

Sponsor: Hunton & Williams

Moderator: Wayne Harris, Chief Counsel, ACES Power Marketing

Speakers:

Robert Pease, Deputy Director Investigations & Enforcement, Federal Energy Regulatory Commission

Lee Ann Watson, Director, Division of Enforcement, Federal Energy Regulatory Commission

Janice Nicholas, Chief Accountant and Director, Division of Financial Audits and Accounting, Federal Energy Regulatory Commission

John Kroeger, Managing Counsel, Division of Enforcement, Federal Energy Regulatory Commission

R. Michael Sweeney, Partner, Hunton & Williams

ASSOCIATION OF CORPORATE COUNSEL

Title: FERC's Expanded Enforcement Authority Under the Energy Policy Act of 2005: Is your company ready?

Moderator: Wayne Harris

February 22, 2006

2:00 p.m. ET

Wayne Harris: Good afternoon. My name is Wayne Harris and I'm Chair of the Association of Corporate Counsel Interview Committee. The Interview Committee is committed to providing members with timely and practical programs that provide information that members can implement in their daily practice. This program is consistent with ((inaudible)).

Today's Webcast is entitled, "FERC's expanded enforcement authority under the Energy Policy act of 2005 -- is your company ready?"

At a February 2nd, 2006 commission meeting Chairman Joseph T. Kelliher made the following statement as part of his address regarding the energy policy act of 2005 -- and I'm going to paraphrase his comments. He said in part, the energy policy act of 2005 is the most important energy law enacted in decades and represents the most significant change in commission

authority since the new deal. The new law gives us the regulatory tools to respond to changes in electricity and natural gas markets unavailable since the 1930's. It gives us stronger regulatory tools to prevent exercise of market power in electricity markets, prevents manipulation of electricity and gas markets and insures the smooth workings of electricity and gas markets.

It gives the commission robust enforcement and civil penalty authority clearly lacked in the past. It gives us major new responsibilities to establish (mentor), electrical liability standards for the ((inaudible)) power system. We have taken on these new duties and authorities with a sense of purpose, mindful of the public process and care.

This afternoon to discuss the first expanded enforcement authority I have with me today an esteemed panel consisting of four staff representatives of the Federal Energy Regulatory Commission and a partner in the energy conference group of the law firm of Huntsman and William.. As many of you know Huntsman William is this year's sponsor of the Association of Corporate Counsel Interview Committee.

First I'm pleased to introduce (Mr. Robert Keith). (Robert) is the Deputy Director Investigation Enforcer in the Offices of Oversight and Investigation. Mr. (Keith) brings more than 17 years of first experience to the OMOI and an additional seven years of the Federal Election Commission. Prior to being named deputy director in May 2004 Mr. (Keith) was director of OM -- OMOI's division of enforcement.

I'm pleased to also welcome (LeAnn Watson). (LeAnn Watson) joined ((inaudible)) in 2002. (Linda) also took market oversight and investigations was established. She is the Director of the Enforcement Division of OMOI. She spend the first 20 years of her professional career as a litigation partner in a large Chicago law firm handling complex commercial litigation. Before joining ((inaudible)) Ms. (Watson) also spent four years as an assistant counsel in Department of

Justice and offers the professional responsibility where she investigated allegations of professional misconduct against Department of Justice attorneys.

We also have Janice Garrison Nicholas who is Chief Accountant and Director of the Division of Audits and Accounting of the Federal and the Regulatory Commission. In this position -- in the Office of Market Sizing -- market over sizing investigations with responsibility for financial and operational habit and accounting habits.

The secrets ((inaudible)) executive management staff positions during her 26 year career with FERC ((inaudible)) Chief Accountant. She served as the Director of the Division of Financial Audit in the office of market oversight investigations since August of 2004.

Next we have Mr. John Kroeger. Mr. Kroeger is a Managing Counselor in the Division of Enforcement where he has worked in ((inaudible)) for the past 15 years. Prior to being named Managing Counselor Mr. Kroeger served as Senior Counsel and as a attorney investigating matters ((inaudible)) for the commissions jurisdiction. Mr. Kroeger began his career in government as an investigative attorney for the US International Trade commission.

And finally we have our (Michael Sydney) Jr. with the law firm of Huntsman and Williams. (Michael) practiced ((inaudible)) representing traditional public utilizes, independent ((inaudible)) producers and energy marketers and energy regulatory matters pending before the commission. His focus is on transmission and trading and compliance aspects before the commissioners.

Our Webcast technology allows you to send questions to our panel in real time. So we're hoping that you will use the text box in the lower right hand corner of your screen to send questions to our panel. Your questions are received anonymously and are screened for content.

I will now turn over the discuss to our panel starting with Mr. (Robert Keith).

(Robert Keith): Good afternoon. I'll first give you of course the disclaimer. Many of the comments are made here by any of the FERC staff are the comments of the FERC staff and not of the commission or even the office of marketing oversight and investigations.

Let me give you a little bit of a background. For the past 70 years since the enactment of the federal power act the commission has basically been a rate making agency. We're in the midst of a big transformation of this agency from a rate making to a regulatory agency. Despite our name the Federal Agency Regulatory Commission, we have not done as much regulation as we are doing today and what OMOI was created to help with this transition.

OMOI consists of the staff of approximately 120 staff members. Eighty-five of those staff members are in the enforcement side of the house. And enforcement by ((inaudible)) what I'm talking about are the enforcement attorneys. We also have some (acondiments) who are part of the enforcement staff to assist in our investigations and our audit staff.

Our audit staff consists of our financial branch and our operational branch. And the two teams together very often they conduct the various audits that we do conduct. The auditors are our eyes in the field and that's a big transformation all for FERC. In the past we used to focus primarily on financial issues. Today not only do we still look at the financial issues but we also look at the behavior of market participants and what we call operational audits.

