One-page summary
Testimony of FERC Commissioner Philip Moeller
Before the U.S. House of Representatives

Committee on Energy and Commerce
Subcommittee on Energy and Power

Regarding Order No. 1000, Hydropower, Natural Gas, Electricity, and Reliability

December 5, 2013

Order No. 1000 has contributed to a more transparent and inclusive electric transmission planning process, but the compliance period will last at least several more years. The cost allocation portion of the rule may lead incumbent providers to develop proportionately more local projects, while litigation over the "right-of-first-refusal" issue may cause investment uncertainty until it is resolved.

The Commission faces similar challenges when considering certificating natural gas pipelines and licensing hydroelectric dams. Under current law, the process is dependent on timely submissions by state and federal resource agencies, which if submitted late in the process are likely to extend the Commission's review period.

Over the last 22 months, the Commission has undertaken significant efforts to address the growing convergence of the natural gas and electric industries through seven technical conferences and regular updates. In November the Commission issued its final rule relating to communications regarding sensitive system information in an effort to open communication channels between interstate natural gas pipelines and operators of wholesale electric markets. Continued challenges relate to the mismatch of the gas trading day and the electric trading day, as well as developing new financing models for new interstate natural gas pipelines given that the new customer demand is largely being driven by non-baseload electric generation.

There are growing reliability concerns related to the electric industry meeting the requirements of the Environmental Protection Agency's rule known as the Mercury and Air Toxics rule. These concerns appear most critical in the Midwest in the footprint of the Mid-Continent Independent System Operator especially approaching the summer of 2016.

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Chairman Whitfield, Ranking Member Rush, and members of the Committee, I am Phil Moeller, one of the sitting commissioners of the Federal Energy Regulatory Commission. Thank you for your ongoing oversight and for providing us the opportunity to discuss our responsibilities as members of the Commission.

In our testimony today, you asked us to specifically focus on three areas: Order No. 1000, natural gas pipeline siting, and hydropower relicensing, in addition to other matters we wish to raise. I will address these areas in order and add two areas of continued concern.

Order No. 1000

I was generally supportive of Order No. 1000 and subsequent rehearing orders reasoning that the order would lead to the construction of needed electric transmission throughout the nation. From my perspective, Order No. 1000 has led to a more transparent and inclusive transmission planning process that allows for more participants and demands more accountability. However, there are likely to be several years of additional compliance filings from the intra-regional filing parties. We have not yet considered the complex inter-regional filings which have already raised a number of difficult policy questions. Most of these questions deal with the general concept of how to treat transmission projects in one region that provide benefits to another region.

I had two primary concerns with Order No. 1000, as I was concerned some policy decisions taken in the original order could be counter-productive to enhancing additional transmission deployment. The first relates to those projects that are justified on the basis of enhancing system reliability (as opposed to those projects that are economic in nature, and those projects that are built to address specific public policies, such as state renewable mandates). I would have preferred that the rule allowed incumbent transmission providers a limited time right-of-first-refusal to build reliability projects. I am concerned that this policy has led to more states enacting "right-of-first-refusal" laws, and that our approach will lead to litigation and investment uncertainty until the litigation is resolved.

My second concern arises from the cost allocation part of the rule, where Order No. 1000 encourages a competitive process to select those projects that qualify for region-wide cost sharing. My concern was that transmission providers would intentionally focus on local projects

to avoid the competition, or simply build projects that avoid region-wide cost sharing despite the fact that regional cost-sharing would be a more equitable cost allocation method given the regional benefits that would accrue. Unfortunately, that has happened in many cases, where it appears that providers may be starting to do exactly that: assign more projects as local despite the regional benefits that accrue. For example, the Mid-Continent Independent System Operator (MISO) region changed the cost allocation process so that projects which were formerly allocated as if they were regional would now be allocated to only the region where the project is located.[1]

Because of the ongoing compliance filings, rehearing requests and litigation before the D.C. Circuit, issues surrounding Order No. 1000 implementation will be before the Commission for at least several years.

Pipeline Siting and Hydropower Relicensing

As for natural gas pipeline siting and hydropower relicensing, many of the challenges that face the Commission are similar for both of these areas. I have a great deal of confidence in the leadership and staff within our Office of Energy Projects. They are dedicated, and they follow the law. To the extent that some entities believe our decisions on certificating natural gas pipelines or the licensing and relicensing of hydropower projects take too long, my impression is that the Commission carries out its responsibilities efficiently and that any delays are often driven by the role that state and federal resource agencies are given by federal law in this process.

