

# United States Senate

WASHINGTON, DC 20510

April 29, 2013

The Honorable Gary Gensler  
Chairman  
Commodity Futures Trading  
Commission  
1155 21st Street, NW  
Washington, DC 20581

The Honorable Jon Wellinghoff  
Chairman  
Federal Energy Regulatory  
Commission  
888 First Street, NE  
Washington, DC 20426

Dear Chairman Gensler and Chairman Wellinghoff:

We are writing to urge the Commodity Futures Trading Commission (CFTC) and the Federal Energy Regulatory Commission (FERC) to execute more robust Memorandums of Understanding (MOU) that will ensure comprehensive oversight of energy markets, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Recent disputes over the jurisdiction of each Commission to punish wrongdoing in these markets have undermined efforts to monitor energy commodity trading. We have strong concerns that such disputes undermine the free flow of information and allow market manipulators to exploit gaps in regulatory oversight and ultimately drive up the price of energy for American consumers.

Congress has required FERC and CFTC to monitor trading and protect consumers from manipulative and deceptive practices in highly integrated natural gas and electricity markets. While Federal statute divides the jurisdiction of FERC and CFTC between cash markets and futures markets, respectively, Federal law also recognizes that detecting many forms of manipulation in these integrated markets requires active oversight of both markets in an integrated fashion. Section 720 of the Dodd-Frank Wall Street Reform and Consumer Protection Act directed FERC and CFTC to negotiate memorandums of understanding, by 2011, that would integrate market oversight efforts and improve information sharing.

In the case of manipulation in natural gas futures markets by Amaranth Advisors, it is our understanding that CFTC and FERC worked together to build their respective cases under the Commodity Exchange Act and the Natural Gas Act. Such cooperation allowed for more complete oversight of these markets, demonstrating the potential for cooperative market oversight to produce evidence of natural gas market manipulation.

Unfortunately, the joint investigation of Amaranth was followed by legal battles between the CFTC and FERC regarding the scope of each commission's jurisdiction. These actions culminated in a recent District of Columbia Circuit Court ruling which concluded that CFTC has the responsibility to protect consumers in natural gas futures markets and FERC has the responsibility to protect consumers in natural gas cash markets. We strongly urge the Commissions to avoid jurisdictional disputes in the future and instead work together to effectively police energy markets jointly.

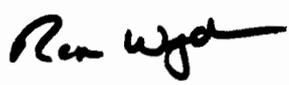
To this end, we call on FERC and CFTC to execute MOUs that will ensure complete integration of data and other information used to monitor and investigate natural gas and electricity market trading. It is our understanding that currently, the Commissions share information only when a specific request is made – a process that often takes months. Furthermore, each Commission compiles investigation documents in a distinct manner, impeding the integration of data even in cases where a potential bad actor has been identified.

We have concerns that this approach does not allow either Commission to comprehensively monitor energy markets. Trading in futures contracts can affect prices in cash markets, and vice versa. For instance, FERC recently proposed a \$435 million fine on Barclays Bank for manipulating electricity prices by entering into money-losing transactions in the cash electricity market, which allegedly moved the market and allowed the bank to profit greatly from its electricity swaps positions. The current separation of data impedes either regulator's ability to identify this type of manipulative trading scheme, ignores the reality that traders will exploit this gap in oversight, and makes it more difficult for either Commission to identify market distorting misconduct.

We call on FERC and CFTC to comply with Section 720 of the Dodd-Frank Act as soon as possible. New MOUs are necessary to ensure that the agencies will work together to pursue manipulation, will share and integrate all data for natural gas and electricity trading, and will cooperate in order to protect American consumers.

Thank you in advance for your consideration of our request.

Sincerely,

		
Dianne Feinstein United States Senator	Lisa Murkowski United States Senator	Ron Wyden United States Senator