

# Platts Energy Podium: Court Ruling on U.S. FERC Enforcement May Need Legislative Fix - Clark

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WASHINGTON

WASHINGTON, March 20, 2013 /PRNewswire/ -- A recent court decision limiting the U.S. Federal Energy Regulatory Commission's (FERC) market enforcement authority is disappointing and highlights an issue that may be ripe for legislative action, FERC Commissioner Tony Clark said Wednesday at a [Platts Energy Podium](#) newsmaker event in Washington.

"The unfortunate outcome is that there is less light in an area that deserves it and ultimately the public's interest is harmed when that happens," Clark said. Clark is the newest of the FERC's five commissioners.

Clark was referring to a March 15 decision by the D.C. Circuit Court of Appeals that held that the U.S. Commodity Futures Trading Commission (CFTC) has exclusive jurisdiction over futures trades.

The court tossed out FERC's \$30 million penalty against natural gas futures trader Brian Hunter for allegedly manipulating the New York Mercantile Exchange natural gas futures contracts in the spring of 2006. The CFTC is separately prosecuting Hunter for allegedly manipulating those markets.

Clark told the Platts Energy Podium that he wished the court had taken a different path.

"I was disappointed with the decision. I would have hoped that there might have been a way for the court to attempt to harmonize the statutes that were at play in a way that could have I think in the best way protected the public's interest."

The ruling may mean that there is less oversight of cross-market manipulation, he said.

"I don't think that's what Congress intended, so there may be a legislative fix that's needed."

FERC has a number of enforcement proceedings pending, involving alleged market manipulation by companies that traded at a loss in either a financial or physical electricity market in order to gain in the other market.

For now, it is tough to tell what impact the Hunter decision will have on FERC's current and future enforcement work, Clark said.

"I think it might be a bit of a stretch to say that it impacts all of these cases that we have," he said, noting that Hunter was not trading in the physical markets that FERC oversees.

"With regard with what may happen in the future, I think that we don't know because we don't know what exact cases may be out there," he said.

A recording of the Tony Clark session is available via podcast at this link: <http://plts.co/PEPclark>.

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