



Federal Energy Regulatory Commission

Monitoring Wholesale Energy Trading: The US Experience

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Commissioner Tony Clark, FERC



Monitoring Wholesale Energy Trading FERC Anti-Manipulation Authority

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- **Under the Energy Policy Act of 2005 (EPAct 2005), FERC has dual roles in protecting the integrity of wholesale gas and power markets:**
 - Surveillance Function
 - Enforcement Function



Surveillance

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- **FERC surveillance function on the power side is supported by Market Monitoring Units (MMUs) at each Regional Transmission Organization (RTO) (Order No. 719)**
 - FERC internal surveillance (Division of Analytics & Surveillance), has authority to reach out at any time and contact jurisdictional market participants to discuss trading behavior



Enforcement

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- **FERC enforcement function is executed in-house**
 - FERC is empowered to issue rules to prevent market manipulation in jurisdictional wholesale power and gas markets, and in jurisdictional transmission and transportation services.
 - FERC has civil penalty authority (\$1M per day, per infraction ceiling)
 - FERC must prove *scienter* (intent)



Monitoring Wholesale Energy Trading FERC Data Collection Formats & Authority

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- **Physical Transactions**

- Order No. 760 requires RTOs to deliver on an ongoing basis bid and cleared transaction data in both DA and RT physical markets
 - Each RTO delivers market data to FERC in the format in which it is stored internally
 - Order No. 771 requires inter-balancing authority transaction tags to include FERC as recipient on an ongoing basis
 - *Ad hoc* data requests to MMUs/RTOs



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- **Financial Transactions:**
 - MOU with Commodity Futures Trading Commission (CFTC)
 - CFTC Large Trade Report only shows aggregate net position volume, lacks various transaction classes
- Commercially available data from vendors
- MOUs with various international regulatory counterparts



Monitoring Wholesale Energy Trading Detecting and Deterring Market Manipulation

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- **While not exclusive, FERC has seen two primary manipulative strategies:**
 - Cross Product Manipulation: using un-economic trading in physical markets with the intent to alter prices against which financial products settle
 - Examples of 'Cross Product' enforcement actions:
 - Constellation Energy Commodities Group, Inc. 145 FERC ¶ 61,062
 - Barclays Bank PLC 144 FERC ¶ 61,041
 - Deutsche Bank Energy Trading 142 FERC ¶ 61,056



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- Rules Arbitrage Manipulations: exploitation of complex market rules (often designed to provide a reliability back stop) with the intention of extracting economic rent while providing no commensurate service
- Examples of 'Rules Arbitrage' FERC enforcement actions:
 - JP Morgan Ventures Energy Corporation 144 FERC ¶ 61,068
 - PJM Up-To-Congestion (UTC) cases



Issues Being Challenged in and Addressed by the Courts

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- What does “De Novo” review mean in the context of U.S. energy law?
- How detailed do anti-manipulation laws and rules need to be to afford participants appropriate “prior notice”
 - Principles-based enforcement vs. Rules-based enforcement



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