For the first current laws though the commission now has an articulated enforcement policy and that simply comes down to firm and fair enforcement. John will be giving you the details in a few minutes on the number of the important orders and policy statements we did -- we have issued in the past two months.

While the commission asks a lot from it's regulated industry in return now we have announced what we will do as an agency to enforce our statues and our regulations which of course is particularly relevant considering as Wayne indicated the important new powers that congress has given us with enhanced jurisdictional authority and for this discussion most importantly \$1 million a day per violation civil penalty authority.

And what we have now given the industry as guidelines for what we would take in to account before we would recommend assessing civil penalties. We've issued enforcement policy statement. The key of course is the compliance program for the companies. That's the most important thing we will look towards -- or one of the first things at least we will look to in the company to determine how we should proceed next.

We've created clear new rules concerning the anti manipulation which are modeled after Securities and Exchange Commission rules particularly 10B5. We've created new due process rights for companies that are audited by a firm. We've issued -- we have established a no action letter and other matters.

So now we'll turn this over to John. John will give you some of the details of some of the matters I've just touched on.

John Kroeger: Thank you (Bob). OMI -- OMOI staff needs to be firm but fair in its enforcement of the commissions requirements intended to help insure open and robust whole sale energy markets free from manipulation and the use of undue preferences.

OMOI staff enforces the new anti manipulation rule, standards of conduct, codes of conduct and compliance with the open acts transmission character in addition to other commission requirements. The new anti manipulation rule is based on FEC rules 10B5. OMOI also investigates non compliance width and under takes audits with respective standards of conduct

which stayed in part to the transmission providers employees engaged in transmission system operations most functions independently from employees of its marketing and energy affiliates.

The codes of conduct govern inter affiliated transactions and seek to assure that rate payers due subsidize the operations of unregulated marketing affiliates.

Now I'd like to provide a brief listing of events relevant to the commission's enforcement program since the passage of the energy policy act of 2005 last August. Among other things the acts provided the commissions' civil panel the authority as (Bob) mentioned -- to walk through a million dollars per day per violation and explicitly made market manipulation unlawful under the federal power and natural gas act.

In October 2005 the commission issued a policy statement on enforcement to provide guidance and regulatory certainty regarding enforcement activities. The policy statement discussed the factors the commission will take into account in determining remedy for violation in order to mitigate the potential penalty. These factors include the extent of the harm, whether market manipulation was involved, whether the action was willful, whether a repeat offense occurred and whether senior management was aware of the violation among other factors.

The policy statement encouraged companies to have compliance programs in place to self support violations and to cooperate with the commission in the event violations occur. The following month the commission issued an interpretive order regarding a no action letter process to provide greater clarity to the commission enforcement programming. In the order the commission explained that companies may seek a staff refute regarding whether it would recommend that the commission take enforcement action based on a set of facts of ((inaudible)) to the commissions attention.

The no action letter process is meant to make available informal advance advice by staff on transactions that could lead to enforcement actions. No action letters are not binding on the commission. No action letters are limited to issues relating to the new anti manipulation regulation, standards of conduct and the former market behavior rules. The first no action letter was issued last month.

In January 2006 the commission issued an anti manipulation rule to implement the anti manipulation provision of the energy and policy act. The new anti manipulation rule is intended to deter and punish fraud in wholesale energy markets. In particular the commission clarifies that it will act in cases where an entity uses a fraudulent device ((inaudible)) or makes a material misrepresentation or material omission as to which there is a duty to speak under a commission filed tariff for order where there's requisites entered and where the transaction in connection with the purchase or sale of natural gas or electric power or transportation of natural gas or transmission of electric energy subject to the commissions jurisdiction.

Last week the commission issued several orders to pertain to enforcement. In these orders the commission completed the process of revamping the electric and natural gas market behavior rules in light of the new anti manipulation rule to bring increased clarity and certainty to the industry.

The commission resented market behavior rules to in six and codified a distance market behavior rules one three four and five on the electric side. The commission also proposed expending the record retention requirement from it spread in three years to five years.

And finally on the same date the commission issued an order to amp the due process opportunities for audit persons who disagree with findings or proposed remedies of draft audit reports. Under the new rule an audited person may request a paper hearing or trial type hearing to resolve disputed findings and proposed summary -- that proposed remedy -- pardon me.

And that concludes our summary of recent steps taken by the commission with respect to an enforcement program.

(Michael Sweeney): This is (Michael Sweeney). I think that the commission staff makes an excellent point and filed initial remarks about really the changes that have taken place. I think that there has been -- people have used the term C change but there has been a significant change where people in industry always ranked compliance with the commissions' regulatory requirement as a high priority but I think the expanded authority under (E pack) really -- you know underscored the significance of this activity. And what we have been seeing and hopefully some things we can ((inaudible)) is people have really reevaluated and reprioritized issues. They've -- you know picked up a bit. There is really a shift in the scope of the program where the -- I don't know -- burdens not the right term but the obligation is on the market participant or the jurisdictional entity -- or now under (E pack)-- the entity to really proactively address compliance in that by shifting the focus to market behavior its going to be up to them to demonstrate to you that they have appropriate controls in place and that their behavior is consistent with the rules.

One of the things that I think is a nice segway -- and on issues to talk about is a lot of people -- in the light of the guidance of the commission to put out recently in the ordered still struggle with the number of questions of what quote -- you know constitutes compliance. And I think on that note maybe it's an appropriate time to start walking through some topics to get into a nice iterative discussion for everyone to benefit.

Before we do that do you have any comments about the shift? Any specific comments and the structure ready -- and I see this as you're becoming more analogous with some of your sister agencies as the commission has the -- they're more about the economic regulatory agency as opposed of a rate making agency.

