

APER 2018 Forum

Federal Energy Regulatory Commission

Washington D.C.



Federal Energy Regulatory Commission Theme 3: Market Surveillance and Regulation





Disclaimer

The views expressed in this presentation are those of the presenter and do not necessarily reflect the views of the Federal Energy Regulatory Commission, its Chairman, or any individual Commissioner



FERC Enforcement Authority

- Federal Power Act and Natural Gas Act
- Fraud and Market Manipulation
 - In EAct 2005, Congress granted FERC significant new authority to prohibit market manipulation
 - Not only by direct participants in the physical natural gas and wholesale electric markets
 - But also where “any entity” commits manipulation, directly or indirectly, “in connection with” jurisdictional transactions
- Anticompetitive conduct and conduct that threatens market transparency that undermine confidence in wholesale energy markets



FERC Enforcement Authority

Anti-Manipulation Rule in FERC regulations:

The Rule prohibits anyone from

- (1) using a fraudulent device, scheme or artifice, or making any untrue statement of a material fact or omitting to state a material fact necessary to make a statement that was made not misleading, or engaging in any act, practice or course of business that operates or would operate as a fraud or deceit upon any entity
 - (2) with the requisite scienter (that is, an intentional or reckless state of mind)
 - (3) in connection with a transaction subject to FERC jurisdiction
- The Commission defines fraud in general terms; fraud is a question of fact that is to be determined by all the circumstances of a case
 - In committing fraud, the entity must have intended to affect, or have acted recklessly to affect, a jurisdictional transaction; no need to show reliance, loss causation or damages to prove a violation



FERC Offices On Surveillance

- Division of Energy Market Oversight (DEMO)
 - Responsible for monitoring and oversight of the electric and natural gas wholesale markets.
- Division of Analytics and Surveillance (DAS)
 - Responsible for conducting surveillance of the electric and natural gas wholesale markets to identify potential violations with a focus on market manipulation and conducting complex analysis for investigations.
- Division of Investigations (DOI)
 - Responsible for conducting investigations and pursuing enforcement actions when appropriate.
- Division of Audits and Accounting (DAA)
 - Responsible for administering the Commission's audit and accounting programs which are a resource for the Commission to examine areas of concern within the electric and natural gas industries. DAA focuses on ensuring compliance with the Commission's regulations, accountability, and transparency.



Market Monitoring and Oversight

DEMO within the FERC's Office of Enforcement conducts monitoring and oversight of the electric and natural gas wholesale markets. DEMO's activities include:

- Examining the competitiveness, structure, and operation of the wholesale electric and natural gas markets, by:
 - Developing and routinely running algorithmic screens on sellers' transactional power sales data and other electric market data to detect the presence of potential market power.
 - Following and examining market trends, changes, and anomalies, including regularly coordinating with the RTO/ISO Market Monitors to track developments in the organized markets and potential market changes.
 - Analyzing significant market events and trends in seasonal assessments and presenting those analyses in a State of the Markets report, and other reports to the public and/or the Commission.



Division of Analytics and Surveillance

DAS within the FERC's Office of Enforcement conducts electric and natural gas market surveillance and provides analytical expertise for the FERC's investigations. DAS's analysts and economists use technical expertise and experience to perform:

- analysis of trading data from individual market participants, trading platforms, RTOs/ISOs, and other sources,
- analysis of relevant market fundamentals,
- testing of traders' explanations for their trading activities, and
- market harm, unjust profits, and disgorgement calculations



Surveillance Areas of Interest

- Trading in price setting mechanisms while holding benefiting positions
 - Relatively low risk jurisdictional products can be used to influence market outcomes to benefit higher risk positions.
 - Physical at index
 - Virtuals
- Sustained, seemingly irrational losses
- Ignoring competitive market feedback within discrete periods of time
 - Market behavior can look very different when results are averaged and smoothed
- Leverage and relative risks
 - Financial to Physical
 - Fixed price against index
- Acting on perverse incentives, to buy high and sell low
- High market concentrations during trading windows



Investigations and Remedies

- Information gathering, including investigative testimony and data requests
- Analysis and review of the information gathered
- Preliminary Findings
- Resolution of the investigation
 - Close with no action
 - Settlement (may include sanction/penalty)
 - Order to Show Cause
 - Order Assessing Penalties
 - Hearing before an Administrative Law Judge (natural gas) or district court review of the penalty assessment (electric)
- Sanctions/Remedies may include civil penalties, disgorgement, trader ban, and/or compliance monitoring



Investigations and Remedies

- **ETRACOM LLC (2016)**: Submitted virtual transactions to benefit congestion positions; civil penalty and disgorgement
- **Barclays Bank PLC (2013)**: Engaged in physical transactions to benefit financial positions; civil penalty and disgorgement
- **Kourouma (2011)**: Individual misled FERC and RTO by providing false information without exercising due diligence to ensure it was truthful; civil penalty



Additional Information

Additional Information on the FERC's enforcement efforts is available in:

- The Office of Enforcement's 2017 Report on Enforcement
 - <https://www.ferc.gov/legal/staff-reports/2017/11-16-17-enforcement.pdf>
- State of the Markets Reports
 - <http://www.ferc.gov/market-oversight/reports-analyses/reports-analyses.asp>
- Staff White Paper on Effective Energy Trading Compliance Practices
 - <http://www.ferc.gov/legal/staff-reports/2016/tradecompliancewhitepaper.pdf>
- Staff White Paper on Anti-Market Manipulation Efforts Ten Years after EPAct2005
 - <http://www.ferc.gov/legal/staff-reports/2016/marketmanipulationwhitepaper.pdf>