ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

September 20, 2007

The Honorable Joseph T. Kelliher
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

The Honorable Walter Lukken
Acting Chairman
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Dear Chairman Kelliher and Acting Chairman Lukken:

We are writing to you with respect to recent press reports raising troubling questions about your respective jurisdictions and working relationship.

As the Chairman and Ranking Member, respectively, of the Committee on Energy and Commerce and the lead negotiators for the House of Representatives on the conference committee that wrote the Energy Policy Act of 2005 (EPAct), we share a strong interest in the effective implementation of this legislation. Section 315 of EPAct granted the Federal Energy Regulatory Commission (FERC) broad new authorities to police natural gas markets against manipulation. Section 1283 included similar authority in electricity markets. Sections 314 and 1284 of the Act increased FERC's civil penalty authority for natural gas and electricity, respectively, so that its enforcement actions would have real teeth. We expect FERC to engage in active oversight and to make appropriate and vigorous use of these new authorities in order to provide for the integrity of those markets, fair competition, and the protection of consumers.

Sections 316 and 1281 of EPAct enacted an important requirement for FERC and the Commodity Futures Trading Commission (CFTC) to develop a Memorandum of Understanding (MOU) to facilitate the sharing of information between the two agencies. It was clear then, and remains clear now, that energy markets, and manipulation schemes seeking to exploit them, straddle the discrete regulatory jurisdictions of your two agencies. In recognition of this deep interconnectedness, it did not make sense to us to retain the previous administrative burdens for sharing information. Our clear intent was for your two agencies to work together, share information, conduct joint investigations, and find and prosecute market manipulation wherever it might take place.

Accordingly, we were pleased to see your agencies conclude your MOU so quickly. This and other cooperative actions taken by you to date are exactly what we authors of EPAct had in mind.

We assure you of our strong support for the enforcement authority of both FERC and the CFTC. FERC has statutory and regulatory authority to prohibit manipulation relating to FERC jurisdictional markets. Efforts by FERC to protect the wholesale energy markets from manipulation are not inconsistent with the CFTC's exclusive day-to-day regulation of futures exchanges, futures contract terms, trading rules, and the like. We do not view these regulatory jurisdictions as conflicting or duplicative but rather as complementary.

It was to be expected that there would be challenges to the implementation of these sections of EPAct, as there are with most new regulatory laws. We urge you to vigorously defend your combined authorities now and in the future. Please be advised that we take seriously our responsibilities to see that the laws we enact are faithfully executed.

Sincerely,

John D. Dingell
Chairman

Joe Barton
Ranking Member

Energy Daily

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Gas Demand In Oil Sands Dropping Off

BY JEFF BEATTIE

CHICAGO—In a rare piece of good news for U.S. utilities and consumers counting on Canadian natural gas imports, gas consumption in Alberta's massive oil sands operations has been dramatically smaller than predicted, and future technological advancements may continue the trend and leave more gas available for export south, a Canadian industry official said here today.

As long predicted, overall Canadian gas imports into the lower 48 states will likely continue to decline as production from western Canada fades and Canadian consumption grows, cautioned David Slater, managing director of marketing for Nexen Marketing USA Inc., in a speech at the LDC Forum Mid-Continent conference here.

But one major slice of growing Canadian consumption—the oil sands—has not drained nearly as much Canadian gas as expected, Slater told an audience of U.S. gas utility, production and marketing officials.

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CFTC Turning On FERC In Amaranth Enforcement Case

BY GEORGE LOBSENZ

In what would be a stunning turn against another federal regulatory agency in a high-profile enforcement case, the Commodity Futures Trading Commission has told Capitol Hill staff that it plans to submit legal briefs saying the Federal Energy Regulatory Commission does not have authority to penalize the Amaranth hedge fund for alleged manipulation of natural gas futures markets—effectively backing Amaranth's main argument against FERC, sources told *The Energy Daily* Monday.

Sources said Commodity Futures Trading Commission (CFTC) officials had meetings with Senate and House staffers Friday in which the CFTC officials said that—despite many months of cooperation with FERC in developing the federal case against Amaranth —the CFTC now feels FERC does not have legal authority to pursue alleged Amaranth misbehavior in gas futures markets that are primarily regulated by the CFTC.

The sources said CFTC's apparent change of heart appeared to be primarily motivated by "turf" concerns that FERC's July enforce-

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APEC Climate Declaration Sets Goals On Efficiency, Forests

BY CHRIS HOLLY

In a declaration dismissed as "climate change chit-chat" by a senior congressional Democrat, the United States and 20 other Pacific Rim nations issued a non-binding pledge Sunday to increase the amount of forest acreage in their countries and to improve the energy efficiency of their national economies.

The members of the Asia-Pacific Economic Cooperation (APEC) group also agreed "to work actively and constructively toward a comprehensive post-2012 arrangement" to replace the Kyoto Protocol climate change treaty when that accord expires at the end of 2012. However, the declaration stopped well short of endorsing caps on emissions of carbon dioxide (CO_2) and other heat-trapping gases blamed by scientists for warming the planet's atmosphere.

The declaration, which also includes language on regional trade and security issues, calls for the 21 APEC members to increase forest cover in the region by 20 million hectares—49.4 million acres—beyond a 2005 baseline by 2020. Because trees are natural "sinks" for CO_2, achieving the forestry goal would remove from the atmosphere roughly 1.4 billion metric tons of carbon, equivalent to about 11 percent of annual global emissions in 2004, the declaration asserted.

The efficiency goal calls for APEC members to reduce their energy intensity, defined as the amount of energy required to produce a given amount of economic goods and services, by 25 percent below a 2005 baseline by 2030.