Male: There's no questions about these -- what (Mike) is saying is correct, just looking at the resources that the commissioner voted to enforcement efforts. When I was the director of enforcement I think we had 15 attorneys. That was it. Now we have 85 staff members of various skills set. Our auditors -- while we have a number of CPA's also consists of the economists, engineers and other energy experts who commission voted a number of resources to the enforcement effort. Enforcement is part of the policy discussions now with commission. We look to rules to see if they are enforceable, whether they're clear.

So yes, (Mike's) correct it is a (C change) here at the agency as we transform from a rate to a regulatory agency. And as a result there's also a burden on us to give the industry as much guidance as we can which is why we issued the documents that John just went over and in particular enforcement policy statements and the due process from the audit and the anti manipulation rule -- a number of key items.

(Robert Keith): I think that one of the -- it to me as a product practitioner one of the most valuable documents as been issued by (Omar) or the commission but on (Omar) related matters and personal matters is the policy statement and I think a lot as far as looking for what the commission and (Omar) itself expects from industry members. I think it provides a blue print -- for lack of a better term -- a port and I think there are -- you know as far as what's going to be required with internal compliance and self employing the critical issue that much of the industry really have to work with. I mean I think it will eventually very simple issue that you have to do it but the stake from for example the (Sarbane) ((inaudible)) materiality comment there isn't one under the policy statement and the question of why is this -- yes, I'm sure that it allows us with people frequently that are on the compliance in this equation is -- what is enough for me to come to FERC.

Well the main answer of course is going to be error on the side of telling him disclosing, self supporting violations to FERC rather than not. We would encourage you to self report virtually

anything to it. That does not mean that simply because you have reported something to us of a potential violation or an actual violation that we're going to take enforcement action against the company.

We have had a number of self reporting come to us now where we have essentially taken in the information, looked at it, saw that there was ((inaudible)), it was unintentional, no one was hurt by the behavior or the actions and we have taken no further action and we said thank you very much for reporting it to us. We appreciate your cooperation and that's the end of it.

Certainly you don't want to be in a situation where FERC is going to be conducting an audit of your company and we find out the company knew of the violation and it may not -- and it may end up being more serious than the company thought or whatever the facts end up being and the company did not disclose that to FERC -- senior management knew of the violations. We're going to look at that situation significantly differently than we would if it was self reported to us.

(LeAnn Watson): I just had to that (Bob). This is (LeAnn Watson). We've also received a lot of self reports which on their face may have appeared to be ((inaudible)) but because of the nature of them we do open an investigations on a lot of these to verify the facts that are given to us on the phone call. So it doesn't necessarily mean that there's going to be an end result of ((inaudible)) adverse to the company but we may open an investigation see what the data reflects and do some further inquiry to determine the actual facts surrounding what occurred.

(Robert Keith): Yes. (LeAnn) raises a good point. We of course have the burden on us to verify the information that the company has provided to us. That does not mean that it's going to be an investigation that's going to last a significant amount of time. The few that we have opened had a quick turn around.

Male: That raises an interesting issue people. On the ((inaudible)) side have -- you know raised questions regarding on the self reporting business does it really -- the obligation is risks ((inaudible)) office. Does it run up through the organization through senior management? I'm not sure I'm following your question exactly (Mike).

On a day to day basis there's two ways of looking at compliance when you look at a company. There's the bottom of approach or topped out or some would argue the best way is both.

(Michael Sweeney): Right.

Male: But the people on the front -- in the front office, on a front line there giving the day to day business their as familiar as it can be with your business practices. When someone's -- you know in a situation where there is a problem, if that problem's known and reported with in a reasonably quick time I'd -- it doesn't really matter who reports it. As time goes by you look further, is it going to be a question further up the chain about -- you know as far as corporate governs, corporate responsibilities.

(LeAnn Watson): Well this is -- this is (LeAnn) again. I was just -- I mean I think on one circumstance I might make a difference. As time does pass for example and our time elapses and we find out that senior management knew about it -- tried to conceal it. Frankly that's going to be -- that may be of more concern than if it was the lower ranks that concealed it and didn't tell their supervisor that they never made it clear.

(Robert Keith): And one of the things we look towards in the compliance plan is where those on the ground have the empowerment to really let senior management know what's going on and that by doing that you can create a culture of compliance. So we want those senior management and those on the ground floor to be very active in participating in the compliance plan.

There was a question that came in as what is the method of self reporting as is it calling the FERC hotline or does it involve making a filing or letter of explanation. You can call the FERC hotline. You can also call (LeAnn Watson) or you can call me at any time and self report.

Most of the ones we've gotten so far have been phone calls -- initiated originally with phone calls to (LeAnn) or myself but you can of course use the FERC hotline.

(LeAnn Watson): And I might just add they also consider making a letter of explanation. Usually the first thing (Bob) or I will ask is please send us a email detailing what you just told me.

(Robert Keith): Right.

(LeAnn Watson): Just to make sure that we've got it down correctly from what you've told us and then we go from there.

(Michael Sweeney): I guess what my question was really getting at -- what I'm hearing is that there's -- it's important to insure that there is well communications in the company going both up and down so that policies are established at the team management level--that's the culture compliance issues -- going to slow down to the front office but at the same time if issues come up would they flow upstairs and are addressed ((inaudible)) and completely where the commissions at. So correct interpretation ...

(Robert Keith): Absolutely and that would be something that we would look towards to determine whether it's a culture of compliance within a company either through self reports or when we're auditing a company. We want that type of free flowing of information within the company so that management can be involved in what is going on within the company. So yes we very much encourage that.

