹³ These commenters also noted that smaller companies have more limited resources available to address compliance matters. *See, e.g.*, Post-Workshop Comments of the American Gas Association, Docket No. AD08-5-000, at 1-3 (filed July 22, 2008); Comments of the Process Gas Consumer Group, Docket No. AD08-5-000, at 3-5 (filed July 22, 2008).

¹⁴ "Regardless of how good a company's compliance program is, violations will occur. This is especially true of large companies." Dr. John D. Copeland, *The Tyson Story: Building an Effective Ethics and Compliance Program*, 5 Drake J. Agric. L. 305 (2000).

¹⁵ *NRG Energy, Inc.*, 118 FERC ¶ 61,025 (2007). A company's aggressive approach to correcting violations and improving compliance may also, in appropriate circumstances, lead staff to resolve violations with compliance measures rather than penalties, particularly where the violation is not serious. *Staff Report on Enforcement*, Docket No. AD07-13-000 at 22 (Nov. 14, 2007).

appropriate amount of credit given,¹⁶ it is possible to describe four key compliance factors that may lead to the reduction or even elimination of a civil penalty.

II. Factors for Vigorous Compliance Programs

A. Actions of senior management

13. One recurring theme at the July 8 workshop was the critical importance of the role of senior management in fostering a strong compliance ethic within a company. While there are numerous issues to address and steps to take to create a sound compliance program, the best program will not succeed unless senior management actively embraces the importance of compliance and sets the standard within a company for proactive compliant behavior. Developing a strong and continuing culture of compliance is a critical task for every company subject to our statutes, regulations, and orders, and the responsibility for a culture of compliance rests squarely on the shoulders of senior management.¹⁷

14. In addition to providing adequate funds and resources for compliance, there are some common steps that senior management can take to instill a culture of compliance. As noted by one commenter,¹⁸ senior management should communicate its commitment to compliance frequently, both formally and informally, to employees. Senior management should set aside the time necessary to address compliance issues as they arise, both to vet proposed actions to avoid violations and to address misconduct if it should occur. Senior management should actively encourage employees to raise questions and to obtain the views of supervisors or designated compliance personnel. Finally, senior management should assure that designated compliance personnel are actively included in the development of new transaction structures or business initiatives.¹⁹

¹⁶ We note that while credit may apply to civil penalties, if there are unjust profits, we will seek disgorgement as a matter of course. Revised Policy Statement at P 43.

¹⁷ Charles Walsh and Alissa Pyrich, *supra* note 12 at 646-649 (senior management must support a compliance program for it to be effective and supervisory personnel should be responsible for maintaining and enforcing company policy).

¹⁸ Post-Workshop Comments of JPMorgan Chase & Co., Docket No. AD08-5-000, at 2 (filed July 22, 2008).

¹⁹ *Id.*

15. Senior management may designate one or more persons as compliance officials within the company.²⁰ This may be a position devoted exclusively to compliance matters or may be an assigned duty of an employee. Compliance official independence is an important hallmark of a strong commitment to compliance. For example, compliance officials should be able to bring compliance matters directly to the Board of Directors or a committee of the Board (or equivalent governance of other organizations). The compensation provisions and reporting structure of the company should encourage the compliance officials and all employees to follow senior management's lead in embracing a strong compliance culture.

B. Effective preventive measures

16. The second factor, systematic and effective preventive measures (such as careful hiring, training, accountability, and supervision), is fundamental to an effective compliance program. It is not enough to create a good compliance program on paper; the company must carry through to implement the program with effective accountability for compliance and periodic review and evaluation of the effectiveness of the program. Although we believe companies already have strong incentives to develop mechanisms to prevent violations,²¹ it is appropriate for the Commission to give credit when companies invest in systematic preventive measures to keep the company in compliance with the Commission's statutes, regulations and orders. We also recognize that even the best efforts, fully and actively supported by senior management, may still not avoid a violation, particularly if the company is dealing with a rogue employee not adhering to clear direction from the company.²² However, it is possible to assess in general the degree to which a company demonstrates consistent serious commitment to preventive compliance measures, and demonstrates that its compliance program generally satisfied the relevant actions identified in our Revised Policy Statement. Where there is evidence that the company has adopted effective preventive measures, with the appropriate accountability and review mechanisms, we may reduce the amount of penalty that might otherwise be applied.

