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Vice Chair

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REGULATORY COMMISSION

United States Senate

July 31, 2013

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

Dear Chairman Wellinghoff,

We write regarding the settlement reached yesterday between the Federal Energy Regulatory Commission (FERC) and JPMorgan Chase (JPMorgan) over claims that the bank engaged in serial frauds against electricity consumers and state energy authorities.

As a result of legislative provisions passed by Congress in 2005, FERC now has the authority to oversee and prevent manipulation and deception within electricity and natural gas markets and impose stiff penalties to deter such future practices. We commend you for using this authority to bring the largest civil penalty and settlement in FERC's history. However, we have some questions related to the prosecution of this and other manipulation cases and larger concerns about the apparent increasing frequency of manipulation in electricity markets.

According to your investigators, shortly following JPMorgan's acquisition of California and Michigan power plants in 2008, the plants started losing money. At that point, the bank adopted twelve different schemes to offer electricity at prices "calculated to appear falsely attractive."¹ These manipulations reportedly transformed "money-losing power plants into powerful profit centers"² while costing state authorities tens of millions of dollars in direct losses.³ The ripple effects of price manipulation may have cost consumers many times that amount.

In addition, in 2012, FERC accused JPMorgan of stiff-arming its investigators by refusing to comply with subpoenas, engaging in "a systematic cover-up" of documents exposing the schemes, and rewriting internal documents questioning the legality of bank conduct.⁴

¹ Ben Protess and Jessica Silver-Greenberg, *A Fresh Tactic by JPMorgan: A Push to Settle*, NY TIMES, July 18, 2013, at A1.

² Jessica Silver-Greenberg, *JPMorgan Executive May Escape Penalty*, NY TIMES, July 19, 2013, at B1.

³ Id.

⁴ Protess and Silver-Greenberg, *A Fresh Tactic*, at A1.

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JPMorgan may even have evaded a FERC-imposed six-month suspension from the California electricity market by granting its rights to two independent firms.⁵

Now, FERC and JPMorgan have entered into a settlement agreement that requires JPMorgan to disgorge unjust profits of \$125 million and to pay civil penalties of \$285 million, for total damages of \$410 million. While this fine is large in absolute terms, the total penalties are equal to roughly 1.3 percent of JPMorgan's 2012 profits.⁶ We are concerned about whether the settlement includes adequate refunds to defrauded ratepayers and also concerned that the individual executives who sought to impede the Commission's investigation will not be punished.

It is critical that government settlements provide appropriate relief for consumers and deter future law-breaking. With these goals in mind, we have several questions for FERC:

- 1) What analysis did FERC conduct to evaluate harms to consumers? Did FERC's analysis take into account the ripple effect of manipulations and indirect costs to authorities and ratepayers? If so, please make that analysis available to our offices. Does the Commission believe that the \$125 million in disgorged unjust profits is sufficient to make ratepayers whole?
- 2) Do you believe it to be the case that JPMorgan granted its trading rights to two independent firms during the six-month suspension period to evade FERC's penalties? If so, does FERC consider the six-month suspension to have been an effective penalty? And, if it was not an effective penalty, what other penalties could FERC impose to better deter improper conduct?
- 3) Is the Commission concerned, based on the high and increasing number of recent FERC enforcement actions, about an increase in market manipulation?
- 4) Does the Commission believe it has the necessary jurisdiction over related financial markets to make certain that energy consumers are protected? Specifically, what is the status of the Memorandum of Understanding required under the Dodd-Frank Wall Street Reform Act to clarify how FERC and the CFTC plan to address information flow and prevent market manipulators from exploiting gaps in regulatory oversight?
- 5) Will the Commission release the full FERC Enforcement Staff report of JPMorgan's conduct in this case?
- 6) Why did the Commission decide to take no action against JPMorgan executives who planned and executed market manipulations or who impeded the Commission's investigations? Is the Commission concerned that these executives will continue to engage in illicit activities at other institutions?


⁵ Lynn Doan, *JP Morgan May Evade Power-Trading Ban With Swaps, ISO Says*, BLOOMBERG, May 10, 2013, <http://www.bloomberg.com/news/2013-05-10/jpmorgan-may-be-evading-power-trading-ban-with-swaps-iso-says.html>.

⁶ Michael Hiltzik, *How Bad Banks Get Away With It*, LA TIMES, July 24, 2013, at B1.


- 7) Why was JPMorgan permitted to avoid an admission of guilt in this case? Under what circumstances would FERC determine that requiring an admission of guilt is a precondition for settlement?

We appreciate your efforts to hold accountable those who break the law, and there is no question that your efforts shed light on JPMorgan's efforts to impede the Commission's investigation and to engage in conduct that violated FERC's Anti-Manipulation Rule and that "operate[d] as a fraud on electricity market participants."⁷ However, we believe that it is critical that FERC and other agencies be as transparent as possible about its settlements – both to Congress and the public. Such transparency is needed to build confidence that the government is developing and using its leverage effectively, and that it is taking necessary steps to obtain maximum relief for consumers and deter future illicit activity.

Sincerely,



Elizabeth Warren
United States Senator



Edward J. Markey
United States Senator

⁷ Order Approving Stipulation and Consent Agreement, 144 FERC ¶ 61,068 (July 30, 2013), <https://www.ferc.gov/EventCalendar/Files/20130730080931-IN11-8-000.pdf>.

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