(Michael Sweeney): Now that really raises another interesting issue that -- you know I mentioned it in my opening remarks of what constitutes compliance in -- as a politician you sort of breath in -- that everything that comes out of the commission that relates to the CO of the council people as successfully as possible. And there's been -- yes, there's concern in the industry that they took a shift in ((inaudible)).

And one of the ways that we've look at it is that the commission orders they come out with other reports with -- and you addressed this recently in the audit order -- audit procedures order -- aren't what we would call quote un quote best practices they just try to state that guidance that you can -- you know use.

(Robert Keith): Yes. We are-we do try to give guidance and in particular audit reports that are issued; particularly those that are issued by the commission as opposed to what we call letter order issued by the director of OMOI. We recognize that our case law is new to the industry. It has been -- as we discussed earlier -- a big change by doing these operational audits and additional financial audits -- and as we've indicated a number of our orders.

Now we will be developing an anti manipulation law on a case by case basis as the other agencies ((inaudible)) and FCC have done but we've only been doing this for a few years. So we're trying to get as much guidance as we can through our audit reports. But also remember through the audit reports that these are solutions that the companies have discussed and agreed to with our staff and most solutions aren't necessarily the ones that other companies have to implement to comply with the regulations.

We start with the regulation. Regulation will acquire X and from that point on we deal with the company on how the company is going to implement that particular requirement. And that's why we don't like to refer to it as the best practices. Those are practices that we've -- that have come out in the audit reports. The company has said that, hey we recognize your concern here FERC

so here's how we're going to implement it, and we'll say fine and go forward but that does not necessarily mean that that solution is the one that all companies have to use to comply with particular regulations.

An example is for -- where companies are having meetings where you're including the marketing side with the transmission side. We don't prohibit such meetings but certainly we're concerned about flow of information from the transmission side to the marketers.

Some companies have decided they're going to have minutes of those meetings. There is no requirement that a company has to have minutes if they're going to have such meetings. A number of companies decided hey we can document it very easily by doing this -- by doing it this way or we're going to have an attorney or the compliance officer attend the meeting and verify the compliance taking place and that there's no improper exchange of information.

So there are many ways that the company can implement that particular requirement. We often dictate which ones we're only going to look to the rule of thumb.

Janice -- do you want to add anything?

Janice Nichols: Well I just wanted to also reiterate -- this is Janice Nicholas -- that again with respect to any commission order that would be precedent as far as -- commission issued order that would be precedent as to a particular recommendation. That would be -- we would expect companies to comply with that recommended corrective action going forward.

With respect to orders issued under delegated authority those again -- as (Bob) was indicating -- are settlements between the commission audit staff and the company under audit. Again they are good indicators of procedures that may be relevant for other companies and maybe a guide for others to implement any of their compliance programs.

So they are a source of information that can be used by other companies. So those audit reports that are issued under delegated authority and those that are issued by the commission directly.

(Robert Keith): One minor clarification on Janice's comments. When the commission would issue the audit report we will -- the commission will specifically mention when a particular item would have general lick ability. Not all agreements again -- even though the commission would have left would have left ((inaudible)) in order or ones that have general ((inaudible)) but we will give guidance through those orders by specifying which ones we think are ones of general practice as opposed to company specific.

(Michael Sweeney): And then a way to look at this is to include -- the ACC memory perspective is really asking -- you know CCNR action letter which would be firmer and you could take more comfort in orders -- if a company's -- if a case by case basis has -- from my perspective you could read into what was going on and tailor a peaceful procedure that captures what your getting. I image that that would be looked at least favorably by (Omar) because you're recognizing what the issue is. You're recognizing what the concern is and you're implementing something to address that.

One can differ about whether it's efficient -- insufficient but the point is there -- it's not something that time -- you know stamped by the commission saying do this. And as each company is unique we can't do a cookie cutter approach given the structure of the industry but none the less there is -- at least you can get a flavor for what type of behavior is going to be offering ((inaudible)), what type of behavior is in fair play and certain steps that you can take to at least -- through settlement or otherwise (Omar) and the commission has excepted or recognized as being compliant.

(Robert Keith): I think that's fair (Mike).

(Michael Sweeney): The good point that we've -- John wanted to get into a no action letter. Are we to imagine that those area -- it's a new area of interest?

John Kroeger: It is from our perspective ((inaudible)).

(Robert Keith): Well we mentioned just a moment ago how companies can seek informal advice from commission staff with a no action process with respect to subject matter such as the standards of conduct and anti manipulations agreement. Totally the purpose here is to permit a company that may be contemplating a certain action but may not be sure how close to the line it's coming to -- seek the advice of commission staff. The no action letter is going out binding but they carry the -- they have defense of the commission staff and should provide some protection to a company to follow the advise of the no action letter.

(LeAnn Watson): ((Inaudible)) (LeAnn) again. I would just add one thing that I don't think John mentioned is that they are public -- the no action letter is ((inaudible)) to be public after the staff issues its opinion on them.

And the other point that I just wanted to make with respect to those too. Although they are not binding they are following the model -- there's the PFCC and the FCC basically put together and then we're -- a few that are familiar with those actions know that those are not binding either but seldom if ever has commission gone against the no action letter.

(Michael Sweeney): To close the ((inaudible)) on the no action letter I'll submit another question. At this time the commission wouldn't be entertaining no action letters that are being honest with say the fairness of conduct -- code of conduct, the marketing rules but we still have some involvement OMOI ...

John Kroeger: No. They're limited ...

(Michael Sweeney): So you're not going to give it to us free.

John Kroeger: ...at this point ...

Male: In fact at this point it wouldn't be appropriate.

John Kroeger: ...limited is in the interpretive order.

(Robert Keith): However, there are other means that you can seek staff guidance on particular issues.

