



June 1, 2015

TO: Members, Subcommittee on Energy and Power

FROM: Committee Majority Staff

RE: Hearing entitled “Discussion Draft on Accountability and Department of Energy Perspectives on Title IV: Energy Efficiency”

I. INTRODUCTION

On Wednesday, June 3, 2015, at 2:00 p.m. in 2322 Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing entitled “Discussion Draft on Accountability and Department of Energy Perspectives on Title IV: Energy Efficiency.” The Subcommittee will reconvene on Thursday, June 4, 2015, at 10:15 a.m. in 2322 Rayburn House Office Building.

II. WITNESSES

Panel I

- Kathleen Hogan, Deputy Assistant Secretary for Energy Efficiency, U.S. Department of Energy;
- J. Arnold Quinn, Director, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission; and,
- Larry R. Parkinson, Director, Office of Enforcement, Federal Energy Regulatory Commission.

Panel II

- Sue Kelly, President and CEO, American Public Power Association;
- John E. Shelk, President and CEO, Electric Power Supply Association;
- Peter Galbraith Kelly, J.R., Senior Vice President, External Affairs, Competitive Power Ventures, Inc.;
- Christopher Cook, President and General Counsel, Solar Grid Storage LLC;
- Jonathan M. Weisgall, Vice President, Legislative and Regulatory Affairs, Berkshire Hathaway Energy; and,

- William S. Scherman, Partner, Gibson, Dunn & Crutcher LLP.

***Additional witnesses may be announced*

III. BACKGROUND

A. Accountability

1. Market Manipulation, Enforcement, and Compliance

The Office of Enforcement within the Federal Energy Regulatory Commission (FERC) is tasked with overseeing energy markets and assuring compliance with FERC tariffs, rules, regulations, and orders. The Office of Enforcement initiates and executes investigations of possible violations of FERC rules, orders, and regulations relating to energy markets and recommends remedies to address violations and, in some cases, pursues remedies through negotiation or litigation.¹

Sections 315 and 1283 of the Energy Policy Act of 2005 (EPAct 2005) increased FERC enforcement authorities, amending the Natural Gas Act and the Federal Power Act, respectively, to prohibit the use or employment of manipulative or deceptive devices or contrivances in connection with the purchase or sale of natural gas, electric energy, or transportation or transmission services subject to FERC jurisdiction. In the 10 years following enactment of EPAct 2005, FERC has issued policies and procedures implementing its new authorities and significantly increased the staff of its Office of Enforcement.

With enhanced authorities, staff, and resources, the number of FERC investigations and civil penalty enforcement actions has increased greatly in recent years.² Some market participants and observers have raised concerns, however, that FERC's enforcement behavior

¹ See <http://www.ferc.gov/about/offices/oe.asp>.

² See, e.g., [FERC 2014 Report on Enforcement](#) (Nov. 20, 2014). See also *Direct Energy Services, LLC*, 148 FERC ¶ 61,114 (August 11, 2014) (\$20,000 civil penalty; \$31,935 disgorgement; compliance measures and monitoring); *Imperial Irrigation District*, 148 FERC ¶ 61,108 (August 7, 2014) \$12,000,000 civil penalty, offset by \$9,000,000 in reliability enhancements; mitigation; compliance monitoring); *Arizona Public Service Company*, 148 FERC ¶ 61,009 (July 7, 2014) (\$3,250,000 civil penalty, offset by \$1,250,000 in reliability and compliance enhancements; mitigation; compliance monitoring); *Indianapolis Power & Light Company*, 148 FERC ¶ 61,007 (July 3, 2014) (\$32,500 civil penalty; \$301,000 disgorgement to MISO; compliance enhancements; compliance monitoring); *International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, ITC Great Plains, LLC*, 146 FERC ¶ 61,172 (Mar. 11, 2014) (\$750,000 civil penalty; compliance enhancements; compliance monitoring); *MISO Virtual and FTR Trading (Louis Dreyfus Energy Services)*, 146 FERC ¶ 61,072 (Feb. 7, 2014) (Louis Dreyfus: \$4,072,257 civil penalty, \$3,334,000 disgorgement compliance enhancements; compliance monitoring; Xu Cheng: \$310,000 civil penalty); *In re Erie Boulevard Hydropower, L.P.*, 146 FERC ¶ 61,027 (Jan. 15, 2014) (\$4,000,000 civil penalty; \$1,700,000 public safety enhancements; compliance and operational enhancements); *Constellation Energy Commodities Group, Inc.*, 145 FERC ¶ 61,062 (Oct. 18, 2013) (\$500,000 civil penalty; \$145,928 disgorgement; compliance monitoring).

has come at the expense of fairness, transparency, and due process,³ while others contend FERC's aggressive behavior could actually impair well-functioning markets.⁴

2. Organized Electricity Market Reforms

FERC Order No. 2000 advanced the formation of Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) to "promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service."⁵ RTOs operate nondiscriminatory wholesale electricity markets where market participants can buy and sell a variety of electricity products and services through market structures that the RTO administers under the jurisdiction of FERC.⁶

Since the issuance of Order No. 2000 15 years ago, a number of policy, administrative, resource, and technological changes have affected the electricity industry and the organized electricity markets operated by RTOs. Such issues have led many market participants and States to call on FERC to undertake reforms to address a broad range of issues, ranging from price formation to governance and transparency to generation performance assurance. Recognizing these many stakeholder concerns, FERC has held several technical conferences, issued various reports, and has numerous open and pending dockets to address some of these issues. To date, however, FERC has proven unable to develop or approve in a timely manner the reforms necessary to ensure fair, transparent, and well-functioning competitive markets.

