Testimony of Chairman Jon Wellinghoff
Federal Energy Regulatory Commission
Before the Committee on Energy and Natural Resources
United States Senate
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Introduction

Mr. Chairman, Ranking Member Murkowski and members of the Committee:

Thank you for the opportunity to appear before you today. My testimony will address the energy markets regulated by the Federal Energy Regulatory Commission (FERC), and how they may be affected by current or proposed laws focused on financial derivatives. I will explain why consumers could face higher energy costs if FERC's role and authority in these markets is reduced by laws addressing financial derivatives.

The Commodity Futures Trading Commission (CFTC) regulates certain financial derivatives under existing law, and would regulate additional financial derivatives under H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. FERC and the CFTC have different missions. FERC is a rate regulator and ensures that rates charged to energy customers are just and reasonable. FERC also approves and enforces electric reliability standards. The CFTC seeks to ensure that markets generally operate fairly and orderly, but has neither the authority nor the expertise to ensure the reasonableness of rates or oversee reliability of energy supplies. Shifting jurisdiction over energy markets from FERC to the CFTC could impair FERC's ability to protect consumers from excessive energy rates, an especially important consideration during a recession. Similarly, expanding the CFTC's authority in FERC-regulated markets could limit FERC's ability to police against market manipulation in energy markets.

Also, uncertainty about regulatory authority and requirements in energy markets could chill investments or increase the cost of capital for infrastructure investments, ultimately harming consumers. This uncertainty also could slow investments in "green energy," such as renewable resources and smart grid technology.

The impetus for legislation on financial derivatives is the financial turmoil caused by certain unregulated financial derivatives and other factors. The FERC-regulated markets did not cause these problems. Thus, whatever decisions Congress makes for currently-unregulated financial derivatives should not apply to the energy markets regulated comprehensively by FERC. Any amendments to the Commodity Exchange Act should preserve FERC's exclusive oversight of rates, terms and conditions for energy transportation and wholesale sales, and prevent dual regulation of energy markets by FERC and the CFTC. Alternatively, FERC's jurisdiction can be maintained through appropriate amendments to the Federal Power Act and the Natural Gas Act, and I would encourage the Committee to consider this approach.

As my colleague, Chairman Gensler, testified recently to the House Committee on Agriculture about certain financial markets: "While seeking to address the gaps and inconsistencies that exist in the current regulatory structure of complex, consolidated financial firms, the proposals also may have unintentionally encompassed robustly regulated markets…." Similarly here, legislation by Congress on financial derivatives should not impair FERC's ability to ensure that consumers have an adequate supply of energy at just and reasonable rates.

Background

Since the late-1970s, Congress and FERC have encouraged competition in the natural gas and electricity industries. In the natural gas industry, Congress adopted the Natural Gas Policy Act of 1978 and the Natural Gas Wellhead Decontrol Act of 1989, removing price controls on first sales of natural gas. FERC also adopted pro-competitive regulations, particularly Order No. 636, requiring the interstate pipelines to unbundle their sales and transportation services.

In the electric industry, this effort has included legislation such as the Public Utility Regulatory Policies Act of 1978 (facilitating market entry by combined heat-and-power facilities and small renewable energy facilities), the Energy Policy Act of 1992 (expanding FERC's authority to require transmission service upon customer application, and reducing barriers to entry by independent power producers) and the Energy Policy Act of 2005 (reducing barriers to investment in the industry, subject to protection against cross-subsidization by ratepayers).

The Commission's efforts in the electric industry include the landmark Order No. 888, issued in 1996. Order No. 888 required public utilities to offer transmission service to others on non-discriminatory rates, terms and conditions. Order No. 888 also encouraged the formation of independent system operators (ISOs), to operate all of the transmission facilities in a geographic area. ISOs were aimed at encouraging competition by facilitating development of regional power markets, and enhancing trading opportunities for a region's buyers and sellers. Several years later, FERC's Order No. 2000 encouraged the formation of regional transmission operators (RTOs), which perform the same transmission functions as ISOs but generally are larger in geographic scope. Today, RTOs and ISOs operate not only transmission facilities but also markets for trading electric energy among utilities.