17. The Commission recognizes that each company's situation may be different. Companies vary widely in their size and structure, in the degree to which they participate

²⁰ Companies subject to the Standards of Conduct must designate a Chief Compliance Officer to be responsible for the company's compliance with the Standards of Conduct. 18 C.F.R. § 358.4(e)(6) (2008).

²¹ Walsh & Pyrich, *supra* note 12 at 681 (implementation of corporate compliance programs ultimately will prove cost effective for corporations).

²² As discussed earlier, this was the case for NRG, where the plant operators acted inconsistently with company protocol for reporting unit availability.

in markets or activities subject to the Commission's jurisdiction, and the compliance risks that those activities present. Because comprehensive compliance program measures can be expensive, each company has to determine the optimum investment to make in compliance measures in light of its resources and risks. The Commission will take into account the size of a company and the nature and extent of its jurisdictional activities in reviewing the adequacy of preventive measures undertaken.²³

C. Prompt detection, cessation, and reporting of the offense

18. The third factor relates to the method by which a violation is detected and the behavior of the company thereafter. There is no specific amount of time by which a company must find or report a violation in order to be considered prompt. We recognize that in some circumstances a company's inquiry into conduct by its employees may take time to determine whether an act violates our regulations or requirements, how many times the violation occurred, or what the consequences of the violations are. Prompt detection may result from a high quality and comprehensive internal monitoring system, or actively-promoted company hotline, or other measures to ensure that transactions are reviewed for conformance to regulatory requirements on a real-time basis.

19. Because the Commission encourages companies to have effective controls in place to identify possible misconduct, violations discovered as a result of systematic internal auditing and supervision programs normally will be given substantial credit. Once discovered, we expect that companies will act expeditiously to end the wrongful conduct and will report it promptly.²⁴ A company will receive credit for prompt reporting if it reports a violation to Enforcement staff shortly after discovery, or if it calls Enforcement staff to let staff know the company is investigating a matter. In other words, based on the circumstances of each case, a company can demonstrate the extent to which it was diligent in discovering misconduct, correcting the problem, and reporting the offense promptly.

²³ Under the Federal Sentencing Guidelines, discussed *infra*, small organizations are expected to "demonstrate the same degree of commitment to ethical conduct and compliance with the law as large organizations" but that "a small organization may meet the requirements . . . with less formality and fewer resources than would be expected of large organizations." Federal Sentencing Guidelines § 8B2.1 *commentary* n.2.c (2007).

²⁴ As we noted in the Revised Policy Statement at P 63, we expect companies to take appropriate steps to cure violations. For example, if a violation involves the failure to make a required filing or disclosure to the Commission or another regulator, companies are encouraged to cure the defect by making the appropriate filing or disclosure as well as reporting the lapse to the Office of Enforcement.

20. Implementation of an aggressive compliance program and strong direction by senior management to search out and report regulatory compliance issues may result in an increase of violations self-reported to the Commission. If a company demonstrates that such self-reported violations are the result of implementing increased compliance measures, the Commission will take these circumstances into account. There is no blanket waiver of sanctions in such instances, but companies that fail to report violations discovered as a result of improved compliance monitoring can expect to be penalized far more severely than if they self-report such violations.

D. Remediation

21. The fourth factor, remediation of the misconduct, is one of the statutory considerations²⁵ and is inherently case-specific. There will be fact-specific questions in each case about the steps taken by a company to end violations and remedy the misconduct. As to employees engaged in misconduct, the issue of whether disciplinary action is appropriate (e.g., reprimand, suspension, reduction in pay or bonus, termination, etc.) depends on the circumstances surrounding the offense and the involvement of supervisory personnel or senior management.²⁶ Similarly, the question of whether new or modified prospective controls are needed to prevent a recurrence is highly fact-specific. The Commission will weigh the response of a company to misconduct it discovers in determining whether civil penalty reduction is appropriate for this factor.