Simply put, the Commission is dependent on state and federal agencies to submit timely determinations/conditions as part of the regulatory review of projects. It is especially difficult when these agencies issue their determinations or impose conditions late in the process. In addition, these determinations and conditions may be based on an agency's specific focus, rather than the balanced review of all public interest considerations that the Commission is required by statute to undertake.

If Congress chooses to address this situation, changes in various statutes could require that resource agencies meet certain deadlines in their statutory role in reviewing such projects. Another approach would be to provide the Commission with the authority to rule on whether the conditions that resource agencies submit appropriately balance the benefits and costs that these projects provide. Again, this would require a significant change in the various environmental laws for the relevant resource agencies.

[1] See the order issued by FERC, available at: *Midwest Independent Transmission System Operator, Inc., et al.*, 142 FERC ¶ 61,215 (2013). This order was issued in Docket No. ER13-187-000, initiated on Oct. 25, 2012.

Gas/Electric Coordination

Among many others, two additional challenges are likely to occupy the Commission for at least the next several years. The first is a subject on which I testified to this committee on July 9, 2013: the challenges associated with maintaining reliability as our nation uses significantly more natural gas to generate electricity. Often we refer to this issue as natural gas/electric convergence. I reiterate the same points as in earlier testimony: more electric generation is fueled by natural gas for five reasons: (1) the ease in siting natural gas-fueled plants versus other fuels; (2) the difficulty in siting electric transmission that would otherwise be a more cost-effective solution for the supply side; (3) the need to "firm up" intermittent generation; (4) the suite of air and water regulations being implemented by the Environmental Protection Agency (EPA); and (5) the new sources of domestic natural gas supply that have lowered prices.

There is much good news in this unprecedented fuel transition, but challenges remain. The electric and natural gas industries are very different in the speed at which the product moves, the timing of the different markets, and the financial models that provide for building the necessary plants, wires and pipes that are required for reliable service. Unlike a supply of coal that can be stored on-site for months, natural gas is a "just in time" fuel source that is extremely expensive to store for an individual generating plant.

The Commission has been working on the gas/electric coordination issue for nearly two years. Seven technical conferences and periodic updates from regional markets have occurred. Last month the Commission issued its final rule providing guidance for communication of sensitive information between specific sections of the electric industry and natural gas pipeline industry. My hope is that this rule will provide needed certainty in an effort to prevent supply disruptions as early as this winter heating season. We are also examining whether efficiencies can be gained by making changes to better align the gas trading day and the electric trading day in various markets throughout the nation. A longer term issue relates to whether new financing models are needed to promote the expansion of the interstate natural gas network given that the customer base has changed to more electric generation that relies on intermittent withdrawals from pipelines.

Electric Reliability

Related to, but apart from, the reliability challenges associated with gas/electric coordination, electric reliability in the face of environmental regulations is my second area to highlight. As noted earlier, the transition being undertaken in the electric sector is unprecedented. Data indicate that the predictions of FERC staff and the public were generally correct about the amount of coal generation that would be retired, give notice to retire, or be repowered with natural gas as a consequence of EPA's mercury rule. Even if the EPA had not issued its mercury rule, today's lower prices for natural gas and weak economic growth would undoubtedly have resulted in many of those coal plants operating less often and perhaps some would have even

retired. Nevertheless, the mercury rule changes the economics of placing a power plant in reserve for emergencies, as compared to removing it entirely from the system.

Certain areas of the nation will be impacted more than others by the retirement of coal facilities. This is especially true in the Midwest. MISO has been predicting a challenging shortfall in generating capacity for the summer of 2016. While hard numbers are difficult to know many years in advance, MISO seems to be increasingly confident that the shortfalls will be extremely serious. Moreover, MISO's calculations at this point appear to be mostly regional in nature, which suggests that certain areas will be in a much more precarious condition to maintain reliability of the bulk power system. Finally, under MISO's system sharing arrangements, the benefits of surpluses are shared, but in times of scarcity load shedding is also shared, raising the specter of rolling blackouts at a time when air conditioning is essential to public health and safety.

In the face of these reliability challenges over the next several years, economic regulators and environmental regulators at the federal, state, and local levels must act with urgency when considering proposed solutions to this impending set of challenges.

Thank you again for the opportunity to testify before you, and I look forward to any questions you have.