



# FEDERAL ENERGY REGULATORY COMMISSION

**Date** December 17, 2009

**Commissioner Marc Spitzer**

**Item Nos.** A-3, M-1 and M-2

**Docket No.** AD07-13-002, PL10-2-000 and PL10-1-000

## Statement of Commissioner Marc Spitzer on Enforcement Package

"Thank you Staff for the presentation on these items. I support the Commission's efforts in items M-1 and M-2 and am pleased to support Staff's 2009 Report on Enforcement. These issuances reflect the Commission's goal to educate those companies subject to our enforcement authority about the Commission's enforcement efforts.

With respect to M-1, I agree with my colleagues that the Secretary, upon direction of the Director of Enforcement, may issue public notice of Enforcement Staff's "Notice of Preliminary Violations" after the subject of the investigation has had an opportunity to respond to Enforcement Staff's preliminary findings letter. I recognize that this action is a departure from prior practice and that this departure may come at some cost to the subject company. As noted in the order, a "cost of accelerated public disclosure is that the entity under investigation is placed in the public eye, with possible adverse consequences to its reputation." Nonetheless, on balance, the order finds, and I agree, that public disclosure of staff's preliminary findings promotes transparency and amounts to good government because it provides the regulated community (and the public at large) with information regarding those activities Enforcement Staff believes are violative of Commission policies, rules, and orders.

With respect to M-2, I support the Commission's effort to formalize the process by which Enforcement Staff will provide exculpatory materials during investigations under Section 1b and administrative enforcement actions under Part 385 of the Commission's regulations. Although we do not believe that we are constitutionally or statutorily mandated to provide exculpatory material to investigation subjects, we believe that such disclosure is consistent with our goal of open and fair investigations and enforcement proceedings.

Finally, on the Staff's Enforcement Report, we are pleased to provide the public with a comprehensive document that describes the actions undertaken by the Office of Enforcement over the past year. During my tenure with the Commission, we have heard repeated requests that the Commission provide guidance as to how the Commission approaches enforcement and compliance matters. The staff report makes the enforcement practices and priorities for the last year and the coming year more transparent. The report also provides context on how the Commission's enforcement program works. This report furthers the Commission's goal of providing transparency of the Commission's enforcement efforts. This report should be required reading for the regulated community and the general public seeking a better understanding about how the Office of Enforcement has conducted its enforcement program over the preceding year and the priorities for the upcoming year.

I support the Commission's enforcement program and our enforcement staff. I thank them for their hard work in putting these items together."