RTO and ISO power markets and transmission services are tightly integrated, and regulated to a greater extent than most other markets. The rules for RTO and ISO markets are specified in lengthy tariffs (hundreds or thousands of pages) reviewed and approved by FERC. In order to analyze these tariffs, the Commission draws upon expertise in various disciplines, including attorneys, economists, energy industry analysts, and engineers. The tariffs contain numerous requirements and mechanisms to ensure reasonable rates and a reliable supply of electricity. These rules are carefully designed to facilitate competitive forces within a heavily-regulated industry. The RTOs

and ISOs themselves are not "self-regulating organizations," but are legally considered to be "public utilities" and in fact are regulated more extensively than other public utilities.

Generally, the Commission's responsibility in the energy industries is to ensure that consumers have adequate supplies of energy at reasonable prices. For example, Federal Power Act sections 205 and 206 require the Commission to ensure that the rates, terms and conditions offered by RTOs, ISOs and other public utilities are just, reasonable and not unduly discriminatory. This responsibility applies to wholesale sales and transmission of electricity in interstate commerce, as well as contracts or other arrangements and practices significantly affecting those sales and services.

Commission staff monitors the energy markets to ensure that the markets are functioning efficiently and appropriately. This is done by monitoring market results and conditions and identifying anomalies. When the available data does not explain the anomalies, staff examines the matter and, if legitimate reasons are not found, investigations are initiated to determine if fraud or manipulation has occurred.

The Commission also requires each RTO or ISO to have an independent market monitor. The market monitors can review all market activities in real-time. They also evaluate market rules and recommend changes, review and report on the performance of these markets, and must refer to the Commission any potential violations of the Commission's rules, regulations or orders.

The Energy Policy Act of 2005 gave the Commission the authority to assess substantial penalties (a million dollars a day per violation) for fraud and market manipulation, including manipulation of RTO and ISO markets. This authority will greatly help the Commission deter and penalize the types of abuses we found during the California energy crisis several years earlier. The Commission has initiated several proceedings based on this authority, which applies to participants in RTO and ISO markets as well as any other entity engaging in fraud or market manipulation in connection with a FERC-jurisdictional transaction.

FERC's efforts on market oversight and enforcement have increased greatly in recent years. Ten years ago, FERC investigatory staff consisted of 14 attorneys and a few support personnel within its Office of General Counsel. Today, staff in FERC's Office of Enforcement (including market oversight, investigations and audits) numbers over 180, including 40 attorneys in its Division of Investigations. For fiscal year 2009, FERC's efforts yielded settlements worth approximately $38 million in penalties and $38 million in disgorgement. Six of those matters involved market manipulation claims and accounted for approximately $20.8 million in penalties and $28.8 million in disgorgement. A complete list of such actions for 2007-2009 is appended as Attachment A to my testimony.

The Commission's transparency requirements are also quite extensive. For example, every public utility (whether within or outside of an RTO or ISO) must file a quarterly report listing every wholesale sale it made during the preceding quarter. The

RTOs and ISOs also have substantial reporting requirements for bids and transactions in their markets.

Financial Transmission Rights

The question of CFTC regulation of energy markets has arisen in several contexts. Examples include RTO/ISO markets for financial transmission rights (FTRs), capacity markets and day-ahead markets. Another example is the question of whether RTOs/ISOs should be considered "clearing" organizations within CFTC jurisdiction. I will focus here on FTRs, as an illustration of the possible effects of CFTC regulation in these areas.

FTRs allow customers to protect against the risk of price increases for transmission services in RTOs/ISOs. An FTR is a right to lock in congestion costs between two specific points. For example, if the transmission capacity going from Point A to Point B is 500 MW, but the RTO or ISO seeks to send 600 MW of power from Point A to Point B when calling on the least-cost generators to serve load, the path will be congested, and the price of service will increase because a more expensive generator at Point B will need to be dispatched. The increase is referred to as congestion costs.

In general, load-serving entities in RTOs/ISOs are allocated either FTRs or rights convertible into FTRs. The allocation is generally based on usage during a historical period, as modified in certain circumstances for later changes. While allocated FTRs are generally limited to load-serving entities and to those who funded construction of specific transmission facilities, other FTRs are auctioned and these generally can be purchased by any creditworthy entity.