The hotline for here is giving guidance to the industry on particular subject or questions that are asked of the hotline. And when we try to give -- when we give advice through the hotline we are trying to give a consensus advice. We will not give you just a ((inaudible)) but if we can't reach a consensus among staff we won't offer an opinion on the particular subject.

((inaudible)) in each case there are different degrees of certainty. No action letter you've got a pretty high degree. We're saying there that we're not going to recommend enforcement action for that areas that are covered by no action. You also have a declaratory no option, declaratory order option as well as the general counsel opinion option if you want to get subjects that are not part of the no action process and you want to get a higher certainty then an informal staff view from the hotline.

Male: Yes. A question just came in and I will read it. It asks what guidance can you offer in regard to guidance to share officers in fulfilling their oversight in governess responsibilities while not engaging in day to day operations. And that's really a question for (Frisk) staff to answer but I'm just going to try to interpret this and I think what the question is getting at -- unless the person who sent it would like to clarify it -- is where is the line between when you're a shared officer and

director in the day to day operations. Is it -- maybe that's what they're trying -- I mean where is it when you have to go down to the training floor or head to a control center to address an issue.

That's how I interpret the question. Where is that line ...

(Robert Keith): Well if you're talking about shared type ...

Male: ...Right.

(Robert Keith): ...of responsibility in standards of conduct type elimination.

Male: Yes.

(Robert Keith): I don't think that's relevant when you're talking about a violation.

Male: Right.

(Robert Keith): Here you're going to confide through senior staff hey we've got a problem here -- well we think we have a problem here and maybe we should be telling FERC about it. And then we expect that senior management of the company will take a look at the situation, reach their conclusions and hopefully report that incident to the warranted department.

Male: Yes. But I'm not sure if that was exactly what the question was going ...

Male: I'm not sure if that's an interpretation of it.

Male: Yes. I mean I thought the question was are we going to -- what's the difference between you know sharing certain responsibilities and not getting to do day to day operations. And it seems to me that's a very factual -- factually ...

Male: Yes.

Male: ...intense question. It's hard to answer in the abstract but I guess one thing that we might caution against is recalling even though you may be a shared employee they still can't be a condor of information and maybe they aren't doing the actual day to day operations but they can't be you know transferring information from one side of the house to the other.

Male: Right.

Male: ...and be in the conduit because they have to walk that line carefully. But I think it's very difficult in an abstract situation to give a preferred example of what -- who is day to day and what is shared.

(Robert Keith): So an interesting ((inaudible)) if there is a concern then it would be expected when ((inaudible)) from the comments that management would -- to the extent they have responsibility for this would engage to determine what the problem is and that you're not gonna -- in that case start worrying -- that they're filling a corporate duty.

((Inaudible))

(Robert Keith): First off that's exactly the way of the compliance officer.

Male: Right.

(Robert Keith): And that's what -- they're one of the main reasons a compliance officer was opposed by the commission in the standards of conduct. So start there with the compliance officer. Have the compliance officer look into the matter, investigate it internally and see what the issue is and then you're not dealing with the shared and a conduit issue in any way.

That is the purpose of the compliance officer. The compliance officer should be a senior manager or within -- a senior in management and should have broad responsibility and should have broad reporting responsibility. So I think that's the real answer there, is go to your compliance officer.

Male: That raises -- just based on (Bob)'s comment -- the interesting point is that under the enforcement policy statement there's discussion of internal compliance programs and you know comprehensive programs and there's -- for example--((inaudible)) is kind of a great example because really the first kind of commission came out and mandated that you impose an internal program that -- they hinted at strongly in the market behavior rules and they imply that -- imposed to due diligence requirement under some of the rules that just -- actually were just ((inaudible)) filled but if the appointing is now you have a broader sort of scope is -- and it's going to force -- and one of the things that -- on the products I believe is people are thinking about if you can provide guidance is where do you place the chief compliance officer now. Is it really for the standards of conduct or is it for regulatory compliance because folks can have a chief compliance officer over the transmission function and fulfill his duties ably but he's not going to be able to do other things that may fall within it. And not that you need a single person but it would -- I think over time people are going to try to make this as efficient, as practical as possible.

(Robert Keith): Well the official perk position is compliance officers are only required to the standards of conduct. So that's really my answer. Beyond that certainly we're going to leave it to the company to determine what's the most efficient use and methods of compliance. Some companies we've looked at have decided one compliance officer for all the different functions

within the company. That's a huge responsibility on one individual and very often it's become then a group of -- that becomes a staff that's involved there with different responsibilities while reporting to one compliance officer. That's worked real -- very well on a number of companies that we've looked at.

Other companies have chosen to decentralize a little bit more. We're not going -- FERC's not going to dictate that or at least FERC has not dictated that to this point. We're going to let the companies handle -- they know their business the best and we're going to let them reach the best conclusion of what's most efficient for them. We have companies of varying size so we don't have a -- and we do not want to impose a one size fits all type of solution here.

The only requirement is you must have a compliance officer standard of conduct.

Male: Any comments on that.

John Kroeger: No. But (Mike) this is John Kroeger. I'd like to pick up on a point that you made earlier about self reporting it. Put a more positive light in it and that is that there can be benefits to self reporting. One is that the commission made clear in its policy statement if there is self reporting and its meaningful self reporting than that can have a positive impact on any sanction or remedial activity that the -- remediation that the commission or staff believes is appropriate. So you can save yourself in that way.

Secondly it's possible that if the commission staff looks into a matter that is self reported the commission staff because it is experienced with standards of conduct and related issues can find other potential areas of problems that should be addressed and there by save the company headaches in the future.

And finally this comes out particularly where the difficulty of the problems we've been trading by informing the commission staff of the activity the company can save themselves the possibility that traders or others may publicly expose the company and there by do it much more damage and ((inaudible)) for the commission first.

