



FEDERAL ENERGY REGULATORY COMMISSION

October 16, 2008

Docket No. PL09-1-000

Item No. M-3

Chairman Joseph T. Kelliher

Statement of Chairman Joseph T. Kelliher on Compliance with Statutes, Regulations, and Orders

"Today, the Federal Energy Regulatory Commission takes another significant step in the development of its enforcement policy, with issuance of the Policy Statement on Compliance. The purpose of the policy statement is to encourage companies subject to our jurisdiction to develop rigorous compliance programs that will minimize the potential for violations of our regulatory requirements.

Achieving maximum compliance with our regulatory requirements is the central object of our enforcement program. In my view, we cannot reasonably achieve that goal unless the companies we regulate make a strong commitment to compliance. If regulated companies and other entities make such a commitment, the natural result should be fewer violations over time, and a significant reduction in serious violations. For that reason, promoting effective compliance programs is in the public interest.

Last May, the Commission issued a package of orders that represented a major step in development of our enforcement policy. We clarified that the two most important considerations in the determination of a penalty amount would be the seriousness of an offense and the strength of a regulated entity's commitment to compliance.

In my view, it is necessary that the Commission take the next step and provide further guidance on what we believe constitutes an effective compliance program. We do that today.

Specifically, the policy statement clarifies our view on the core elements of a model compliance program. First, a critical element of a strong compliance program is senior management involvement. Ultimate responsibility for compliance rests with the senior management of a company or regulated entity. It is essential that senior management accept that responsibility and instill a culture of compliance.

Second, a model compliance program includes effective preventive measures to ensure compliance. It is not enough to create a compliance program that exists only on paper. Systematic preventive measures such as careful hiring, training, accountability, and supervision can demonstrate that a paper program truly guides a company.

Third, an effective compliance program is designed to promptly detect, cease, and report violations. It is important that companies have effective controls in place designed to discover violations through systematic internal auditing and supervision. Self reporting is a necessary element of an effective compliance program, but self reporting by itself does not represent a commitment to effective compliance. We also recognize that adoption of a model compliance program may result in an increase in reported violations, as violations that previously were not identified or not disclosed are reported.

Fourth, a strong compliance program does not stop at reporting violations, it is focused on remediation. When a company commits a violation, it is important that the company take steps to remedy the



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misconduct, perhaps through disciplinary action or measures directed at injured parties. But the most vital consideration in this area is whether a company examines its controls to determine if new or modified controls are needed to prevent a recurrence. Determinations in this area will necessarily be fact specific.

We recognize that companies and entities that develop effective compliance programs may still commit violations. In that case, companies that follow the guidance we offer today can expect significant penalty credits, perhaps a full credit.

It is clear that promoting effective compliance by regulated companies and other entities is in the public interest. To that end, we are prepared to use our penalty authority to encourage regulated companies and others to develop strong compliance programs, by offering the prospect of significant penalty reductions in the event of a violation. Under the policy statement we are prepared to offer a full penalty credit in some cases.

The full penalty credit for a model compliance program would not be available for serious offenses, such as violations that involve significant harm, risk significant harm, or damage the integrity of the FERC regulatory program. Serious offenses would include, for example, market manipulation, attempted market manipulation, and the most serious reliability violations. However, it is not practical for FERC to define the total universe of regulatory requirements whose violation would be eligible for the full penalty credit.

Significantly, the policy statement was developed after studying the practices of other federal regulatory bodies and academic literature on corporate compliance programs. The policy statement reflects what we consider to be best practices to encourage effective compliance programs by regulated companies and other entities."



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