



**Federal Energy Regulatory Commission  
November 20, 2007  
Conference on Enforcement Policy  
AD07-13-000  
Additional Comment & Questions of  
Commissioner Marc Spitzer**

"I am a strong supporter of the Commission's enforcement program and our enforcement staff. Indeed, vigorous enforcement is critical to ensuring fair, open, and transparent competitive markets. However, I also recognize that our enforcement program is new. The program must continue to evolve as the FERC's core objectives change. There is always room for improvement in our programs. With these principles in mind, I ask interested entities to address the following questions in their follow-up comments on the November 16, 2007 enforcement conference. In responding to the questions seeking suggestions, ***please be specific.***"

1. Is there any disagreement that vigorous enforcement is critical to ensuring that the markets operate in a fair, open, and competitive manner?
2. Self-reporting is necessary to the success of our enforcement program. What should the Commission do to encourage self reports?
3. Several panelists suggested that the Commission require regulated entities to implement compliance programs. What should a meaningful and robust compliance program require of a regulated entity? What steps should the Commission take to assist entities in designing compliance programs? Some panelists suggested that a forbearance period or "safe harbor" be adopted for violations resulting from implementation of a robust compliance plan. Please comment on how such mechanisms may be implemented, including whether a safe harbor period should have temporal limits or be restricted to certain types of violations.
4. Panelists raised the concern that the Commission is acting as "judge and jury" with regard to enforcement matters. What should the Commission do, or what procedures should it put in place, to dispel this concern? Please identify with specificity the provisions of the Commission's Separation of Functions Policy Statement, or other Commission procedures, that should be revised to address this concern.
5. Several panelists suggested that the Commission educate market participants about the Commission's rules and policies. What steps should the Commission take to perform such education?
6. The White Paper submitted on behalf of American Gas Association, et al. (White Paper) suggests expanding the "no action letter" program, issuing staff handbooks and creating a "help desk" as means to assist the public in understanding the Commission's enforcement program. Traditionally, however, guidance issued under such mechanisms has not been binding on the Commission and, therefore some assert, of little value. Please explain the value that the industry would receive if the Commission adopted the suggestions in the White Paper.
7. The White Paper suggests that the Commission expand the use of mediation in the enforcement process and identifies mediation mechanisms used by other federal agencies. Please identify those steps in an audit or investigation that lend themselves to mediation and how a mediation mechanism be implemented in FERC enforcement proceedings.

8. Several panelists asserted that the audit process and investigation process need to be more transparent. Please specify the steps the Commission should take, if any, to bring more transparency to those programs.

9. Several panelists mentioned that company responses to data requests may not always be as informative or as timely as the Commission would like. The flip side of this is that companies may find it difficult to respond on point due to the breadth of such requests and the inability to discern the underlying intent of the requests. As a result, there may be multiple rounds of data requests over many months. Because discovery and other legitimate procedural disputes are inherent in a FERC process, including enforcement, is there a concern that a market participant cannot adequately raise a legitimate dispute in enforcement proceedings for fear that such action may be perceived by the Commission as "uncooperative" or less than exemplary when the Commission considers penalties? If so, how should the Commission resolve legitimate discovery and procedural issues that may arise?