



# FEDERAL ENERGY REGULATORY COMMISSION

March 18, 2010

Docket Nos. PL10-4-000

Item No. M-1

Commissioner Marc Spitzer

## Statement of Commissioner Marc Spitzer on Penalty Guidelines

"In 2005, Congress vested the Commission with substantial new enforcement and penalty authority.<sup>1</sup> Since that time, we have emphasized the need to issue clear orders, rules, regulations and policies to best promote compliance. Today, we continue those efforts by issuing a Policy Statement on Penalty Guidelines that sets forth the criteria we will use to determine civil penalties for violations of our statutes, rules, regulations, restrictions, conditions, or orders.

The Penalty Guidelines' criteria are consistent with and build upon the guidance we provided in our 2005 and 2008 Policy Statements on Enforcement as informed by our experience over the last several years.<sup>2</sup> Specifically, we will generate a penalty range based on the combination of: (1) a violation level, consisting of a base level that is adjusted for various factors; and (2) a culpability score, which considers an organization's past and current conduct and efforts to remedy the violation. Further, consistent with Enforcement Staff's 2009 Annual Report, the Penalty Guidelines distinguish between the types of violation and establish a corresponding base violation level and dollar amount commensurate with the violation.

Moreover, the Penalty Guidelines adjust the penalty amount based on a culpability score. Notably, the Application Commentary that accompanies the Penalty Guidelines provide concrete examples of the Commission's initial thoughts on the showing necessary to support a reduction of or increase to a base penalty amount. In this regard, the Penalty Guidelines respond to the numerous requests for information on how the Commission discounts a civil penalty resulting from a self-report. The Penalty Guidelines provide several examples of how self-reports may be credited including, for example, that if an organization reports a "violation to the Commission, exhibit[s] full cooperation in the investigation, and resolve[s] the matter without need for a trial-type hearing" the organization will be credited accordingly. Similarly, the Penalty Guidelines provide transparency through several detailed examples that explain how a civil penalty would be calculated based on the facts given.

I support the Commission's enforcement program and appreciate the hard work of our Enforcement Staff and the offices to create a useful product that will further our goal of promoting clarity to best ensure compliance. Finally, I note that the Commission is constantly seeking to improve its policies and as such, Enforcement staff will hold a technical conference to discuss how the Penalty Guidelines have worked and to permit comments and questions from the community subject to our enforcement authority.

For these reasons, I support the order."

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<sup>1</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>2</sup> *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 (2005)(2005 Policy Statement); and *Enforcement of Statutes, Orders, Rules, and Regulations*, 123 FERC ¶ 61,156 (2008)(2008 Policy Statement).