3. PURPA Modernization

The Public Utility Regulatory Policies Act of 1978 (PURPA) was enacted to promote electric conservation, efficiency and equitable pricing of wholesale electric energy, in part, by requiring State regulatory authorities, and nonregulated electric utilities, to consider adopting new Federal electricity rate standards and load management techniques. Section 210 of PURPA established a new class of electric generating facilities, known as qualifying facilities (QFs), either small power production facilities or cogeneration facilities, to receive special rate and regulatory treatment. Section 210 was meant to encourage cogeneration and small power production by requiring electric utilities to purchase electric power from, and sell electric power to, QFs at the utility's avoided cost.

³ William Scherman, et al., The Energy Bar Journal, "[The FERC Enforcement Process: Time for Structural Due Process and Substantive Reforms](#)," (May 13, 2013).

⁴ Peter Gardett, Breaking Energy, "[Recent FERC Settlements Could Unravel Power Markets: Hogan](#)," (Oct. 31, 2013).

⁵ Regional Transmission Organizations, [Order No. 2000](#), 89 FERC 61,285 (1999). ("Thus, we believe that appropriate RTOs could successfully address the existing impediments to efficient grid operation and competition and could consequently benefit consumers through lower electricity rates resulting from a wider choice of services and service providers. In addition, substantial cost savings are likely to result from the formation of RTOs."). *Id.* at 3-4.

⁶ See <http://www.ferc.gov/industries/electric/indus-act/rto.asp>. There are currently 7 RTO/ISO regions nationwide that administer wholesale electricity markets.

Since the passage of PURPA, increasingly competitive wholesale electricity markets made it inefficient and uneconomic for electric utilities to comply with Section 210. EPAct 2005 amended Section 210 to address the issue by repealing the mandatory purchase obligation if FERC finds that QFs have access to nondiscriminatory wholesale electricity markets, like those administered by RTOs and ISOs.⁷ Despite the reforms adopted in EPAct 2005, several market participants and State public utility commissions have raised concerns that Section 210 continues to result in inefficient and uneconomic outcomes, including impairing the development of cost-effective, competitive renewable energy and forcing ratepayers to pay for unneeded generation or energy that is well above market price.

B. Energy Efficiency

For background information on “Title IV – Energy Efficiency,” please see the [Majority Memorandum](#) for the Subcommittee on Energy and Power hearing entitled “Strategic Petroleum Reserve Discussion Draft and Title IV Energy Efficiency” held on April 30, 2015.⁸

IV. SECTION BY SECTION

A. Accountability

1. Chapter 1 – Market Manipulation, Enforcement, and Compliance

Sec. 4211. FERC Office of Compliance Assistance: This section requires FERC to establish an Office of Compliance Assistance headed by a Director who shall be responsible for promoting improved compliance with Commission rules and orders by, among other things, providing entities regulated by the Commission the opportunity to obtain timely compliance guidance; making recommendations with respect to market behavior and enforcement; issuing reports and guidance; and performing outreach to regulated community.

Sec. 4212. Improving Transparency in FERC Investigations: This section requires FERC to complete a rulemaking with respect to investigations to address: 1) the disclosure of exculpatory materials; 2) the documentation of communications regarding the merits of an investigation between FERC investigatory staff and advisory staff; and 3) allowing direct communications between entities subject to an investigation and FERC commissioners regarding settlement considerations.

2. Chapter 2 – Market Reforms

Sec. 4221. Evaluating and improving wholesale electricity markets: This section requires FERC to direct regional transmission organizations (RTOs) to develop, in consultation with stakeholders, and submit a plan that describes how the market rules, practices, and structures of the RTOs meet certain established criteria, such as just and reasonable rates; reliability,

⁷ See EPAct 2005, section 1253.

⁸ <http://docs.house.gov/meetings/IF/IF03/20150430/103401/HHRG-114-IF03-20150430-SD002.pdf>

fuel diversity and resource adequacy; transmission and natural gas infrastructure development; accurate price formation; and improved transparency in governance and stakeholder processes. Each RTO is required to identify specific actions to be undertaken by the RTO to revise or amend its market rules to meet the criteria. FERC shall require periodic reporting to monitor timely implementation of the plan submitted by the RTO.

3. Chapter 3 – PURPA Modernization

Sec. 4231. PURPA modernization: This section establishes that a QF of any size is presumed to meet the access requirement to the relevant markets identified in section 210(M)(1) of PURPA, if the QF is eligible: 1) for service under FERC-approved Open Access Transmission Tariff and interconnection rules in the relevant market; and 2) to participate in competitive solicitations overseen by a State regulatory authority.

B. Energy Efficiency

For the section-by-section of “Title IV – Energy Efficiency,” please see the [Majority Memorandum](#) for the Subcommittee on Energy and Power hearing entitled “Strategic Petroleum Reserve Discussion Draft and Title IV Energy Efficiency” held on April 30, 2015.

V. ISSUES

The following issues may be examined at the hearing:

- DOE perspectives on the energy efficiency subtitle of the committee’s energy legislation;
- FERC perspectives on the accountability subtitle of the committee’s energy legislation;
- Market participant and legal perspectives on FERC’s Office of Enforcement, organized electricity markets, and the mandatory purchase obligation under PURPA section 210; and,
- Federal and private sector views on the proposed reforms outlined in the committee’s discussion draft on accountability.

VI. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Patrick Currier or Tom Hassenboehler of the Committee staff at (202) 225-2927.