

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF THE COMMISSIONER

Dear Senator Cantwell:

November 4, 2019

Thank you for your September 19 letter addressed to each Commissioner expressing concerns about the Federal Energy Regulatory Commission's approach to addressing market manipulation. I share your concern that the Commission's commitment to preventing manipulation and penalizing bad behavior appears to be waning.

FERC's enforcement responsibilities are at the heart of its obligation to serve the public interest. In the wake of the Western Energy Crisis, the Energy Policy Act of 2005 amended the Federal Power Act to give the Commission additional authority to guard against market manipulation. That authority is absolutely essential. The Commission often relies on competitive markets to produce rates for the wholesale sale and transmission of electricity that are just and reasonable and not unduly discriminatory or preferential. But, as I explained in a recent dissent in *Public Citizen v. MISO*, 168 FERC ¶ 61,042 (2019), competitive markets can achieve that outcome only to the extent that they are free from market manipulation and other forms of fraud, making the Commission's enforcement responsibilities vital to its statutory mission.

The Commission's Office of Enforcement has a strong history of identifying and deterring fraudulent conduct. Although we can always improve the efficiency of our processes, I believe the Office of Enforcement has had a good track record in implementing the authority contained in the Energy Policy Act of 2005. Continuing and building on that record is one of my chief priorities as a member of this Commission.

Chairman Chatterjee's October 31 response elaborated on his rationale for the recent changes to the reporting structure for the Division of Energy Market Oversight and the rescission of the Commission's Notice of Alleged Violation policy. I supported both of those decisions. They represent the type of process improvements referenced above, which will allow the Commission to carry out its enforcement responsibilities more efficiently, but without hindering our ability to detect, deter, and punish fraudulent conduct. Nevertheless, several other recent actions provide cause for concern.

First, I believe the Commission is not expeditiously pursuing select enforcement matters. I recognize that enforcement proceedings often present complex legal issues that require careful consideration. But the old adage that "justice delayed is justice denied" applies every bit to enforcement proceedings. We must act promptly both in order to detect and deter fraud, but also to ensure that any misbegotten gains are returned consumers as quickly as practicable.

Second, as noted in the Chairman's October 31 response, the Chairman's Office unilaterally terminated two enforcement proceedings during the 2019 fiscal year. I am not aware of any

prior instance in which a Chairman, acting on his/her own, has terminated an enforcement proceeding against the Office of Enforcement's recommendation. Although the Chairman may have the legal authority to take that action, I do not believe that it is consistent with Congress' decision to vest responsibility for addressing market manipulation and other forms of fraud in the Commission as a whole.

Third, by a 2-1 vote, FERC recently declined to finalize the "Connected Entities" rulemaking, which would have brought much needed transparency to the relationships among market participants, making it easier to uncover certain types of market manipulation. This rulemaking would have also imposed a "duty of candor" on entities that participate in markets for virtual products, such as financial transmission rights. FERC's failure to act means that financial traders can lie with impunity, at least insofar as the Commission is concerned. The failure to finalize the Commission's proposed duty of candor is especially notable because many of the Commission's recent enforcement actions involved virtual transactions, which underscores the importance of ensuring that the information we receive about these transactions is accurate and truthful.

Although Congress gave FERC important tools to prevent market manipulation, I believe that Congress should explore targeted amendments to the Federal Power Act to enhance the Commission's ability to carry out its enforcement responsibilities. This legislation should:

- Provide the Commission with the explicit authority to prohibit recidivist violators of the Commission's rules and regulations from continuing to participate in Commission-jurisdictional markets, at least in certain circumstances. Although FERC has, in the past, included so-called "trader bans" as part of several settlements, it is not clear that the Commission has the authority to impose such a measure without the trader's consent, even in the face of multiple instances of manipulation.
- Clarify that only an action of the Commission on the record can terminate an enforcement proceeding, at least once it reaches a sufficiently advanced stage of the process. As noted, the current law can be interpreted as permitting the Chairman to unilaterally terminate an enforcement proceeding, which I believe is inconsistent with Congress' decision to vest our enforcement responsibilities in the Commission as a whole.
- Direct the Commission to impose a "duty of candor" on all market participants, including financial traders participating in FERC-jurisdictional markets.

Thank you for the letter and your attention to these important issues. I stand ready to respond to any additional inquiries.

Sincerely,



Richard Glick
Commissioner