



February 4, 2010

Honorable Jon Wellinohoff, Chairman
Honorable Philip D. Moeller, Commissioner
Honorable Marc Spitzer, Commissioner
Honorable John R. Norris, Commissioner
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: Enforcement of Statutes, Regulations, and Orders,
Docket No. PL10-2-000**

Dear Chairman and Commissioners:

The undersigned trade associations (“Associations”) fully support the Federal Energy Regulatory Commission’s (“Commission’s”) efforts to develop a robust, firm and fair enforcement program that deters violations of Commission-administered statutes, rules, regulations and orders. However, we write to express concerns regarding certain aspects of the recent order in Docket No. PL10-2-000 (“Order”) authorizing the Secretary to issue Staff’s Preliminary Notice of Violations (“Notice”).

First and foremost, the Associations’ primary concern with the Order is the Commission’s decision to publicize the identity of a company that is subject to an ongoing, non-public investigation.¹ Although we appreciate the Commission’s desire to provide other market participants with information as to the types of transactions or behaviors that the Commission finds troublesome, we believe that releasing the identity of the subject of the investigation is unnecessary to accomplish this goal of transparency. In our view, any benefit to such disclosure is outweighed by the significant adverse consequences to the subject. In addition to the significant reputational harm discussed further below, these adverse consequences are quite expansive and go well beyond reputational harm. For example, public disclosure could also

¹The Associations share the concerns expressed in the request for rehearing filed by The Edison Electric Institute, the Electric Power Supply Association, the American Gas Association, and the Interstate Natural Gas Association of America regarding the disclosure of the identity of the entity subject to investigation. All of the Associations articulated this concern in a November 19, 2007 white paper in Docket No. AD07-13-000, urging the Commission to balance the need for strong enforcement actions with the recognition that enforcement actions have significant negative impact on the reputations of market participants.

significantly hurt the subject's credit ratings and could damage ongoing business negotiations between the subject and third parties.

As to reputational harm, the Commission's Order suggests that the risk of such harm is minimal because the identity of the subject is likely to become public in filings with the Securities and Exchange Commission. At most, as mentioned by the Commission, this is *only* true for publicly traded companies. For non-publicly traded companies, the reputational harm is concentrated in the moment of disclosure in the Notice. In addition, even for publicly traded companies, the investigation and potential penalty level may not necessarily rise to a level of financial materiality that would require an SEC disclosure. Therefore, the FERC Notice will not, in all cases, simply accelerate public disclosure of the fact that a company is subject to a FERC investigation. Rather, the FERC Notice will constitute public disclosure that might otherwise not have been made, such as in the case when the investigation is later closed. Alternatively, if the case is not closed, the public Notice will prevent the subject from having the option to mitigate the potential negative impact stemming from a public announcement, even when it is accompanied by a settlement.

Additionally, the Associations note that the current title of the Notice – “Notice of Violations” – could be read incorrectly to mean that the Commission has definitively concluded that some type of violation has occurred. As the Commission recognizes in its Order, the Notice is not a final determination of a violation and we ask that the title be modified to “Notice of Inquiry” or some other similar title so as not to convey a mistaken impression regarding the procedural posture of the investigation. In that same vein, the Associations ask the Commission to include in the Notice a statement clearly indicating that the Notice does not constitute a final agency determination and that the investigation is still subject to further Commission proceedings.

Further, consistent with recent practice related to show cause orders, we assume that the Notice will not include any information related to likely penalty levels or otherwise quantify the potential financial exposure of the subject and ask the Commission to so clarify.

Finally, the Associations also urge the Commission to delineate the factors to be weighed by the Director of the Office of Enforcement when considering whether to direct the issuance of a Notice, to clarify the level of detail in the information included in the notice, and to clarify that the subject will be notified in advance that a Notice will be issued.

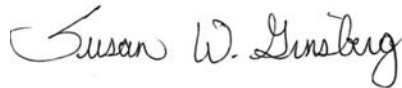
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The Associations ask that the Commission consider the issues raised above and clarify the Order accordingly. We look forward to continuing to work with the Commission and to continuing to engage in a constructive dialogue on these and other enforcement issues.

Sincerely yours,

**INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA**



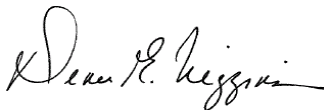
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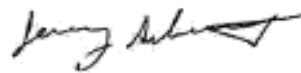
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