

Norman Bay Testimony
House Banking Subcommittee on Financial Institutions and Consumer Protection
January 15, 2014

Chairman Brown and members of the subcommittee, thank you for inviting me to testify today. My name is Norman Bay; I am the director of the Office of Enforcement at the Federal Energy Regulatory Commission. I appear before you today as a staff witness, and the views that I present are not necessarily those of the Commission or of any individual Commissioner.

I've also submitted prepared testimony that responds to the subcommittee's questions, and so in my remarks today I will provide a brief overview of the work of the Office of Enforcement.

In a sense, my office is a legacy of the Western power crisis from 2000 to 2001, and you've alluded to that crisis Sen. Reed. During the crisis, Enron and other entities manipulated energy markets in California and the West and ripped off consumers. At the time, FERC did not have a general anti-manipulation authority and its penalty authority was limited to \$10,000/day.

Thus, a manipulator could manipulate the market every day for a year and face a penalty of \$3.65 million, which was hardly even a rounding error for Enron.

In the Energy Policy Act of 2005, Congress fixed the weakness in FERC's regulatory authority. Congress gave FERC a broad anti-manipulation authority based on Rule 10(b)(5) in the Securities and Exchange Act of 1934. Congress also provided a penalty authority of up to \$1 million per day, per violation. These tools have been critical to FERC's efforts to protect consumers from market manipulation in the wholesale natural gas and power markets.

After receiving its anti-manipulation authority, FERC has also built up its enforcement capabilities. By way of comparison, during the Western power crisis there were 20 staff in the Office of General Counsel who did enforcement work. We now have around 200 staff in a standalone office, the Office of Enforcement.

We have staff with expertise in the markets, who are economists, accountants and auditors, former traders, analysts with highly quantitative skill sets, including mathematics, engineering, statistics and physics. We also have lawyers who are former prosecutors or who have extensive litigation experience in private practice with some of the finest law firms in the country.

Our staff is organized into four divisions: the Division of Investigations; the Division of Audits and Accounting; the Division of Energy Market Oversight, which focuses on energy market fundamentals, including important trends and developments; and the Division of Analytics and Surveillance, which provides technical support on investigations and which creates and runs automated screens to detect potential market manipulation.

These screens are critical to our oversight of the energy markets because, otherwise, there is simply too much data – given the many trading hubs and markets and products – for FERC analysts to be able to examine that data on a manual basis.

Since receiving its EAct authority in 2005 FERC has collected about \$873 million in civil penalties and disgorgement. One of the top priorities of the office is fraud and market manipulation.

Some of our most significant enforcement actions to date include actions against: Constellation, which settled for \$245 million in 2012 for manipulating the electricity markets in New York; J.P. Morgan, which settled for \$410 million in 2013 for manipulating the electricity markets in California and the Midwest; and Barclays, in which the Commission issued a penalty assessment in July of 2013 of \$453 million. Barclays has challenged that assessment, and we are currently litigating the matter in Federal District Court in the Eastern District of California.

In summary, the anti-manipulation authority Congress provided FERC in 2005 has been critical in our efforts to police the energy markets and to detect and to deter and punish market manipulation. You should know that we are committed to doing our best to protect consumers and to further the public interest.

Indeed, and I often say this, I am honored and humbled to be working with the many dedicated, talented and hard-working staff at FERC, particularly in the Office of Enforcement.

In conclusion, I wish to thank the subcommittee for this opportunity to testify today and look forward to answering any questions you might have.