Historically, FTRs were developed to give load-serving entities price certainty similar to the pricing methods in non-RTO/ISO markets. In most cases, FTRs have terms of one year or less. In the Energy Policy Act of 2005, however, Congress enacted Federal Power Act section 217, requiring FERC to use its authority in a way that enables load-serving entities to secure FTRs on a long-term basis for long-term power supply arrangements made to meet their customer needs.

Unlike "futures contracts," FTRs are available only to the extent allowed by the physical limits of the grid. All of the FTRs must be "simultaneously feasible" on the grid. Financial derivatives, by contrast, are not limited by physical capacities and instead are limited only by the willingness of market participants to take an opposite "bet."

Also, markets for FTRs include hundreds or thousands of different FTRs (for each pairing of receipt and delivery points) and thus are much more fragmented and less liquid than typical contracts of fungible commodities traded on futures exchanges. (Attachment B to my testimony provides statistics on this point.) Since an FTR applies to a specific pair of receipt and delivery points, it is not fungible with an FTR for a different pair of points.

FTR markets do not pose systemic risk to the economy. All FTR markets combined amount to roughly several billion dollars. This market level fluctuates depending on the level of physical congestion in each RTO and is expected to decrease substantially as more transmission is built relieving congestion.

The Commodity Exchange Act and Proposed Legislation

Questions have been raised about whether FERC-regulated energy markets, including FTRs or other products, fall within CFTC jurisdiction under the Commodity Exchange Act. Similar questions arise under proposed bills on financial derivatives, such as H.R. 4173.

For example, some may argue that an FTR is a solely financial arrangement and constitutes a futures contract under the Commodity Exchange Act, or that an RTO or ISO is a "derivatives clearing organization" under that Act. Either of these arguments, if accepted, may establish CFTC jurisdiction.

Moreover, my understanding is that the CFTC construes its jurisdiction under the Commodity Exchange Act to be exclusive. If so, the issue could become, not whether to allow dual regulation by FERC and the CFTC, but whether FERC regulation will be ended and replaced by CFTC regulation, even though the CFTC has neither the authority nor the expertise to ensure the reasonableness of price levels or oversee reliability of energy supplies.

Under proposed legislation, some may argue that FTRs or other FERC-regulated agreements fit within the definition of a "swap." For example, they may argue that the definition of "swaps" in proposed legislation includes capacity contracts (giving a customer in an RTO/ISO or bilateral market the right to buy electricity from a generating facility or other resources). This argument, however, ignores the fact that capacity contracts are critically important in ensuring the reliability of future electricity supplies, i.e., that there is enough "steel in the ground" and other resources to meet those needs. Thus, these agreements may be subjected to a regulatory scheme crafted for circumstances entirely unrelated to, and arguably ill-suited for, the energy markets.

Congress Should Preserve FERC Regulation of Energy Markets

In addition to offering FTRs, certain RTOs and ISOs operate day-ahead and real-time energy markets, capacity markets and ancillary service markets. The rules for determining the prices for various power sales and transmission services – including congestion costs – are inextricably intertwined in the tariffs and in software as an integrated market design. This integrated design under comprehensive FERC oversight differs significantly from the way in which many other derivatives markets evolved, where the derivatives developed independently from the markets for their underlying commodities.

All elements of these markets are approved by FERC, incorporated into FERC-approved tariffs, and monitored closely by the independent market monitors and FERC. Subjecting one or more of these to CFTC regulation could disrupt the integrated functioning of RTO/ISO markets, leading to market inefficiencies and higher energy costs for consumers.

For example, as noted above, load serving entities generally are allocated FTRs as a means to hedge the transmission costs they incur and, ultimately, recover from their customers. CFTC requirements on position limits could conceivably require different allocations than the tariff rules approved by FERC. A utility currently allocated, e.g., half of the FTRs on a transmission path it has used and funded for many years could find its allocation reduced significantly, and find itself unhedged against congestion costs.

Similarly, subjecting FTRs to CFTC clearing rules could conflict with FERC-approved tariff provisions on creditworthiness. FERC-approved tariffs reflect a balance between limiting the risk of defaults and unduly increasing the costs incurred by market participants and, ultimately, consumers. FERC also recognizes that different approaches to credit may be warranted for different types of power market participants (such as municipal utilities, cooperative utilities and federal agencies), unlike the one-size-fits-all approach that may suit other markets. There is no reason to assume that policies crafted by the CFTC in a different regulatory context apply equally well here.

