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**Prepared Comments**  
**FERC Panel Workshop on Compliance Programs**  
**July 8, 2008 – Washington, DC**

**Introduction**

Thank you for inviting me to be a part of this panel workshop. I hope to provide you with some useful perspectives to consider as you continue your research into how companies should develop sound regulatory compliance programs. The key point of view I would like to share with you is that developing a regulatory compliance program can be accomplished in a methodical manner. There are very practical ways that companies can begin the process of developing a compliance program. What I will share with you are some of the leading practices for doing so. Before getting into these leading practices, I thought it would be helpful to provide a little background on the practice that I am a part of within Deloitte & Touche.

**Client Guidance on Compliance**

Deloitte itself has a rich history in assessing companies' financial performance and financial reporting. Along with these auditing services, we also help clients assess enterprise risks, including those related to regulatory compliance. We have worked with a number of energy clients that are regulated by FERC to help them develop various components of their regulatory compliance programs. In support of these advisory services we have applied a variety of analytical tools including capability maturity models, compliance capability assessment tools, and leading practice comparative data. All of this has been geared toward enabling companies to be effective and efficient in how they leverage resources in the pursuit of compliance. Most importantly, the efforts we have assisted clients with have yielded practical approaches to developing and deploying compliance programs in their organizations.

**External Issues**

What I would like to turn to now are some of the external issues affecting market participants and how regulatory compliance has evolved. Regulatory compliance in the past was marked by some of the following attributes:

- One, a low likelihood of monetary penalties for non-compliance
- Two, a heavy reliance on companies doing the “right thing”
- Three, many companies treating regulatory compliance as a “check the box exercise,” and
- Four, few companies using tools to help them manage and monitor their varied compliance requirements and risks

When we talk about how companies should develop regulatory compliance programs, it's important to consider the market and regulatory environment that exists today. The regulatory environment, from the perspective of market participants, is highlighted by:

- One, a regulatory enforcement body (i.e., the FERC) which can impose penalties for non-compliance that can be sizable
- Two, an expectation that companies are infusing or already have in place a “culture of compliance” throughout their organizations
- Three, a demand by corporate governing bodies that the companies they oversee are adequately addressing the compliance needs of the company by considering the people, systems, policies, and controls that are in place to ensure compliance
- Four, a recognition that a “check the box” approach to compliance is no longer adequate and can expose a company to significant risk, and
- Five, rating agency consideration of the compliance practices of a company in the determination of credit ratings

### **Compliance Program Leading Practices**

Now that I've established a backdrop, let's get into the leading practices. At the request of Commission staff I selected several of the agenda topics to address. Deloitte has assisted a variety of clients with each of these topics, so the comments that follow are grounded in our direct experience helping others successfully address these issues. The four compliance program components I will discuss are:

- Identifying and prioritizing risks;
- Developing an appropriate organizational structure;
- Designing record keeping and retention policies; and
- Establishing accountability and reporting systems

*First I'll address identifying and prioritizing risks.* When developing a regulatory compliance program it's useful to begin the process with identifying the requirements that are applicable to the company. In identifying the requirements, you will identify the risks. Once identified, the company should have in place a regularly updated risk assessment program that relies upon a recognized risk framework. This risk assessment program will be relied upon to rank and prioritize risks with the aim of establishing treatment plans for the most serious risks. When we have worked with clients on enterprise risk assessments, we have found that whoever is responsible for the identification and prioritization of risks should have clear organizational accountability for execution of the risk assessment process. Also, the process should engage both business and functional leaders so that there is buy-in to the results and the ultimate risk management and monitoring plans. The goal is to create an operating environment where you have no compliance surprises.

*Second, I'll address some of the considerations associated with developing an appropriate organizational structure* – It's important to have senior level leadership commanding a company's compliance program. That means having a vice-president or equivalent that is responsible for regulatory compliance. In working with a number of clients on this topic, we have found that when senior level compliance leadership is present, the sustainability and persistence of the compliance culture is stronger from the management ranks through the operations ranks. In the absence of such compliance leadership, issues emerge that can challenge a company's ability to consistently demonstrate regulatory compliance. One example we have seen in several client situations is the difficulty in leveraging resources across business units to satisfy compliance demonstration or reporting requirements. Other examples include:

- Gaps in organizational controls;
- Inadequate transparency into the operational risks of the company; and
- Inefficient or redundant compliance processes and systems

In terms of an overall organization, leading practice entails operating a compliance function in a highly integrated manner. In addition to having information systems that support the management and monitoring of risks, the compliance department should have funding that is adequate to efficiently handle routine, investigative and discretionary responsibilities. Unfortunately there is not a magic number here. The appropriate level of funding depends on the breadth and depth of the market operations in which a company engages. Regardless of the size of the compliance organization it must have the formal authority and independence to carry out its duties separate from organizational business line functions.

