

Testimony of Larry Parkinson, Director, Office of Enforcement
Committee on Energy and Commerce Subcommittee on Energy and Power
June 3, 2015

Thank you Mr. Chairman and Ranking Member Rush, and Members of the Subcommittee. My name is Larry Parkinson, director of the Office of at the FERC. As with Mr. Quinn, I have to have the disclaimer that my comments don't necessarily reflect the views of individual Commissioners or the Commission itself.

I've submitted a longer statement for the record, but I want to take a couple of minutes just to give a little bit of an overview of the enforcement program. Congress, 10 years ago in EPCRA 2005, gave FERC a very strong direction when it came to enforcement. Much of the provisions on enforcement stemmed from the abuses by Enron, in particular, and I think the message was: We expect FERC to have a strong enforcement program. We expect you to ensure the integrity of the markets. We expect you to catch bad actors, particularly those who manipulate the markets, and we expect you to protect energy consumers.

Congress gave FERC very important enforcement tools, including significantly increased penalties. FERC took that direction seriously. It quickly adopted an anti-manipulation rule, built up its enforcement capabilities. Much of that credit is due to the current Chairman, Norman Bay, who headed the Office of Enforcement previously.

We now have very strong, capable, multi-disciplinary group of professionals who are in charge of our enforcement program and carry it out. And I would say that we have achieved notable results. We are still relatively new; it's only a 10-year-old program since we got the new authorities. But in those 10 years we've returned almost \$1 billion to consumers and ratepayers, and to the US Treasury from malfeasance by market actors.

We are committed to fairness and professionalism, and we're committed to ensuring confidence in the markets.

It is important to point out that we have a bipartisan Commission that owns and directs the enforcement program. The Office of Enforcement is not some standalone enforcement entity out there doing its thing without any oversight from the Commission. And there has been, over the last 10 years, remarkable consensus amongst Commissioners of virtually all of our enforcement matters, whether it is approving settlements that we have reached in the enforcement program or issuing orders.

The orders have been virtually all unanimous. We've had a couple of instances where an individual Commissioner has dissented on one piece or another, but virtually everything has been unanimous.

I would point out, and we will get to this probably in questions, but it is a little ironic that a couple of the provisions, at least, in the draft are designed in part to seal off the enforcement staff or at least to erect barriers between enforcement staff and the Commission. And I think, in that respect, they are particularly puzzling if one of the goals is to make sure that the enforcement program has proper oversight by the Commission.

I would point out that a couple of characters, a couple of individuals, have caricatured our enforcement programs as a bit of an outlier in the federal enforcement process. I will say I've

been in the federal enforcement world for almost 30 years; I've worked at a number of different places under both Republican and Democratic administrations. I will say that when I came to FERC five years ago I was a little bit surprised because we are an outlier. We are an outlier in the sense that we give an enormous amount of process to investigative subjects during the investigative phase. I still am surprised at how much process FERC gives during that phase of the process.

And I would point out that process produces delay, and too much delay can be detrimental not only to the investigative subjects but certainly to the public and market participants.

One key to understanding the enforcement process is there are two phases, and it's not unique to FERC, it is the same in every federal enforcement process, and that is there is an investigative phase, which is the fact-finding stage, and there is an adjudicative phase. There has been, by some, an attempt -- not by this committee, but by some in the community -- to conflate those two components.

Part of the language that we are looking at today tries to engraft trial-type processes onto the investigative phase, and I think it is important to keep in mind that those two processes are different. A federal investigation is a fact-finding process, it's not civil litigation, it's not ordinary civil litigation, and the attempt to engraft civil litigation process on a fact-finding process I think would be highly detrimental to that process.

I've described in some detail in the testimony our concerns about the four specific provisions. I'll just mention them briefly.

We do have a Brady Policy that works. It was voluntarily introduced.

On the transcript issue, witnesses do get access to their transcript. But in rare occasions access is delayed to protect the integrity of an investigation.

In the other two provisions, restricting communications, which I really think would restrict communications between the enforcement staff and the Commission and other offices in the building, would seriously impede not only the investigative process itself but the Commission's ability to manage its own enforcement process.

So in closing I would urge the subcommittee, before it adopts provisions like the ones that are drafted, to look at other federal enforcement programs. I think some of these are unprecedented; they don't exist in other agencies. I think when Congress gave us new authorities in 2005 the intent was to give FERC enforcement the same sorts of tools and abilities that other federal enforcement agencies have. We've used those I think responsibly and professionally, but I think some of the amendments if adopted would undermine that authority.

We welcome constructive critique of our enforcement program, I think we are known for that, and we analyze how we are doing are business on a regular basis. We look forward to any suggestions from the Committee.

Thank you for the opportunity to participate and I look forward to your questions.