Any changes that may be warranted in FERC-regulated markets can be made by FERC and do not necessitate a shift of authority to another agency. For example, two months ago FERC proposed to require several actions to strengthen credit rules in the RTO and ISO markets. The proposed actions include reducing or eliminating the use of unsecured credit in those markets, and shortening the time allowed for posting of additional collateral. In a separate action, the Commission asked for comments on whether to require comprehensive reporting of resales of FTRs in secondary markets. I have also asked FERC staff to begin conducting outreach with market participants on the idea of position limits for FTRs and other energy markets. FERC is open to exploring other issues as appropriate, including whether financial participants in energy markets can create systemic risk and the usefulness of "secondary markets" for resale of FERC-regulated products and services.

Congress has recognized FERC's role in ensuring that FTRs help protect utilities and their customers from increases in the cost of transmission service. As noted above, Congress in 2005 enacted Federal Power Act section 217, requiring FERC to use its authority in a way that enables load-serving entities to secure FTRs on a long-term basis for long-term power supply arrangements made to meet their customer needs.

Moreover, Congress has indicated that RTOs and ISOs should be regulated exclusively by FERC. When Congress enacted the Food, Conservation, and Energy Act of 2008 and addressed the regulatory gap known as the "Enron loophole," by giving the CFTC authority over "significant price discovery contracts [SPDCs]," the Conference Report stated (on page 986) that "[i]t is the Managers' intent that this provision [on

SPDCs] not affect FERC authority over the activities of regional transmission organizations or independent system operators because such activities are not conducted in reliance on section 2(h)(3) [of the Commodity Exchange Act]." In a colloquy with Senator Bingaman, Senator Levin emphasized this point, stating that "it is certainly my intention, as one of the amendment's authors – that FERC's authority over RTOs would be unaffected." Cong. Rec., Dec. 13, 2007, S15447. More recently, the House of Representatives passed H.R. 2454, the American Clean Energy and Security Act of 2009, which (in section 351) would amend the Commodity Exchange Act to define "energy commodity" as including "electricity (excluding financial transmission rights which are subject to regulation and oversight by the Federal Energy Regulatory Commission.)"

Congress has taken care to avoid duplicative regulation elsewhere in the electric industry. For example, the Federal Power Act exempts state agencies from regulation as public utilities; preserves State authority over local distribution and intrastate commerce (including much of Texas); and exempts cooperatives from regulation as public utilities if they are financed by the Rural Utilities Service. The same approach of avoiding duplicative regulation is warranted here.

State regulators support FERC's jurisdiction in wholesale energy markets instead of a shift of jurisdiction to the CFTC. Last month, the National Association of Regulatory Utility Commissioners (NARUC) adopted a resolution stating that FERC (and, within ERCOT, the state commission) "should continue to be the exclusive Federal regulator with authority to oversee any agreement, contract, transaction, product, market mechanism or service offered or provided pursuant to a tariff or rate schedule filed and accepted by the FERC…."

The impetus for legislation on financial derivatives is the financial turmoil caused by certain unregulated financial derivatives and other factors. As Chairman Gensler stated in recent testimony before the House Committee on Agriculture: "One year ago, the financial system failed the American public. The financial regulatory system failed the American public." He also stated that "[w]e now face a new set of challenges as the nation continues to recover from last year's failure of the financial system and the financial regulatory system." The FERC-regulated energy markets did not cause these problems. Any response by Congress should address the source of these problems, and not inadvertently sweep in the FERC-regulated markets, since these have continued to perform well.

In short, FERC has many years of experience with the energy markets. While I and others continue to seek improvements in these markets, I see no problem in these markets that would be solved by supplementing or displacing FERC oversight with CFTC oversight. No regulatory failure has occurred that would warrant such a major shift in oversight of these markets. These markets are vital in meeting the energy needs of many millions of Americans, and nothing has been proffered to warrant the uncertainty of inserting a new regulator and a new regulatory regime.

