

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

October 31, 2019

OFFICE OF THE CHAIRMAN

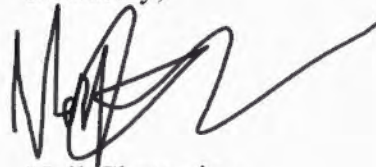
The Honorable Maria Cantwell  
United States Senate  
Washington, D.C. 20510

Dear Senator Cantwell:

Thank you for your September 19, 2019, letter regarding your concern relating to the vital role the Federal Energy Regulatory Commission (FERC) plays in preventing fraud and manipulation in our nation's energy and financial markets. I wholeheartedly agree with you that the role the Commission plays is critical to safeguarding our jurisdictional markets. That is why I am committed to maintaining a robust enforcement program at FERC. Attached, please find answers to the specific questions posed in your letter.

I hope the information I have provided is helpful. If I can be of further assistance with this or any other Commission matter, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Neil Chatterjee', with a long horizontal flourish extending to the right.

Neil Chatterjee  
Chairman

## Attachment

### Market Manipulation:

**QUESTION:** Over the past decade, market manipulation cases represented more than half of the Office of Enforcement's overall investigations, and from 2007 to 2019 FERC recovered approximately \$784 million from civil penalty actions. This year, the Commission has only recovered \$14.2 million from three civil penalty actions against five firms compared to an annual average of \$64 million. What explains this apparent decline in enforcement activity?

**RESPONSE:** The Commission's top enforcement priority continues to be market manipulation. Although underlying investigative activity has been relatively constant for more than a decade, the annual average civil penalty and disgorgement amounts have varied over the years. Each investigation involves varying amounts of market harm, gain and loss, and each takes varying amounts of time to resolve. Some years have resulted in large-dollar individual settlements (several over \$100 million) that generate high annual numbers, but that pattern is not always consistent.

Of note, the Office of Enforcement today uses a wide variety of robust surveillance screens to detect and prevent manipulation in natural gas and electric markets. When these screens are tripped, OE personnel contact market participants immediately to obtain additional information regarding their trades. Many large financial institutions no longer participate in Commission-jurisdictional markets and when market manipulation occurs now, it is much more likely to be detected early. Early detection reduces the magnitude of any market harm, thus reducing the amount of any civil penalty.

Finally, a reduction in the amounts and numbers of the Commission's civil penalty actions is a natural by-product of the maturation and increased effectiveness of the Commission's enforcement program. In particular, firms have gained significant experience with the Commission's anti-manipulation rule since it was issued in 2006, which should contribute to a reduction in the number of enforcement actions and large-dollar penalties. Moreover, the significant financial penalties assessed against firms over the past several years serve to deter manipulation in the electric and natural gas markets.

**QUESTION:** How does the number and scope of civil penalties and disgorgements compare to previous years?

**RESPONSE:** In FY 2018, there were six public civil penalty actions against five parties that recovered \$83,365,508 in civil penalties and \$66,953,806 in



disgorgement. In FY 2017, there were five civil penalty actions against six parties that together recovered \$51,841,000 in civil penalties and \$42,100,000 in disgorgement. In FY 2016, there were six civil penalty actions against eleven parties that together recovered \$12,250,225 in civil penalties and \$5,697,329 in disgorgement. And in FY 2015, there were nine civil penalty actions against eleven parties that together recovered \$26,250,000 in civil penalties and \$978,186 in disgorgement.

**QUESTION:** How many non-public investigations has the Office of Enforcement conducted this year and how does this compare to the average annual level of activity between 2017 and 2018?

**RESPONSE:** The Commission's investigations and inquiries often extend over multiple years. During FY 2019, the Office of Enforcement's Division of Investigations (DOI) conducted 70 separate non-public investigations and inquiries involving a total of 110 entities. For FY 2018, DOI conducted 89 separate non-public investigations and inquiries involving a total of 141 entities. And for FY 2017, DOI conducted 94 separate non-public investigations and inquiries involving a total of 152 entities. In addition to DOI's above activity in non-public investigations and inquiries, DOI also has litigated between three and five matters in Federal District Court over the periods in question.

**QUESTION:** How many of these non-public investigations were terminated by the Chairman? How many were terminated by vote of the Commission?

**RESPONSE:** During FY 2019, two non-public investigations were terminated by the Chairman. During FY 2019, one Order to Show Cause proceeding was terminated by vote of the Commission.

**QUESTION:** Under what authority can the Chairman unilaterally close an investigation that has been authorized by a commission order?

**RESPONSE:** Pursuant to § 7171(c) of the Department of Energy Organization Act, the Chairman is responsible for the executive and administrative operation of the Commission, including "the supervision of personnel employed by or assigned to the Commission [and] . . . the distribution of business among personnel and among administrative units of the Commission." In fulfilling these responsibilities, the Chairman allocates resources among and establishes priorities for Commission staff. These responsibilities and corresponding authority of the Chairman apply to non-public investigations conducted by the Office of Enforcement, including those that the Commission converts from informal investigations into formal investigations with subpoena authority.



**QUESTION:** Under FERC's current market enforcement rules, will the Commission decline to open a case against a market participant that manipulates a market even if it is not technically violating a tariff provision?

**RESPONSE:** No. The Commission consistently has stated that fraud is determined by all the circumstances of a case, "not by a mechanical rule limiting manipulation to tariff violations." *In re Make-Whole Payments & Related Bidding Strategies*, 144 FERC ¶ 61,068, at P 83 (2013).

**Division of Energy Market Oversight:**

**QUESTION:** Were all Commissioners aware of the decision to shutter the Division of Energy Market Oversight? Did all Commissioners weigh in on this decision? If not, why?