III. Penalty Credit

22. The factors discussed above will be applied in light of each company's commitment to compliance and the results of that compliance program. Because there are many factors to take into account in every situation, the appropriate result must be determined on a case-by-case basis. We will continue to determine whether to apply civil

²⁵ See *supra* note 4.

²⁶ Another comment at the July workshop was that there is a delicate balance to be struck when tying regulatory compliance to compensation of employees and senior management. See, e.g., panel comments of Jeff Guldner, Arizona Public Service Company; Post-Workshop Comments of the Edison Electric Institute, Docket No. AD08-5-000, at 6-7 (filed July 22, 2008). We recognize that compliance is one among several important goals for companies, and that incentives in compensation should recognize legitimate goals other than compliance. We also understand the risk that too great an emphasis on compliance in compensation may actually discourage employees or senior management from acknowledging compliance lapses within a company and self-reporting those matters to the Commission. Here again, each company must evaluate its circumstances and determine the appropriate degree to which compensation should relate to successful compliance.

penalties, or the amount of penalties, based on the totality of facts and circumstances presented, including those related to senior management's commitment and the presence of vigorous compliance measures. Such cases may provide an opportunity for the Commission to provide specific future guidance to the public on issues resolved in those cases.²⁷

23. The Commission is aware that in other contexts, specific credit is given based on the existence of an effective compliance and ethics program. For instance, the Federal Sentencing Guidelines provide reductions to the "culpability score" used to determine fines for business organizations if there is an effective compliance and ethics program.²⁸ If the organization had an effective compliance and ethics program in place, it receives a reduction from the base culpability score.²⁹ Combined with credit for self-reporting and cooperation, the compliance credit can completely offset the culpability score points

²⁷ We also note that in many instances violations reported to the Commission are closed without sanctions. These usually involve inadvertent violations or violations that resulted from errors or misunderstandings of regulatory requirements, and which were not serious. Such resolutions normally are not made public. During the first two years of enforcement activity since passage of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005), approximately 70 percent of staff investigations were terminated without any penalty, including many instances where a violation occurred. *Staff Report on Enforcement, supra* note 15, at 22.

²⁸ The Sentencing Guidelines require courts to calculate a culpability score as one step in determining the appropriate fine for an organization. Federal Sentencing Guidelines § 8C2.8(a)(8) (2007). The relationship of compliance programs to the culpability score is explained in Federal Sentencing Guidelines §§ 8B2.1 and 8C2.5 (2007). Compliance programs also may be taken into consideration in determining whether to take action against an organization. In this respect, the Sentencing Guidelines provide strong incentives for organizations to establish compliance programs. "Effective programs do not guarantee immunity from prosecution, but the existence of a qualifying compliance program may influence a prosecutor's decision to prosecute." Melissa Ku & Lee Pepper, *Corporate Criminal Liability*, 45 Am. Crim. L. Rev. 275, 297-300 (2008). Similarly, the existence of effective compliance protocols may be taken into account by the Commission in determining whether to investigate or sanction violations.

²⁹ Courts must consider whether "the offense occurred even though the organization had in place at the time of the offense an effective compliance and ethics program." Federal Sentencing Guidelines § 8C2.5(f)(1) (2007). If so, the culpability score is reduced.

otherwise applicable and, when combined with the other elements of determining fines, substantially reduce or even eliminate civil fines that otherwise would be assessed.³⁰

24. Effective compliance and ethics programs are also recognized by other administrative agencies. The Securities and Exchange Commission (SEC) has issued orders providing guidance on the circumstances under which it will give credit for self-policing, self-reporting, remediation, and cooperation.³¹ The Environmental Protection Agency (EPA) has adopted detailed incentives for self-policing to encourage discovery, disclosure, correction, and prevention of violations of environmental statutes and regulations.³² The EPA assesses penalties based on both the economic benefit a company derived from the environmental violation and a punitive “gravity-based” component. Under the EPA’s approach, the economic benefit component is still assessed, but the gravity-based component may be reduced to zero if all conditions of the self-policing policy are met fully. The Commission notes that the EPA economic benefit assessment is similar to disgorgement of unjust profits, which the Commission routinely requires.³³ The EPA’s gravity-based component is similar to a civil penalty imposed by the Commission.