So there are benefits by -- accrued to the company from self reporting aside from under taking its minimal obligation under the commissions requirements. ((inaudible)) you made an interesting point, so it does tell -- does have -- excuse me -- to a comment that I have is that in addition to self reporting is the issue of cooperation and I you know -- the policy statement makes it fairly clear what un-proper the -- you know lays out criteria of what you will all deem to be not -- uncooperative conduct. And a balance is -- you know from a product practitioners view is to vigorously ((inaudible)) compliance.

You know everyone has an eye for compliance. You know it's a different industry and for people who are listening in that they ((inaudible)) energy industry, just the nature of regulation and people who have been it it's a different approach then other industries. It just it -- you know it's unique to itself.

But the point is that you -- from my perspective I want to -- a private practitioner would want to do -- or in house council would want to vigorously defend the client but at the same time not cross the line where they're not being cooperative. I mean it just -- like you're -- there's no difference then in -- then in enforcement staff for our staff -- you know doing their job to the best of their abilities. And that's you know something that I think recently both in the audit order -- audit procedures order and the policy statements -- alliance ((inaudible)) are clearly in the sand and people are much more cognizant of that.

Any comments on that?

(Robert Keith): Well for one -- a couple of things is we did not do any enforcement policy statement and made clear in the recent order on the part 31 and the audit procedures we do not require for example companies to waive rights. We will not fill you up to waive attorney clients or if you don't waive it you will not be viewed as cooperative.

You can of course vigorously defend your client. We expect you to vigorously defend your client. We do not discourage companies from coming in and saying for example on data requests that our data requests are too broad. There are times where the company might be right. We might be asking things due to the lack understanding on our part. The company can help us reach a better understanding and properly narrow the questions.

For other instances where we think our data requests are on target and then we'll tell you that. Then that's fine and we can disagree but at that point we would expect you to answer the questions that we have asked. But we will not view it as a lack of cooperation by you legitimately questioning things that we are asking of the company. That legitimately questioning what we're asking for is far different than impeding our ability to gather information.

Where companies are failing repeatedly to meet deadlines, where companies are putting up what we would consider to be frivolous reasons, those are different situations. We generally find companies to be very cooperative and to comply with what we've asked from them. But we don't expect companies -- someone has told us to just roll over anything we're asking.

We expect companies to tell us if we're wrong and we will try to correct it if we are wrong but we're going to have good reason for why we asked most of our questions. ((Inaudible))

John Kroeger: We've seen some vigorous defense. Not so much in making it difficult for audit staff or enforcement staff to get information but in the phase of the audit or investigation when it comes to time the information that needs appropriately obtained to potential violations and that's where

company counts off and they can make a very significant contribution. Not in impeding us in getting information but in the next phase of the process where we sit down and we assess what the information means in context and that's where company counsel who are vigorous can play appropriate and affective roles.

(Robert Keith): I think we got a new question John. It's referred to you personally. The question is realistically why wouldn't we rely on the hotline to be sufficient and ((inaudible)) the answer necessary to ((inaudible)) its civil penalty even though the commission prefers the no action letter approach. It probably would be the answer. We -- as I've said before we don't give advice lightly on the hotline. We try to give a comprehensive staff consensus before we'll give advice.

But the one difference is and it's very often on the hotline we're going to ask some questions to try to clarify the information as best we can but these questions are very fact specific that the companies are asking. We will not answer hypothetical questions and when we are getting this information we're not going to conduct a separate investigation to look behind everything the company is representing to us.

So if the company is relying -- is relaying to us accurate information and giving us a complete picture on what they're asking then yes, I think the companies can take quite a bit of comfort in the answers that we will be -- that they will be getting from the hotline.

(Michael Sweeney): ((inaudible)) both John's comment and just your answer to the question raises an interesting point that's worth discussing briefly is if someone calls the hotline and has a discussion with audit staff or -- no as (Omar) staff -- what is on the hotline -- it would seem to me that it would be good to have some sort of quote audit trail of that conversation at least on your side so you can at least protect yourself that I've checked in and here's the date, here's who I talked to ...

(Robert Keith): ...Oh we keep a record ((inaudible)) ...

(Michael Sweeney): Oh you do. OK.

(Robert Keith): Every hotline call that comes to the commission is recorded. ((inaudible))

(Robert Keith): We have everyone ...

(Michael Sweeney): It is recorded in the central audio recorder.

(Robert Keith): Not audio recorded. The summary is written of each call of the call including its disposition and that we've put together with calls -- our biweekly report on our hotline and that is distributed to senior management in the commission to let them know what's going on. So it's not just ((inaudible)) that we know of these hotline calls. Senior management thought the commission also is aware what will be coming in through the hotline and advise that the hotline has given to market participants.

(Michael Sweeney): Right. ((inaudible))

(Robert Keith): Anything that comes into the hotline is a big difference between that and the no action as (LeAnn) indicated is the confidentiality aspect of it. The no action letter is designed in most instances companies can request confidential treatment but in most instances we expect final answers to be public. That is not the case with hotline. It is everything ((inaudible)) the hotline is treated as confidential under one B and R investigations the same as any material that you would get during the course of an investigation or audit.

(Michael Sweeney): OK. OK. Because from my perspective I would just be doubly safe having it in the companies files for whatever reason if you're audited you can pull it out and it can match up --

staff can match up exactly -- at FERC -- it also brings up another interesting issue. And it goes really globally what we're talking about is FERC has gotten -- is changing the paradigm and has gotten increasingly sophisticated about how to approach a market, how they're going to regulate markets.