**RESPONSE:** Yes, all Commissioners were aware of the decision to realign the functions performed by the Division of Energy Market Oversight. The Commission addressed the realignment during the Commission's Open Meeting on September 19, 2019.

**QUESTION:** What analysis did Commissioners rely on when deciding to close the Division of Energy Market Oversight? Please provide all relevant documents and memos used in making this decision.

**RESPONSE:** The primary objective of the realignment was to better reflect the key functions and mission statements of the three existing Commission offices, the Office of Enforcement, the Office of Energy Policy and Innovation, and the Office of the Executive Director. The functions that were realigned will improve organizational efficiency by eliminating duplicative functions, streamlining remaining functions, and centralizing management expertise. The compliance functions that existed in the Office of Enforcement's Division of Energy Market Oversight remain in OE under the Division of Analytics and Surveillance and Division of Audits and Accounting.

The policy-related functions that are more closely aligned with the mission of the Office of Energy Policy and Innovation were transferred to that office under a new Division of Energy Markets Assessment, and some of the data management support functions in the Office of Enforcement's Division of Analytics were transferred to the newly created Data Governance Division within the Office of the Executive Director.

**QUESTION:** What efforts were made to inform Congress and the public about this planned reorganization?



**RESPONSE:** The Commission views this change as a minor but prudent realignment of existing functions to improve organizational efficiencies and effectiveness. No existing functions are being eliminated, and the mission and programs of the Office of Enforcement are not changing. Upon approval of the internal realignment, as required in our collective bargaining agreement, we worked with our local bargaining unit to notify them of the organizational changes, then notified staff in the relevant offices. The organizational changes were effective September 16, 2019. Chairman Chatterjee announced these organizational changes at the public September 19, 2019 Commission Open Meeting and responded to media inquiries during the normal post meeting press conference. Other Commissioners also indicated their support of this realignment at the Commission Open Meeting. Several briefings for Congressional staff have been held since the reorganization was announced.

**QUESTION:** How will the important functions currently performed by the Division of Energy Market Oversight be maintained by other FERC offices? Please list any functions that this division was engaged in that will no longer be pursued.

**RESPONSE:** All functions previously performed by the Division of Energy Market Oversight will continue to be performed by FERC staff.

Compliance and market surveillance functions performed by DEMO remain in the Office of Enforcement. Employees administering and performing compliance functions related to the Electric Quarterly Report (EQR) and the financial forms have moved to Office of Enforcement's Division of Audits and Accounting. Employees monitoring and conducting analysis of market power using EQR and other market data have moved to Office of Enforcement's Division of Analytics and Surveillance.

Policy-related functions that are more closely aligned with the mission of Office of Energy Policy and Innovation have been transferred to the Office of Energy and Policy Innovation. Employees responsible for functions such as the Seasonal Assessments, the Annual State of the Markets report, and other reports examining broad market trends make up the new Division of Market Assessments in Office of Energy Policy and Innovation.

**QUESTION:** How many of the Division of Energy Market Oversight's roughly 40 employees will continue to work at FERC in support of the mission of the Office of Enforcement?

**RESPONSE:** All 34 Division of Energy Market Oversight employees will continue to work at FERC in support of its mission. Seventeen employees from



the prior Division of Energy Market Oversight transferred to the Office of Energy Policy and Innovation's newly formed Division of Energy Market Assessments. One pre-existing vacancy for the Director of Division of Energy Market Assessments also transferred to the Office of Energy Policy and Innovation. The previous Director of DEMO became Deputy Director of the Office of Enforcement in July. The remaining 17 employees from DEMO will continue to support the Office of Enforcement's mission as part of other Office of Enforcement divisions, the Division of Audits and Accounting and the Division of Analytics and Surveillance.

**Notice of Alleged Violations:**

**QUESTION:** How many investigations has FERC conducted since May 19, 2019, that would have previously resulted in a NAV?

**RESPONSE:** One.

**QUESTION:** During the decade the NAV policy was in place, did FERC ever publicly disclose a subject was under investigation prior to them having an opportunity to respond to FERC's preliminary findings?

**RESPONSE:** Yes. From time to time, the Commission has by public order referred an entity for further action by the Office of Enforcement. While any investigations that resulted thereafter were non-public, the Commission's referrals did publicly identify the entities concerned prior to their having an opportunity to respond to preliminary findings, which in each case necessarily had yet to be made. In the Commission's other non-public investigations – where the identities of subjects were not made known through a public Commission order – all subjects had the opportunity to respond to preliminary findings before a NAV was issued.

**QUESTION:** The NAV policy rescission order cited the development of “more information methods of providing transparency to industry about investigations and enforcement actions”—do any of these information methods effectively warn markets that they may be dealing with participants whose actions were troubling enough to warrant additional scrutiny by FERC?

**RESPONSE:** The NAV order stated that there were “more informative” methods of providing transparency than the limited information included in NAVs. As described in paragraph 8 of the NAV order, one of these methods is the Commission's comprehensive *Annual Report on Enforcement*, which is published in November and transparently details numerous enforcement matters. The *Annual Report on Enforcement* details all matters that have been closed by



settlement, as well as all cases that have proceeded to litigation, either through a public Order to Show Cause proceeding, an Administrative Law Judge proceeding, or an appeal *de novo* to an applicable federal district court after an entity has failed to pay a penalty assessed by the Commission. Market participants thus have transparent knowledge of all entities whose liability the Commission has adjudicated, even where such entities may be contesting that liability. In addition, the Office of Enforcement has frequent non-public interactions with the independent market monitors charged with overseeing ISOs and RTOs, as part of which staff frequently identifies entities it is investigating and the conduct staff has observed.