



**Federal Energy Regulatory Commission  
January 18, 2007  
Open Commission Meeting  
Statement of  
Commissioner Marc Spitzer**

**Item M-3: In regards to Entergy Services, Inc. (IN07-4-000)**

"I support this settlement as a fair and just resolution of this case. I have two concerns, however.

First, based on my experience, a charitable contribution is not appropriate as a component of a civil or criminal settlement with a government agency. Government agencies should not be in the business of picking and choosing among many worthwhile charities. Government should not vest the *imprimatur* of civil approval upon any specific tax exempt entity. Nor can government vouch for the effectiveness or efficacy of any specific 501(c)(3) organization, oversee the legality of its operations nor ensure its tax exempt status will not be revoked *post hoc*. Finally, the history of charitable contributions depicts an empowerment of individual citizens to pursue worthwhile objectives through "undetached generosity." See, *Commissioner v. Duberstein*, 363 U.S. 278 (1960). Using the settlement process to "pick" a charity and quantify the amount of the donation under the guise of the Government's civil penalty authority is offensive.

Secondly, a corporate culture that tolerates the repeated transgressions over a long period of time is disturbing. While I will weigh and balance many factors in enforcement cases, I will particularly focus on whether the corporate climate encourages compliance or whether it ignores behavior that results in a pattern and practice of misconduct.

Although I ultimately agreed that the fine is reasonable, I did ponder a higher penalty amount because of the conduct and the customs in this matter. I hope the Respondent recognizes its mistakes and I expect it to implement changes to prevent recurrence."