The second piece of that is the industry in turn has become increasingly sophisticated and one of the things that I would be interested in you all -- your all comments on is that the number of companies have for example used energy trading. As that industry developed risk folks and risk in internal risk management policies and really initially -- and companies could have done this from the very beginning but you know really focus on the financial aspects. Who's my counter party? What's my risk exposure? What are my bar limits? You know what is the credit of my counter party? Who am I allowed to do business with and how much? And then also who's ((inaudible)) makes decisions up the chain? That's sort of your generic risk management structure.

It seems to me that a complimentary piece one way or the other is to have a regulatory portion of that because as you get closer to the line about making decisions -- I mean people from the -- one would assume from the companies perspective will come to the commission as needed for guidance. At the same time there's day to day business that moves on so there's a premium from my perspective of thoughtful consideration for our action.

And now assuming that that thoughtful consideration takes place whether -- and you know documented, whether its in place sought for internal counsel or external counsel but someone stopped, thought, understood -- you know you can recognize what the rules are. We can ((inaudible)) in the investigation or an audit context about where is the line at but none the less there at least is a clear record that the company was thoughtful in their action which then will take you I think out of hopefully -- you know the knowingly willful arena or reckless behavior.

So you -- just as far as if at the end of the day an adverse decision -- what if -- you know they're protecting their exposure as much as they can.

(Robert Keith): The areas you're hitting on are areas that were subsidized in the old market behavior rule two how the company had a legitimate purpose for doing what it was doing and that was a defense that the company can perform. Somebody certainly can perform a defense like that in response to any investigations involving anti manipulation. We want the company to do what were outlining (Mike). We want the company to think through as part of their risk assessment take into account the regulatory requirements and particularly (FERCs) regulatory requirements.

And we appreciate when companies do that. We will look to those as being a good compliance program and those are elements which you've outlined are considered to be essential to a good compliance program. And yes we will give the company credit for that when we're looking and evaluating the actions that took place. If the company has an effective compliance plan into place and the company enforces it as opposed to just has one on paper that's a critical difference. We have seen companies where they have the best compliance plan I've ever seen but the culture within the company is not one of compliance.

Your -- we're not going to give much weight to that compliance plan. Where you have a situation where they're seeking advice as (Mike) was implying in his example then we're going to look to that as an affective compliance program.

(LeAnn Watson): There is one other thing that just occurred to me that we might want to mention. This is (LeAnn) again. That is when we're talking about all these compliance programs and self reporting and the whole litany under the policy statement you've got to keep in mind that if you go to the center of remedies and sanctions but on the other hand we also stated in our policy statement that if processes need to be disgorged or if refunds need to be made no matter what you put in place is going to change that.

This just goes to litigation really ((inaudible)) penalty and if we find that money is owed back to customers or other people that is going to be one hundred percent.

(Robert Keith): And another observation on (Mike)'s example it really -- it pays to have a compliance program that involves training of people down to this trader level program that traders are able to recognize the potential situation when it's appropriate to get their managers or the compliance officer involved ((inaudible)) the trainer was not conversing in the commissions you know basic rules and prohibitions may not recognize the situation where it's appropriate to bring in other people to determine whether a trading strategy for example would be compliant.

(Michael Sweeney): OK. This stems a question I have just from my perspective is that there's ((inaudible)) when you were talking about -- I appreciate your comments but ((inaudible)) on the mitigations. You really hit the mitigations exposure to the penalties.

One thing that comes to mind is through the course of our discussion is the issue if say on a regular basis there's a issue where it becomes a policy to be it could not be just be between OMOI and one company but it goes down the line. Is there a way for OMOI to elevate a issue to the commission and say this is a policy now that you need to decide?

I mean I can give you -- I don't want to be -- I can give a hypothetical but I'm saying is where it comes down to where we're talking about making quivel about what's the law, where are we at but it -- you know on situations it could be in any of the new rules but at one point -- I'm just curious. ((inaudible)) can you or can (Susan Quarters) -- someone at senior Omar say this is an issue that we recommend the commission you know provide either in a audit report, policy guidance or ...

(LeAnn Watson): Well I guess what I would say is that it's two things. Remember first of all most all of our investigations ultimately ((inaudible)) themselves.

(Michael Sweeney): Right.

(LeAnn Watson): And when they ((inaudible)) themselves they have to be approved by the commission. And usually our settlements are pretty detailed in terms of ((inaudible)) ...

(Michael Sweeney): Right.

(LeAnn Watson): ...do with that and we can make them more or less detailed as necessary.

(Michael Sweeney): Right.

(LeAnn Watson): And those are approved by the commission and the commission can add additional statements in the order of approving them ((inaudible)) the commission who has to do so. And then secondly I was going to point out that in December of this year the commission adopted the power staff reports and that was a situation before anti manipulation rules where there was a lot of question in particular about market behavior ((inaudible)).

(Michael Sweeney): Really.

(LeAnn Watson): And we thought that market behavior ((inaudible)) we needed to put some flesh on the bones and provide that ((inaudible)) and it was a situation where the commission agreed and adopted before they made that public ((inaudible)) their investigation. Investigative reports are non public. So that was a situation where I think we did exactly that.

(Michael Sweeney): But could you take this -- quickly it just seems to me that you are the closest to the issues. So if there's you know for whatever reason -- I'm mean I'll give an -- just an example but ((inaudible)) the code of conduct you talk about functional -- you know it's separation and independence is that the maximum ((inaudible)) -- which if you do your research there's not a lot of meat on the bone.

In the process you all are doing operational audits or if it's an investigation arguably the closest to seeing what really works and how people struggle with it. That's what I'm saying and if it's something where you think it's useful for the industry and for your organization to -- you know I was wondering if there's a ((inaudible)) for that to be ((inaudible))? That's what I'm saying. Just something like that.