*Third, I'll address some of the issues to keep in mind regarding the design of record keeping and retention policies* – We have found that this program component is central to a company being able to communicate its track record of performance relative to compliance both internally and externally. Record keeping and retention enables companies to conduct forensic assessments, evaluate potential instances of falsification or manipulation, and respond to regulatory and legal inquiries, among other things. The policies should identify the requirements for retaining transaction histories, the format of such information and the protocol for handling violations therein. When determining what to build into these policies, consideration should be given to three basic areas. Number one is the records that will be needed to support the demonstration of compliance. Second is having a means of keeping policies and procedures current by each business unit and enterprise wide. And last, consideration should be given to the IT capabilities and functionality that will be needed (e.g., report generation). An efficient process for a compliance program is to have the ability to meet current and future compliance, legal and governance responsibilities. Where we have seen successful management of this issue, clients have clearly addressed all three areas.

*Fourth, I'll mention briefly our perspective on establishing accountability/reporting systems* – This component represents what many of our clients consider to be the backbone of their compliance programs today – the information system that is used to identify responsibilities for various compliance requirements. Although some companies rely on spreadsheets and database programs to help them manage their compliance requirements, more formal Risk Reporting and Monitoring tools are becoming the leading practice for companies managing FERC compliance requirements today. These tools come with a wide variety of different functional capabilities for document management, responsibility delegation, reporting, and requirement due date notifications. In general, these tools are being used by companies to understand and manage their business and compliance requirements. They can provide timely and accurate information and performance indicators that meet the needs of different levels of management who want to understand where the company stands with respect to its compliance performance at any point in time. A few of the key considerations for companies that are in the midst of considering a Risk Reporting tool include assessing the reporting capabilities of the tool to ensure it will meet the needs of different levels of personnel in the organization. Companies may also consider evaluating the reliability of the reporting function to ensure that it provides a timely and accurate representation of the businesses performance. These tools should not create more work for the organization, but should result in a more efficient and effective overall process for demonstrating compliance. One caveat to note about these tools is that they do not take the place of having rigorous policies and procedures and clear lines of accountability. They should be viewed as an enabler of compliance.

### **Concluding Thoughts**

In moving from these points of view regarding considerations for the different components of a compliance program, I would like to wrap up with some concluding remarks. Companies that are looking to establish an integrated compliance program recognize that this is not a task that can be accomplished in a month or two. Developing a program will take many months to structure and deploy within an organization. The types of business units that will be involved and/or represented in this effort include compliance, legal, IT, internal audit, and operations. Each of these groups will provide key inputs for the structure of a compliance program that is adopted. Shifting to a culture of compliance throughout an organization – from Senior Management through to operations personnel – will take time, but it is important to remember that it will be a collaborative effort, not one that can be delegated to operations, IT, or compliance alone. The demonstrated commitment of senior leadership is critical to initiate and sustain a compliance program as well.

Some companies have chosen to maintain separate compliance programs for their respective business units, and others have opted to establish more integrated programs that focus on centralizing the systems, controls, reporting, and oversight. Whatever approach is chosen, it is important that the compliance oversight function be independent

from those that are involved in the day-to-day execution of business activity. Each organization should decide for itself whether a centralized or decentralized model will work best in light of its business strategy. What is important is providing management and supervisory personnel adequate insight into transacting activities so that they can have confidence that the company is acting in a manner that is consistent with both corporate standards of conduct and regulatory requirements.

As I noted at the outset of my remarks, whether you're in the midst of revamping your existing compliance program or are looking to build a compliance program there are practical steps that can be taken. Some of these steps include conducting periodic compliance risk assessments, establishing an independent compliance function, inventorying enterprise records management needs, and establishing routine mechanisms for ensuring ownership and accountability of compliance requirements.

I want to thank the Commission Staff for providing us this opportunity to present our point of view regarding the development of a sound compliance program, and I look forward to answering any questions you have.