The potential harm that would ensue, however, if the regulation of the energy markets was taken from FERC could be substantial. Investment in infrastructure needed both to maintain reliability and to develop clean renewable energy resources could be impeded. Consumer protection could be impaired and the benefits to consumers from viable competitive energy markets could be compromised. In sum, the current system of FERC oversight and comprehensive regulation of electric and gas markets is working well. Changing that system will not enhance benefits to consumers, but only put them in jeopardy.

Conclusion

Late last year, Chairman Gensler testified that giving the Federal Reserve certain authority in financial markets "has the potential of setting up multiple regulators overseeing markets and market functions in the United States." He also stated that "[w]hile it is important to enhance the oversight of markets by both the SEC and CFTC, I think Congress would want to closely consider whether it's best to set up multiple regulators for some functions." The context of today's hearing is different, but the concern is the same. Any improvements warranted in FERC-regulated markets can be made by FERC. Interposing a new regulator, or having multiple regulators, has not been justified, is not needed and would be harmful.

Attachment A

Subject of investigation and ORDER and DATE	Total payment Civil Penalty, Disgorgement, Other	Explanation of payments (civil penalty under the NGA, FPA, or NGPA; DISGORGEMENT OF PROFITS; other PAYMENTS) and compliance plans
Florida Blackout, 129 FERC ¶ 61,061 (October 8, 2009)	$25,000,000 Civil Penalty	Civil penalty resulting from violations of Mandatory Reliability Standards for the Bulk Power System Order No. 693, FERC Stats & Regs 31,342 (2007).
Energy Transfer Partners, L.P., 128 FERC ¶ 61,269 (September 21, 2009)	$5,000,000 Civil Penalty $25,000,000 Disgorgement	Civil penalty resulting from violations of market behavior rule 18 C.F.R. §284.403(a) (2005).
Enserco Energy, Inc., 128 FERC ¶ 61,173 (August 24, 2009)	$1,400,000 Civil Penalty	Civil penalty resulting from violations of the Commission's open access transportation program, including, improper release and acquisition of discounted rate capacity through flipping transactions, and violations of the shipper-must-have-title requirement.
In re Amaranth Advisors., *et al* 128 FERC ¶ 61,154 (July 8, 2009)	$7,500,000 Civil Penalty	Civil penalty resulting from violations of 18 C.F.R. §1C.1 (Natural Gas Anti-Market Manipulation Rule).
In re Southern Company Services, Inc., 128 FERC ¶ 61,013 (July 8, 2009)	$350,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of buy-sell transactions and shipper-must-have-title requirements.
In re Wasatch Oil & Corp. and Wasatch Energy LLC, 127 FERC ¶ 61,322 (June 30, 2009)	$320,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions.
In re ProLiance Energy, LLC, 127 FERC ¶ 61,321 (June 30, 2009)	$3,000,000 Civil Penalty $195,959.44 Disgorgement	Civil penalty and compliance reporting resulting from violations of §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions, violations of shipper-must-have-title requirements and violations of buy-sell transaction rules
In re Sequent Energy Management, L.P. and Sequent Energy Marketing, L.P., 127 FERC ¶ 61,320 (June 30, 2009)	$5,000,000 Civil Penalty $53,728.18 Disgorgement	Civil penalty and compliance reporting resulting from violations of §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions, violations of shipper-must-have-title requirements and violations of buy-sell transaction rules.

