FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

August 29, 2013

The Honorable Dianne Feinstein
The Honorable Lisa Murkowski
The Honorable Ron Wyden
United States Senate
Washington, D.C. 20510

Dear Senators Feinstein, Murkowski, and Wyden:

Thank you for your April 29, 2013 letter urging the Federal Energy Regulatory Commission (FERC) and the Commodity Futures Trading Commission (CFTC) to execute more robust Memoranda of Understanding (MOU) as required under section 720 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). I share your concern about the need for FERC and the CFTC to work together to protect the American public from energy market manipulation, and I remain committed to the principle of broader information sharing between the two agencies.

As you know, in Dodd-Frank, Congress directed FERC and the CFTC to develop two MOUs, concerning information sharing and jurisdiction, respectively. With respect to information sharing, FERC and the CFTC continue to operate under a 2005 MOU that allows FERC to request information from the CFTC. While that MOU provides a useful foundation, I believe that we should expand and broaden our information sharing. Unfortunately, in developing the new information sharing MOU required by Dodd-Frank, the two agencies disagree over whether the CFTC should provide FERC with certain data that we believe is critical to our surveillance program to detect and deter energy market manipulation. This data includes the Large Trader Report, which would allow FERC staff to identify market participants with an incentive in the financial markets to manipulate the physical markets by trading at physical hubs and nodes. This ability, in turn, would improve the efficiency and precision of FERC staff's surveillance screens.

With respect to the MOU on jurisdiction, one complication has been a disagreement over whether FERC has the authority to protect consumers from price impacts in the physical energy markets resulting from manipulation occurring in the financial markets. FERC believes that in the Energy Policy Act of 2005, Congress authorized FERC to protect against manipulation that affects the wholesale natural gas and electric markets. In *Hunter v. FERC, 711 F.3d 155 (D.C. Cir. 2013)*, however, the U.S. Court of Appeals for the District of Columbia Circuit recently ruled that the CFTC has exclusive jurisdiction over futures, depriving FERC of authority to bring an action based on manipulation in the futures market even though the activity affected prices in the physical natural gas and electricity markets. Although we believe the *Hunter* decision is narrow in scope, it has been interpreted broadly by some market participants to support arguments that FERC does not have the authority to bring manipulation cases for conduct that is squarely within FERC's jurisdictional markets. Accordingly, I support a legislative fix to eliminate uncertainty on this matter and ensure that FERC has the full authority needed to police manipulation of wholesale physical natural gas and electric markets. Such legislation would also assist both agencies in clearing the remaining hurdles to executing the jurisdictional MOU.

If you have any questions concerning this or any other matter, please do not hesitate to contact me or my staff.

Sincerely,

Jon Wellinghoff
Chairman