

United States Senate

WASHINGTON, DC 20510

September 19, 2019

Federal Energy Regulatory Commission
888 First Street NW
Washington, DC 20426

Dear Chairman Chatterjee and Commissioners Glick and McNamee:

We are writing to express our concern over the apparent erosion of the vital role the Federal Energy Regulatory Commission (FERC) plays in preventing fraud and manipulation in our nation's energy and financial markets. Several recent actions seem to indicate that the Commission may not be fully committed to finding, stopping, and punishing manipulative acts that can stifle competition and result in unjust and unreasonable prices.

In 2005, Congress amended the Federal Power Act and the Natural Gas Act to empower the Commission with broad authority and responsibility to prevent the use of 'any manipulative or deceptive device or contrivance' in jurisdictional wholesale power and natural gas markets and in jurisdictional transmission and transportation services. As some of the authors of that legislation, and in consideration of the enduring lessons of the 2001 Western U.S. energy crisis, we would like clarity on the following recent actions by the Commission:

The recent decline in the number of civil penalty actions initiated by FERC seems to signify a curtailment in enforcement activity. Abrupt terminations of non-public investigations without any public transparency are also troubling.

Further, recent press articles report that the Commission eliminated its Division of Energy Market Oversight (DEMO). This surprise announcement has raised concerns about whether this closure will weaken FERC capabilities to assess broader energy market trends and continue to perform vital compliance functions.

Finally, on May 16, 2019, the Commission rescinded its policy on issuing Notices of Alleged Violations (NAVs) regarding investigations (Docket No. PL 10-2-003). We believe these NAVs may improve markets and that the public and market participants have a right to know if the Commission believes there is enough evidence of wrongdoing to initiate an investigation, even if the details of the investigation remain appropriately non-public.

Ensuring wholesale electricity and natural gas markets remain competitive and free of manipulation provides tremendous self-reinforcing benefits to American ratepayers. We ask for timely and individualized responses to each of the attached questions regarding the above topics. We hope your responses will help reassure Congress and markets that the Commission remains committed and eager to protect American consumers from all forms of energy market fraud and manipulation.

Sincerely,



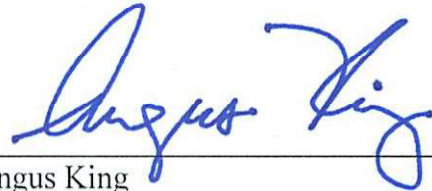
Maria Cantwell
United States Senator



Dianne Feinstein
United States Senator



Ron Wyden
United States Senator



Angus King
United States Senator



Edward J. Markey
United States Senator

Attachment

Market Manipulation:

- 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?
- How does the number and scope of civil penalties and disgorgements in 2019 compare to previous years?
- How many non-public investigations has the Office of Enforcement conducted this year and how does that compare to the average annual level of activity between 2007 and 2018?
- How many of these non-public investigations were terminated by the Chairman? How many were terminated by a vote of the Commission?
- Under what authority can the Chairman unilaterally close an investigation that has been authorized by a commission order?
- 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?

Division of Energy Market Oversight:

- 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?
- 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.
- What efforts were made to inform Congress and the public about this planned reorganization?
- 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.
- 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?

Notice of Alleged Violations:

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