In re Piedmont Natural Gas Co. Inc., 127 FERC ¶ 61,319 (June 30, 2009)	$1,250,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions.
In re Puget Sound Energy, 127 FERC ¶ 61,070 (April 22, 2009)	$800,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of 18 C.F.R. §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions and self-reported violations of shipper-must-have-title requirements.
In re Anadarko Petroleum Corp., 127 FERC ¶ 61,069 (April 22, 2009)	$1,100,000 Civil Penalty $232.423.40 Disgorgement	Civil penalty, disgorgement and compliance reporting resulting from violations of 18 C.F.R. §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions.
In re Louisville Gas and Electric Co., 127 FERC ¶ 61,068 (April 22, 2009)	$350,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of 18 C.F.R. §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions.
In re Jefferson Energy Trading, LLC, Wizco, Inc., Golden Stone Resources, LLC, 126 FERC ¶ 61,040 (January 15, 2009)	$585,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of 18 C.F.R. § 1c.1, in connection with an attempt to engage in multiple affiliate bidding to impair the pro rata allocations in an auction.
In re Klabzuba Oil & Gas, F.L.P., 126 FERC ¶ 61,040 (January 15, 2009)	$300,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of 18 C.F.R. § 1c.1, in connection with an attempt to engage in multiple affiliate bidding to impair the pro rata allocations in an auction.
In re ONEOK, Inc., 126 FERC ¶ 61,040 (January 15, 2009)	$4,500,000 Civil Penalty $1,914,945 Disgorgement	Civil penalty, disgorgement and compliance monitoring resulting from violations of 18 C.F.R. § 1c.1, in connection with the submission of multiple affiliate bids to impair the pro rata allocation mechanism in an auction. Also violations of shipper-must-have-title requirements and open access transportation requirements.
In re Tenaska Marketing Ventures, 126 FERC ¶ 61,040 (January 15, 2009)	$3,000,000 Civil Penalty $1,972,842 Disgorgement	Civil penalty, disgorgement and compliance monitoring resulting from violations of 18 C.F.R. § 1c.1, in connection with the submission of multiple affiliate bids to impair the pro rata allocation mechanism in an auction.

In re DCP Midstream, LLC, 125 FERC ¶ 61,359 (December 23, 2008)	$360,000 Civil Penalty	Civil penalty and compliance monitoring reporting resulting from self-reported violations of the shipper-must-have-title requirement.
Sempra Energy Trading LLC, 125 FERC ¶ 61,360 (December 23, 2008)	$400,000 Civil Penalty $7,959 Disgorgement	Civil penalty, disgorgement, and compliance monitoring reporting resulting from self-reported violations of the shipper-must-have-title requirement.
In re Cornerstone Energy, Inc., 125 ¶ FERC 61,234 (November 26, 2008)	$325,000 Civil Penalty $121,825 Disgorgement	Civil penalty and disgorgement resulting from self-reported violations of the shipper-must-have-title requirement.
In re NorthWestern Corporation and NorthWestern Services, LLC., 125 FERC ¶ 61,233 (November 26, 2008)	$450,000 Civil Penalty	Civil penalty and compliance monitoring reporting resulting from self-reported violations of the shipper-must-have-title requirement and failure to obtain a certificate of public conveyance and necessity under section 7of the NGA.
In re Integrys Energy Services, Inc., 125 FERC ¶ 61,089 (October 24, 2008)	$800,000 Civil Penalty $194,506 Disgorgement	Civil penalty, disgorgement, and a 1 year compliance monitoring plan resulting from a self-report for violations of shipper-must-have-title requirements and circumvention of the posting and bidding requirements for released capacity.
In re Enbridge Marketing (U.S.) L.P., 125 FERC ¶ 61,088 (October 24, 2008)	$500,000 Civil Penalty	Civil penalty and compliance report resulting from self-reported violations of the shipper-must-have-title requirement.
In re Duquesne Light Company, 123 FERC ¶ 61,221 (May 29, 2008)	$250,000 Civil Penalty $1,000,000 Compliance Plan	Civil penalty and at least $1,000,000 designated for a comprehensive compliance plan for violations of FERC cost allocation procedures, the electric quarterly report filing requirement, and the standards of conduct.
In re Edison Mission, 123 FERC ¶ 61,170 (May 19, 2008)	$7,000,000 Civil Penalty $2,000,000 Compliance Plan	Civil penalty and at least $2,000,000 designated for a comprehensive compliance plan for violations of 18 C.F.R. § 35.41(b) (2007), which imposes a duty to provide accurate, factual, and complete information in communications with the Commission upon electric power sellers authorized to engage in sales for resale of electric energy at market based rates.
In re Entergy New Orleans, Inc., 122 FERC ¶ 61,219 (March 11, 2008)	$400,000 Civil Penalty	Civil penalty resulting from self-reported violations of the Commission's shipper-must-have-title requirement.
In re Constellation NewEnergy – Gas Division, LLC, 122 FERC ¶ 61,220	$5,000,000 Civil Penalty $1,899,416 Disgorgement	Civil penalty, disgorgement, and a compliance monitoring plan resulting from self-reported violations of the Commission's capacity

