

Testimony of Larry Gasteiger
Homeland Security and Government Affairs Subcommittee
November 21, 2014

Mr. Chairman, thank you for inviting me to testify today. My name is Larry Gasteiger and I am the acting director of the Office of Enforcement at the Federal Energy Regulatory Commission.

I am pleased to testify regarding the Commission's enforcement program and some of its recent enforcement actions involving financial institutions. The Commission's statutory authority and responsibility to investigate market manipulation in FERC-jurisdictional energy markets is rooted in the Energy Policy Act of 2005, which I also will refer to as EAct 2005.

In the aftermath of the Western energy crisis and the 2003 Northeast blackout Congress passed EAct 2005, which broadly prohibited market manipulation in FERC-regulated wholesale physical natural gas and electric markets, and provided new authority to enforce mandatory reliability standards. Congress also significantly enhanced the Commission's civil penalty authority for violations of FERC rules by increasing maximum civil penalties to \$1 million per violation per day.

Since receiving its expanded enforcement authority, the Commission has worked hard to build up its enforcement capabilities. Around the time of the Western power crisis, FERC had about 20 enforcement staff; today we have nearly 200 attorneys, auditors, economists, analysts and former traders working in the Office of Enforcement.

In the last few years FERC has enhanced its ability to identify price manipulation in both physical and financial markets by adding surveillance tools, expert staff and new analytical capabilities. In 2012, the Commission established a dedicated unit for market surveillance and analysis in the Office of Enforcement.

Also in the past year, FERC surveillance and enforcement efforts have been enhanced by a new memorandum of understanding with the Commodity Futures Trading Commission that provides us with access to additional, highly useful financial data on a regular and continuing basis. We have worked hard to effectively and efficiently put these resources to good use.

Since receiving its EAct 2005 authority, the Commission has imposed and collected approximately \$902 million in civil penalties and disgorgement. Some of these enforcement actions have involved financial institutions, including JP Morgan, Deutsche Bank and Barclays.

I've provided a more detailed description of these cases in my written testimony but, briefly, the JP Morgan case involved market manipulation in California and Midwest energy markets and resulted in a settlement requiring JP Morgan to pay a combined

\$410 million in civil penalties and disgorgement in July 2013. The settlement resolved the Office of Enforcement's investigation into 12 manipulative bidding strategies that gamed the markets by creating artificial conditions that would cause the system to pay the company inflated rates. Enforcement staff also determined that JP Morgan knew the two regional markets where these schemes played out received no benefit from making these inflated payments, and thus the company defrauded those market operators by obtaining payments for benefits that they did not deliver.

In our settlement with Deutsche Bank in January 2013, the Office of Enforcement determined that Deutsche Bank used physical energy transactions to affect congestion levels and corresponding energy prices within the California market. It carried out this conduct to increase the value of its financial contracts in violation of EPC Act 2005 and the Commission's anti-manipulation rule. The disgorgement in that case was \$172,000 dollars with a penalty of \$1.5 million.

The Commission's July 2013 Order assessing a civil penalty in the Barclays case addressed similar conduct to that in Deutsche Bank. The Commission found that Barclays engaged in manipulative physical trades to benefit corresponding financial positions. Although Barclays' physical trading often lost money, it nonetheless profited the company overall because its trades helped move the index price that set the value of its larger financial swaps benefiting position.

The Commission imposed penalties of \$435 million and disgorgement of nearly \$35 million. The Commission's Barclays order is currently under review in federal district court, so that matter is still ongoing.

Another topic the Subcommittee has asked about is whether financial holding company investment with physical energy production has affected how those financial institutions approach the power plant business. The Commission has not taken any view on the participation in its regulated markets by financial holding companies versus more traditional energy holding companies like generators or utilities.

However, that said, the Commission expects financial institutions, like all other participants in FERC-regulated markets, to have good compliance programs, to transact in a manner that follows market rules in letter and spirit, to work cooperatively with grid operators and the Commission when there are concerns, and to self-report potential violations.

Everyone has to play by the rules, and encouraging a culture of compliance is the goal of our Office of Enforcement.

It is my hope that the description of the work of the Office of Enforcement I've provided demonstrates that the Commission takes very seriously its duty to police the energy markets and protect consumers. To the extent we have succeeded in our mission, it is due to the many talented, dedicated and hard-working staff at the

Commission, and it is my honor and privilege to work with them, particularly the staff in the Office of Enforcement.

In conclusion I want to thank the Subcommittee for the invitation to testify today, and I look forward to answering your questions.