

PART ONE

Chris Newkumet: In the face of new market enforcement challenges, unresolved cyber security issues and an increasingly complicated operational relationship between natural gas suppliers and power generators, the U.S. Federal Energy Regulatory Commission finds itself in the thick of things coming out of the summer doldrums. Flying below the radar, the Commission is taking on several matters of great significance to industry, markets and consumers. Here to talk about it is FERC Chairman Jon Wellinghoff.

Let's start with the enforcement and investigations machine, which has roared into life under your chairmanship. We have in the past year had a \$250 million settlement involving Constellation. Over the past four or five years, I believe, there is upwards of \$500 million in fines and disgorged profits. We have show-cause orders out almost every other week now calling companies on the carpet to explain what they've been doing in electric markets, etc. We've had a series of very high profile pipeline rate investigations telling pipelines to prove why they are making what they are making. What's gotten into you?

Chairman Wellinghoff: What's gotten into us is sort of the natural progression of where we started out back in the Enron era and the 2000-2001 timeframe when we had extensive fraud and manipulation going on in the energy markets and FERC did not have adequate authority, did not have adequate resources to move forward with the types of activity that we have now. Then in 2005, Congress under the Energy Policy Act gave us the authority specifically to go after fraud and manipulation. They also upped our penalty authority from \$10,000 a day, per violation to now \$1 million per day, per violation, which adds up very quickly when you have multiple violations.

Back in the Enron era we had 10 or 12 attorneys working in a small enforcement office with really no authority, no penalty authority, and now we have over 140 attorneys headed by a former U.S. Attorney ...

CN: Norman Bay...

Chairman: Norman Bay. The deputy is a former counsel to the FBI. So we have serious people who understand the landscape in the energy area, both gas and electric, and who have adequate resources, both the statutory authority and the physical resources, to go after people and ensure that the markets operate fair and openly in ways that consumers can be protected.

CN: This reminds me, I remember seven, eight, nine years ago under a different chairman it was announced that all of a sudden FERC was going to be the "cop on the beat." But it occurred to us that the same 1,400 employees were working there and you can't just flip the switch. But what you are saying is, it has taken this amount of time, some budget authority, some statutory authority to really ramp things up. That's fine.

How is this good for regulated industries? Do regulated industries have a sense of certainty about the rules now?

Chairman: Those who do play by the rules know that they can make money in the markets and not be disadvantaged and not be taken advantage of, just like consumers, by those people who are not playing by the rules. So it is important that you have somebody in place who can ensure that those rules are enforced, and enforced in a fair and full manner.

CN: I know cyber security is on your mind and in your worries. The energy industries, the energy sectors are really standing out there with their pants down. There are hundreds of thousands of cyber threats every day; there are threats to physical facilities; there are atmospheric events we worry about. This would seem to be the quintessential bi-partisan issue. The pro-hacker lobby can't be very powerful, and yet Congress has done nothing, it fiddles. You are on the record as saying someone should be given authority to do something here, and you've suggested that it should be FERC. Why?

Chairman: Well, Chris, I've been harping on this issue since I became a Commissioner in August 2006. I've been there for six years and it's an issue that still needs to be resolved. We need authority, or someone needs authority, to address immediate threats and vulnerabilities that could affect the infrastructure of our energy system in this country...

CN: Pretty severely...

Chairman: Very severely. Both the electric system and the natural gas system, and I want to emphasize that, especially given that we are now moving toward more generation from natural gas. It is vulnerable, both systems are vulnerable in a way that we need to have some authority to ensure that with potential known threats or vulnerabilities they can be immediately mitigated and we can in fact address them in ways that those systems can be made secure.

CN: And FERC has the experience and the day-to-day relationships with utilities...

Chairman: We do. We have authority over those jurisdictional entities, but we don't have that immediate type authority that would be necessary to, first, communicate information confidentially and, number two, be able to order specific things to be done and to follow up on those things that needed to be done. That's not there.

CN: Natural gas is now equally responsible for power generation compared to coal. This has revealed some problems. The natural gas suppliers and electric utilities apparently don't play well together. FERC just wrapped up a series of five high-profile conferences on this matter. Pretty quickly, what was your take-away message from the conferences?

Chairman: Well, the take-aways from the five regional meetings that we had were that we have some regional-specific problems. There are some areas that have congestion and difficulties in delivering gas at certain times of the year based upon pipeline infrastructure. Those are regional specific. But we have other issues with respect to scheduling between gas nominations and electric scheduling, and those scheduling systems are not, often, compatible. So we have to look at the compatibilities of those scheduling systems and see if we need to put in place any policies or any nationwide actions.

CN: FERC Chairman Jon Wellinghoff, always interesting talking to you.