(March 11, 2008)		release policies, including circumvention of the posting and bidding requirements for released capacity, violations of the shipper-must-have-title requirement, and violations of the prohibition on buy-sell transactions.
In re BP Energy Company, 121 FERC ¶ 61,088 (October 25, 2007)	$7,000,000 Civil Penalty	Civil penalty and compliance monitoring plan resulting from self-reported violations of competitive bidding regulations, shipper-must-have-title requirement, and prohibition on buy/sell arrangements.
In re MGTC, Inc., 121 FERC ¶ 61,087 (October 25, 2007)	$300,000 Civil Penalty	Civil penalty and compliance report resulting from self-reported violations of the shipper-must-have-title requirement.
In re Gexa Energy, L.L.C., 120 FERC ¶ 61,175 (August 21, 2007)	$500,000 Civil Penalty $12,481.41 Disgorgement	Civil penalty and disgorgement resulting from a self- report of violations of the FPA.
In re Cleco Power, LLC, et al., 119 FERC ¶ 61,274 (June 12, 2007)	$2,000,000 Civil Penalty	Civil penalty and a 1-2 year compliance plan resulting from a self-report for a violation of a 2003 Settlement agreement by sharing 9 employees and sharing prohibited market information between different Cleco companies.
In re Columbia Gulf Transmission Company, 119 FERC ¶ 61,174 (May 21, 2007)	$2,000,000 Civil Penalty	Civil penalty resulting from a Commission referral for a violation of a Commission order to allow installation of a receipt interconnection.
In re Calpine Energy Services, L.P., 119 FERC ¶ 61,125 (May 9, 2007)	$4,500,000 Civil Penalty	Civil penalty and a 1-2 year compliance plan resulting from a self-report for violations of shipper-must-have-title requirements.
In re Bangor Gas Company, 118 FERC ¶ 61,186 (March 7, 2007)	$1,000,000 Civil Penalty	Civil penalty and a 1 year compliance plan resulting from a self-report for violations of shipper-must-have-title requirements.
In re PacifiCorp, 118 FERC ¶ 61,026 (January 18, 2007)	$10,000,000 Civil Penalty	Civil penalty and a 1 year compliance plan resulting from a self-report for violations of OATT and Standards of Conduct.
In re SCANA Corporation, 118 FERC ¶ 61,028 (January 18, 2007)	$9,000,000 Civil Penalty $1,800,000 Disgorgement	Civil penalty, disgorgement, and a 1 year compliance plan resulting from a self-report for violations of OATT.
In re Entergy Services, Inc., 118 FERC ¶ 61,027 (January 18, 2007)	$2,000,000 Civil Penalty	Civil penalty and a 1-2 year compliance plan resulting from a self-report for violations of OATT and Standards of Conduct OASIS posting requirements.

In re NorthWestern Corporation, 118 FERC ¶ 61,029 (January 18, 2007)	$1,000,000 Civil Penalty	Civil penalty and a 2 year compliance plan resulting from a hotline call for violations of Business Practice Standards for OASIS Transactions.
In re NRG Energy, Inc., 118 FERC ¶ 61,025 (January 18, 2007)	$500,000 Civil Penalty	Civil penalty and a 1 year compliance plan resulting from a self-report for violations of ISO-NE Market Rule 1 and the Commission's Market Behavior Rules 1 and 3.

Total penalties $114.80 million

Attachment B

Number of FTR Participants and Paths (2009)

RTO	Market Participants	Active FTR Paths
PJM	175	79,330
MISO	106	23,870
ISO-NE	51	23,255
CAISO	64	23,039
NYISO	54	3,055
	TOTAL	152,549

Source: Derived from RTO data in Ventyx; NYISO derived from RTO website data.
Note: The count of market participants and active FTR paths reflect long and short-term auctions and include all allocated and auctioned FTRs. The counts for PJM and MISO reflect the June 2008 through May 2009 planning period; all other RTOs are for calendar year 2009. The CAISO FTRs were implemented along with the day-ahead market on April 1, 2009. NYISO only allows for zonal load nodes. Many participants are active in multiple markets.