Both the afforestation and energy intensity targets are stated as "aspirational goals," and thus are non-binding

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CFTC Turning On FERC In Amaranth Case... (Continued from p. 1)

ment action against Amaranth was intruding in the CFTC's jurisdiction over energy futures markets.

"It appears to be a turf battle over who is going to be regulating these [futures] markets," said one source, noting that the CFTC also has filed an enforcement case against Amaranth.

Sources said the CFTC changed its mind after it was asked by the court hearing the CFTC complaint against Amaranth to file briefs on questions raised by the hedge fund on FERC's authority to bring the enforcement action.

After conducting legal analyses, "the CFTC felt compelled to argue that it had exclusive jurisdiction [over Amaranth's gas futures trading activities]," a knowledgeable source said.

A CFTC spokesman had no immediate comment Monday on the agency's apparent change of position on FERC's authority, saying the CFTC does not comment on pending litigation.

FERC officials did not respond Monday to a request for comment.

While CFTC and FERC officials were mum, the CFTC briefings on Capitol Hill came as the White House Friday announced that it had named Walter Lukken as the new chairman of the CFTC. Lukken, a Republican, has been serving as acting CFTC chairman since former chairman Reuben Jeffrey's resignation earlier this year.

Beyond its potentially devastating impact on FERC's case against Amaranth, the CFTC's apparent new position on FERC's authority is particularly strange because a federal appeals court in July rejected an initial Amaranth attempt to win a temporary restraining order against FERC based on the hedge fund's assertion that the CFTC has exclusive authority to regulate gas futures markets.

Whatever the motivation for the CFTC's new position, it is likely to be political dynamite in the Democratic-controlled Congress, where leaders generally have been leaning on both the CFTC and FERC to toughen oversight and enforcement in increasingly volatile energy markets.

The Amaranth case is perhaps the most highly publicized enforcement matter pending before both agencies, in part due to Amaranth's spectacular failure after its natural gas trading strategy blew up in its face, putting the hedge fund into bankruptcy.

Both the CFTC and FERC in July brought enforcement actions against Amaranth accusing the hedge fund of actions aimed at manipulating the natural gas futures market. While the CFTC charged Amaranth with attempted manipulation, FERC went one step further and alleged that Amaranth succeeded in manipulating the futures market.

FERC said Amaranth succeeded in lowering gas futures prices on the New York Mercantile Exchange (NYMEX) through short bursts of massive selling, which allegedly benefited gas derivative positions Amaranth held on the Intercontinental Exchange (ICE) and other unregulated natural gas derivative exchanges.

In bringing its case against Amaranth, FERC contended that the alleged manipulation of the futures markets affected prices in the physical gas market that it regulates under the Natural Gas Act.

FERC's action was particularly significant because it represented the first time it has exercised new authority granted to FERC by Congress in the Energy Policy Act of 2005 (EPACT) to regulate transactions made "in connection with" physical gas sales.

FERC took action amid growing expressions of concern by key congressional Democrats and industrial gas consumers that physical gas prices were being affected by derivative trading on exchanges such as ICE, which are largely exempt from CFTC monitoring under a 2000 federal law championed at the time by the now-defunct Enron Corp.

Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-N.M.) has been particularly active in questioning FERC and the CFTC about their oversight of natural gas markets and FERC's plans for implementing its new enforcement authority under EPACT.

Asked about the CFTC's apparent change of position on FERC's authority, a spokesman for Bingaman Monday said: "Without prejudging Amaranth, he (Bingaman) applauds FERC for the actions it has taken so far. He is pleased that FERC is so robustly using its new authority under EPACT."

The CFTC's briefings on Capitol Hill followed a recent hearing in U.S. District Court for the Southern District of New York, which is hearing the CFTC complaint against Amaranth. Sources said that at the hearing both FERC and the CFTC sought a delay in proceedings in hopes of resolving the newly developing rift between the two agencies over FERC's authority.

FERC's enforcement action against Amaranth is not before the court because FERC is acting under its administrative authority. The commission issued a July 24 "show-cause" order against Amaranth laying out its allegations against the hedge fund and seeking $291 million in fines and profit disgorgements by the bankrupt hedge fund and its top two gas traders. The order does not represent final commission action, but rather gives Amaranth an opportunity to rebut the charges.

Amaranth responded in an August 27 filing at FERC in which the hedge fund challenged FERC's authority to take action on its futures trading. Amaranth argued that it never made a "single" transaction involving physical natural gas—FERC's primary area of authority in natural gas markets—but dealt exclusively in gas futures.

While FERC contends Amaranth's futures trading affected physical gas prices subject to FERC oversight, Amaranth mocked those arguments as "bootstrapping.

"The commission's...exercise of jurisdiction over futures transactions 'is plainly contrary to law and cannot stand,'" said Amaranth, citing a 2002 district court case involving FERC enforcement against Atlantic City Electric Co.

"Accordingly, Amaranth Advisors respectfully request the commission expeditiously to reassess its jurisdictional ruling to avoid an expensive waste of commission and taxpayer resources, and the unjustified burden and cost this proceeding is imposing on Amaranth Advisors."

Although the circumstances are somewhat different, an initial legal skirmish over FERC jurisdiction in the Amaranth case would suggest Amaranth might have a tough time making its case.

Days before FERC announced its enforcement action against Amaranth, the U.S. Court of Appeals for the District of Columbia Circuit refused to issue a temporary restraining order against the agency that Amaranth's head trader, Brian Hunter, sought based on the argument that FERC has no authority over gas futures.