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FERC Lacks Authority Over Commodity Futures Contracts

The D.C. Circuit clarifies that FERC may prohibit manipulative trading only in markets outside of the CFTC's exclusive jurisdiction over commodity futures contracts.

On March 15, the U.S. Court of Appeals for the District of Columbia Circuit ruled in *Hunter v. FERC*[1] that the Federal Energy Regulatory Commission (FERC) lacks authority over commodity futures contracts and therefore cannot assess fines for manipulation of the natural gas futures market. This decision undercuts FERC's interpretation of its enforcement jurisdiction under the Natural Gas Act (NGA) to regulate the natural gas markets.

FERC alleged that, over the span of three months in 2006, Brian Hunter, a natural gas trader for a hedge fund, sold a significant number of natural gas futures contracts at the end of trading day and was able to depress the natural gas settlement price on the New York Mercantile Exchange. Hunter's portfolio benefited from this reduction in price. On July 25, 2007, the Commodity Futures Trading Commission (CFTC) filed a civil enforcement action under the Commodity Exchange Act (CEA), alleging that Hunter manipulated the price of natural gas futures contracts. On the following day, FERC filed an administrative enforcement action alleging that Hunter manipulated the market in violation of section 4A of the NGA and ultimately fined him $30 million. Hunter petitioned for review, arguing that FERC lacked jurisdiction to pursue its enforcement action. The CFTC case has been on hold in the U.S. District Court for the Southern District of New York, pending the D.C. Circuit's ruling regarding FERC's jurisdiction.

The D.C. Circuit rejected FERC's argument that the Energy Policy Act expanded FERC's authority to regulate manipulation in energy markets such that this authority could be complementary to or even override the CFTC's authority. FERC also contended that the manipulation of natural gas futures contracts directly affects the price of natural gas transactions, which falls within its jurisdiction. However, the D.C. Circuit held that the plain language of the CEA vests exclusive jurisdiction over all accounts, agreements, and transactions involving commodity futures contracts with the CFTC. The court also noted that accepting FERC's interpretation would go against Congress's objective of centralizing the oversight of futures contracts and avoiding overlapping and duplicative regulation.

This decision resolves the ongoing dispute in this litigation regarding the extent of FERC's jurisdiction.

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1. *Hunter v. FERC*, No. 11-1477 (D.C. Cir. Mar. 15, 2013), *available at* http://www.cadc.uscourts.gov/internet/opinions.nsf/99CC9904B30AC2CB85257B2F004DEA04/$file/11-1477-1425550.pdf.

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