Janice Nichols: Right. This is Janice. Just to reiterate and add to what (LeAnn) was speaking about.

With respect to the audit process I feel one of our responsibilities is to inform the commission. If we identify policy issues -- or issues of product likeability to a particular industry it's our responsibility to notify the commission and make them aware what we're seeing.

While we may not -- in fact find say -- for instance a particular situation a violation of the commission rules. That's not to say that they're honest areas that we might find gaps in, areas that require what we believe may need clarification and we have an ability to bubble up those issues through this report up to the commissions to make them aware of what we think are possible policy issues for commission consideration.

So there is a form and there is a mechanism that we can in fact do that under the appropriate circumstances.

(Robert Keith): And as we indicated in our recent audit due process quarter we do seek not just guidance but a consensus from the other commissions and offices as well as from the chairman. It is my

job to keep the chairman informed on different policy matters and I'm not doing my job if we don't bring those issues up to -- to at least the chairman and it's appropriate to the entire commission.

(Michael Sweeney): Let me just remind our audience we have about five more minutes left. You can go to the right hand corner of your screen and ask questions or if you are waiting for an opportunity to ask your questions please do so now.

I think we've touched on market manipulation rules. Any -- can you touch on the expanded nature because before it seems like the rules just address sellers and now we're addressing purchasers and ((inaudible)) and also other entities that are in the market place?

(LeAnn Watson): Well that's true. I mean under the new rule ((inaudible)) under the new authority given to us by congress that it goes to any entity and ((inaudible)) and we tried to in the ((inaudible)) of our orders -- the 70's ((inaudible)) it's a little different than any security context because this is one area where the energy industry differs from the security context. On what we have said in particular ((inaudible)) refer you to the actual items of the premiums on paragraph 22 we made it clear that that in committing the fraud in the entity must have intended to affect ((inaudible)) to affect jurisdictional transactions although it does ((inaudible)) in the entity it still looks at the nexus as the commission called it to ((inaudible)) transaction of some nature.

(Michael Sweeney): Yes. We have another question. I'll read it and than I think we have -- we have a new question. I'll read it and than I think we might have an interpretation follow up but the question is, do you have any specific comments on how the new enforcement rules affect RSO's slash RTO's and the ((inaudible)) --is the question they're asking about the IS RTO's or companies within an ISO or RTO?

If it's a company within the ISO RTO certainly there can be influences where there's manipulation even within the footprint of an RTO or ISO. One thing we'd look at is the company complying with

ISO RTO rules, are they -- compliance alone was not in the inquiry but that's going to be a key component in vet type of inquiry. ((inaudible)) with RTO's ISO's will be -- will we be looking to the ISO's and RTO's ?

(LeAnn Watson): Well here -- I mean those are going to be from (Wyatt). Each one of the ISO's or RTO's has their own market oversight office.

(Robert Keith): Yes.

(LeAnn Watson): If -- well the FERC simply yield to what that office does or will you conduct audits of those offices to insure that their market compliance programs are adequate?

Male: I would just add that we will work closely with the market monitors of these ISO's RTO. But in terms of for example the anti manipulation rule that is not something that the ISO RTO market monitors can enforce. That must be referred to FERC and we issue the policy statement with some referral protocols about a year ago that addressed that specifically. We can not delegate our authority on those type of matters to the ISO RTO.

(Robert Keith): We expect the I -- the market monitoring units when they have reason to believe that a violation of the ((inaudible)) refer the matter to us to investigate. The second part of your question (Elaine) will we be looking at the ISO's RTO's? Yes. We have the authority and we'll exercise under appropriate circumstances to audit ISO's and RTO. They are public utilities and subject to all the rules and regulations and commission.

Male: I've just got one final question.

(Robert Keith): Yes.

(Michael Sweeney): The final question is what confidentiality procedures or policies are in place to allow a company to share its confidential privileged information in the context of the new enforcement rules including self reporting?

(Robert Keith): Our regulations 18CFR section 1B, any information that is provided to enforcement as part of the investigation or self report is treated confidential and we are required by law to keep it confidential including up to one year imprisonment. The only way this information may public is by an expressed vote of the commission.

In situations where if you're talking about leaving privileged information such as attorney client ((inaudible)) our work product, we've worked very closely with companies to try to preserve the company for all legitimate privileges while at the same time providing the necessary information to the commission. We've done some in camera reviews. We've done other methods like that where the company -- where some of the corps ((inaudible)) are entirely appropriate and do not ((inaudible)) to the company yet still give the information to the government.

We recognize the law is not crystal clear on these issues and we will work with the companies to the extent that we can on those issues.

Male: Here let me just get everyone 30 sec -- 15 seconds to just do the wrap up if you have any comments.

(Robert Keith): I think we're fine on FERC's end. We appreciate the companies taking our rules into account and doing their risk assessments. We appreciate the many policies we've got from the companies where they shared information about the compliance programs with us and that the culture appears to be changing to where the companies realize that it is something they need to take account and companies are responsibly taking compliance under consideration.

That is the first thing we will look for is compliance before we'll go anywhere else. So we thank you for your industries continued cooperation.

(Michael Sweeney): And this is (Michael Sweeney). I've been -- would like to thank (Omar) and ACC, for folks participating, allowing me to participate. I found this personally very informative and helpful and hopefully the audience did as well.

Male: And on the behalf of Association of Corporate Counsel I would like to thank FERC staff for participating in the Webcast and Huntsman Williams and (Michael Sweeney) for their participation as well. At this point I'd like to conclude the Webcast but before you log off I'd like you to go to the Webcast evaluation. That's item seven on your list and you will be able to give a brief evaluation of this Webcast. Thank you very much everyone. Good bye.

Male: Thank you.

END