



FEDERAL ENERGY REGULATORY COMMISSION

Date May 15, 2008

Commissioner Marc Spitzer

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 Commissioner Marc Spitzer on Enforcement Package

"The Energy Policy Act of 2005 (EAct 2005) significantly enhanced the Federal Energy Regulatory Commission's (Commission) enforcement role. Among other things, EAct 2005 increased the Commission's maximum civil penalty authority to \$1 million per day per violation, expanded the scope of the statutory provisions to which civil penalty authority apply, and extended the Commission's jurisdiction to prohibit energy market manipulation and to enforce reliability standards for the bulk transmission system.

During my tenure with the Commission, I have heard repeated requests for the Commission to provide further clarification about its rules and policies. Likewise, during the November 2007 Enforcement Conference and in subsequent written comments, market participants emphasized their desire to comply with the Commission's rules, regulations but beseeched the Commission to provide industry with guidance as to how the Commission approaches enforcement matters. Today, we issue a series of orders that respond to those requests and provide further guidance regarding our enforcement policies and regulations.

The Revised Policy Statement on Enforcement provides guidance as to the Commission's approach to audits and investigations; the factors the Commission's Enforcement Staff will consider and processes they will follow in conducting audits and investigations; and considerations that the Commission will evaluate when choosing an appropriate remedy for enforcement violations. The Policy Statement indicates, and I strongly endorse, the Commission's commitment to ensuring the fairness of our investigatory process from the commencement of an investigation until it is resolved. The Policy Statement also makes clear that a subject of an investigation's exercise of its rights, including good faith disputes regarding discovery or settlement issues, will not be counted against it in determining whether the subject has cooperated with Enforcement Staff. Nor will it cause the subject of an investigation to forego possible credit for exemplary cooperation. Similarly, the Policy Statement clarifies that, pursuant to 18 CFR section 1b.18, the subject of an investigation has the right during an investigation to submit written documents directly to members of the Commission, and not just Enforcement Staff. Likewise, some entities requested that the Commission establish a mediation process to address discovery or other disputes that may arise during an investigation between Enforcement Staff and a subject of an investigation. We conclude that such processes need not be established at this time. However, we are committed to reevaluating this ruling if warranted by facts and circumstances. I am particularly interested in ensuring that discovery disputes are fairly and expeditiously resolved.

We also issue an Interpretative Order that addresses many of the suggestions raised in written comments to the Commission regarding additional methods for market participants to communicate with the Commission and its Staff. In addition to the existing mechanisms for obtaining Commission and Staff guidance, the Commission expands the No Action Letter process to include questions relating to a broad range of issues that fall within the Commission's jurisdiction. We also create a help desk portal through





which questions can be submitted regarding particular areas of compliance.

The Commission also issues a Notice of Proposed Rulemaking (NOPR) regarding "Ex Parte Contacts and Separation of Functions." In short, the Commission proposes to allow the subject of an investigation to communicate with the Commission in writing until a proceeding governed by Part 385 is initiated or a civil action is initiated. After such time, both the subject of the relevant proceeding and decisional employees from the Office of Enforcement will be barred from communicating with the Commission either in writing or orally. We also propose to categorically bar interventions in enforcement proceedings. Consistent with our commitment for a firm but fair enforcement program, these proposed changes will allow subjects of investigations an appropriate mechanism to present their positions to the Commission. I look forward to reading the comments on these proposals and the others described in the NOPR we issue today.

Further, in response to some confusion apparent at the Enforcement Conference and as detailed in written comments, we are revising our regulations to make clear that an entity has the right to submit a non-public written response to the Commission in the event Enforcement Staff intends to recommend that the Commission initiate a proceeding governed by Part 385 of our regulations or make the entity a defendant in a civil action brought by the Commission. We also clarify the timing requirements for such submissions and that, if timely submitted, the Commission will consider both the Staff's recommendation and the subject's response in deciding whether to take, and the scope of, any further action.

I strongly support the Commission's enforcement program and our Enforcement Staff. I thank our Staff for their hard work on these orders. I believe that vigorous enforcement is critical to ensuring fair, open, and transparent competitive markets. I also believe that a company's commitment to compliance is a critical consideration as the Commission applies this fair enforcement policy. However, I also recognize that clarity in our regulations and policies is essential to compliance by market participants. Our existing enforcement program is new and will continue to evolve as the Commission's objectives change. Moreover, there is always room for improvement in our programs. These orders demonstrate the Commission's commitment to responsiveness and to ongoing improvements in our program, and I proudly support them."

