

Commissioner Tony Clark on Platts Energy Week, Part 1

Chris Newkumet: Tony Clark is the newest voice on the US Federal Energy Regulatory Commission, which has a huge oversight role in the workings of energy sectors and their evolving markets. Lately the Commission has been in the thick of things, ranging from very high-profile enforcement actions to a complete re-imagining of the way much-needed power transmission facilities are built, paid for and managed. Much of this has transpired since Commissioner Clark came to Washington in June 2012. Commissioner, welcome to the show.

Commissioner Tony Clark: Chris, good to be here.

Newkumet: Let's jump right into the big megillah. Over the past two weeks, FERC has brought the hammer down on some of the big boys playing in the energy markets. We had \$453 million in penalties to Barclays for bidding practices in California; \$410 million to JP Morgan for actions in California and Michigan; and just this past week you proposed \$30 million in fines for BP America for allegedly gaming the Houston Ship Channel gas market. Why is all this coming together now?

Clark: I think probably the reason that it is coming together now is that you had EPAct 05 that really changed the landscape as far as FERC's jurisdiction and our authority over some of these areas. It takes a few years to build up the analytical ability of the staff, the capability to bring cases like that, and now you are starting to see the first, basically, tranche of these cases that are coming about really because FERC has been able to step up its enforcement authority and start bringing some of these cases. They are very complex cases; they take a good deal of time to put together. So you are starting to see some of these come through right now.

Newkumet: The energy community in the trading sector says the rules just aren't clear enough. Is that a legitimate criticism?

Clark: Well, I think any time you have a new statute you are going to have some period of time where both the industry and the Commission are sort of learning the ropes as far as how the rules of the road are going to come out. That is only natural in a lot of ways. But most of what FERC has been doing is based on a lot of other statutes that have been complied with for many, many years. So, hopefully both with education that we've been undertaking, some of these orders that have come out – which hopefully are fairly transparent and really telegraphing to stakeholders exactly what the concerns are that we have – as well as over the course of time, the rules will become much more clear.

Newkumet: You talked about transparent. One of the things that we see and that we have seen in these cases is settlement orders. Basically these are black box settlements for all intents and purposes, and the investigated party ends up writing a check to the Treasury Department. But what does the industry really learn about that, other than it cost JP Morgan \$430 million or whatever?

Clark: Right. One of the things that I really have pressed for in the settlements since I've been on board is that we do have a certain degree of transparency. When I say that what I mean is that

the order very clearly lays out exactly what the behavior is that the Commission was looking at, what the facts are, and what the Commission's concerns are. I think that we've done a fairly good job of that. With regard to the settlements themselves, as a Commissioner you don't get to negotiate those. They are negotiated between our Office of Enforcement and the party that is under investigation, and as a Commissioner you get the settlement. There is no yellow button on your desk. There is a green button and a red button, and you either approve it or deny it. In the case of the recent ones, JP for example, on balance I thought it was something that I could accept because what it did was it got money back to consumers faster, rather than after a very protracted amount of litigation. Consumers get back all the money we felt they were owed. In addition, the fine was significant; it was the largest fine that the Commission has ever approved.

Newkumet: You talked about the JP Morgan order. You had a separate statement attached to that order in which you said, companies under investigation need to be more responsive, forthcoming and cooperative. Do you feel you've been lied to?

Clark: Well, I have a concern and the concern that I was trying to telegraph through that particular statement was – not just the JP case but in other investigations that I've had the opportunity to observe since coming on the Commission – I think sometimes subjects of investigations move very quickly into a litigation pose. When you move into that litigation pose what happens is it can become more difficult for the Commission's investigators to get the information that they need. Rather, what I would like to see subjects of FERC investigations do is be fully transparent. Provide that information to our investigators who need it. Often times, and these are cases that people don't even see, a case is opened, our enforcement staff looks at it, the subject of the investigation is very open and transparent about what happened, and that case is closed ever before it is brought to public light. Some of these other cases we've had instances where subjects haven't been as forthcoming, and in cases like that I think it would be in everyone's interest, the public but also in the interest of the subject of the investigation, too, to be as cooperative and open and transparent as they possibly can be.

Newkumet: Let's turn to oil exploration and pipelines, and let's go back to North Dakota, near and dear to you, and heart of the Bakken Shale. You've been open with your desire to see pipeline infrastructure move at a much quicker pace. How does that happen? What needs to happen there?

Clark: There are some things that FERC can do and one of them is processing in a timely manner and a very thorough manner some of the petitions for declaratory order that we get from pipeline companies so that they can get information sooner rather than later regarding what sort of rate-setting principles the Commission is going to be giving them on a going-forward basis. Beyond that there are other things that can happen. Of course, FERC doesn't site oil pipelines; we do site natural gas pipelines. On the natural gas side I think we do a fairly good job of that in a thorough manner, not cutting any corners but also not allowing any red tape to block some of these as well. But pipeline capacity and greater pipeline capacity is going to be very, very important both on the gas side and on the oil side for this country. We have such significant shale plays that are opening up, and that needs to get to market somehow. Pipelines, generally speaking, are the safest, most efficient, cost-effective way to do that.

Newkumet: Another hot topic is LNG exports. Just this past week, DOE approved non-Free Trade Agreement exports from the Lake Charles, Louisiana terminal. That's the third DOE-approval, I believe, bringing the total potential exports to 5.6 Bcf/day. Can FERC keep up with its end of the permitting?

Clark: I believe so. FERC's portion of what we do with LNG is really on the environmental siting, the safety of the facilities, all of the real sort of nuts and bolts about the facility itself, as opposed to the general policy of whether the nation should be exporting LNG or not. But FERC has a very competent staff, very professional staff that is involved in our Office of Energy Projects. I'm very convinced that they can keep up with the fairly heavy workload that is going to be coming their way, and do it in a timely manner.

Newkumet: FERC Commissioner Tony Clark, always fun, always interesting. Thanks for coming.