25. The Commission will take an approach to civil penalties similar to those of the Federal Sentencing Guidelines and the EPA. Where a violation is not serious, that is, the violation does not involve significant harm, risk of significant harm, or damage to the integrity of the Commission’s regulatory program, and all four elements of vigorous compliance are present, the Commission may reduce the level of civil penalty that otherwise would be imposed to zero. The Commission adopts this approach to

³⁰ Even if the combination of an effective compliance program and self-reporting and cooperation reduces the culpability score to zero, under the Federal Sentencing Guidelines the application of the multiplier (based on the culpability score) to the base fine and other elements of determining the appropriate fine may still result in a monetary fine. Federal Sentencing Guidelines, Chapter 8, Part C.

³¹ *Accounting and Auditing Enforcement*, SEC Release No. 1470 (October 23, 2001).

³² *Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations*, Environmental Protection Agency, 65 Fed. Reg. 19,618 (April 11, 2000) (Audit Policy). The EPA has resolved thousands of violations through its Audit Policy and recently extended additional incentives to new owners of problem facilities on an interim basis further to increase remediation of violations. *Interim Approach To Applying the Audit Policy to New Owners*, Environmental Protection Agency, 73 Fed. Reg. 44,991 (August 1, 2008).

³³ Revised Policy Statement at P 42-43.

demonstrate the benefit to a company of developing and implementing strong compliance measures related to Commission regulatory requirements. On the other hand, where there is an inadequate or incomplete compliance program, or where despite a demonstrated commitment to compliance serious violations occur, a civil penalty will be imposed. In such circumstances, however, the Commission will consider whether, in light of all the circumstances, a reduction in the civil penalty is warranted.

26. Thus, for complete elimination of a civil penalty, a company must affirmatively demonstrate (1) that its violation was not serious and (2) that its senior management has made a commitment to compliance, that the company adopted effective preventive measures, that when a violation is detected it is halted and reported to the Commission promptly, and that the company took appropriate remediation steps. All of the components must be present for complete elimination of a civil penalty; reduction of the penalty will be considered where the company meets some but not all of the requirements. The Commission retains discretion to determine whether the actions taken by a company are sufficient to meet the requirements.

27. Given the scope and breadth of the Commission's regulatory responsibility, it is not feasible to catalog or to list examples of violations that might be eligible for an elimination of a civil penalty. We emphasize that where the violation is not serious and there is a demonstration of substantial commitment to compliance, the Commission is more likely to reduce or eliminate a civil penalty. In all instances, our goal is a firm but fair application of the Commission's civil penalty and remedial authority according to the unique facts of each case. We also emphasize that other sanctions, such as disgorgement of unjust profits and prospective compliance monitoring, may still be imposed.

IV. Conclusion

28. We remain committed to informing and updating the public concerning our enforcement policies, including our policies with respect to compliance programs. We will continue to provide guidance about our policies and to increase public understanding of all matters related to enforcement, including the importance of compliance programs by companies engaged in activities subject to our jurisdiction. As we noted in the

Revised Policy Statement, it is our desire that enforcement actions ultimately result in increased compliance with regulatory requirements and fewer violations of our governing statutes, regulations, and orders.³⁴

By the Commission. Commissioner Moeller concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁴ Revised Policy Statement at P 72.

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MOELLER, Commissioner *concurring*:

As I stated in May, “[t]hose who are subject to Commission penalties need to know, in advance, what they must do to avoid a penalty.”¹ This policy statement provides further guidance to the industry, and that is why I support it.

Nevertheless, I would also support the development of a model compliance program for the industries we regulate. Such a model program would need to be individualized to the needs of the companies adopting it, but that does not mean that the industry would not benefit from seeing a basic model containing the essentials that every program should contain. Perhaps we could even adopt several model programs; they could be tailored to each of the basic market activities and industries that we regulate.

Given that this Commission has not yet provided the industry with a model program or programs, I encourage trade associations within the industries we regulate to consider developing their own model programs. Such model programs would provide industry with an opportunity to share best practices and consider which aspects of a compliance program are so important that they belong in a model program.

Philip D. Moeller
Commissioner

¹ See Concurring Opinion of Commissioner Moeller, *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156 (2008).