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RPTR BAKER

EDTR ROSEN

DISCUSSION DRAFT ON ACCOUNTABILITY AND DEPARTMENT OF ENERGY

PERSPECTIVES ON TITLE IV: ENERGY EFFICIENCY

WEDNESDAY, JUNE 3, 2015

House of Representatives,

Subcommittee on Energy and Power,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 2:48 p.m., in Room 2322, Rayburn House Office Building, Hon. Ed Whitfield [chairman of the subcommittee] presiding.

Present: Representatives Whitfield, Olson, Shimkus, Pitts, Latta, McKinley, Kinzinger, Griffith, Johnson, Ellmers, Flores, Mullin, Hudson, Rush, McNerney, Tonko, Green, Castor, Welch, and Pallone (ex officio).

Staff Present: Nick Abraham, Legislative Associate, Energy and

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Power; Will Batson, Legislative Clerk; Leighton Brown, Press Assistant; Patrick Currier, Counsel, Energy and Power; Tom Hassenboehler, Chief Counsel, Energy and Power; Dan Schneider, Press Secretary; A.T. Johnson, Senior Policy Adviser; Caitlin Haberman, Minority Professional Staff Member; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; John Marshall, Minority Policy Coordinator; and Tim Robinson, Minority Chief Counsel.

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Mr. Whitfield. I would like to call the hearing to order, and I want to apologize initially to our wonderful panel of witnesses that because of these votes which were unexpected, we were delayed. So I do apologize to you all, but we do thank you for being with us. Today we are having a continued hearing on our discussion draft on accountability in the Department of Energy, and today we are going to be focused on perspectives on Title IV, the energy efficiency provisions. I would like to recognize myself for 5 minutes for an opening statement.

We begin with our draft provisions on accountability, especially as relates to the Nation's electricity system. The 2005 energy bill expanded FERC enforcement authority over electricity markets, and we have now had 10 years of experience with the implementation of those provisions. Many have raised concerns about the action of FERC's Office of Enforcement, particularly regarding fairness, consistency, transparency, and due process. Some have even questioned whether FERC enforcement actions are counterproductive and actually impede the proper functioning of electricity markets.

The discussion draft would establish, as many of you know, an Office of Compliance Assistance at FERC to address these concerns. In addition, FERC order 2000 advanced the formation of RTOs and independent system operators. That is now 15 years old. This provision sought to promote efficiency in the wholesale electricity

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markets and to ensure that electricity consumers pay the lowest possible rate for reliable service. However, much has changed since this order first came out, and many market participants are calling for reforms ranging from price formation to governance and transparency as well as generation performance assurance.

FERC has yet to develop effective reforms to ensure fair, transparent, and well-functioning, competitive markets. They have done a good job at that, or at least trying to. This discussion draft seeks to fill the void with several proposed criteria intended to improve the wholesale electricity markets.

Finally, PURPA was enacted to promote electric conservation efficiency and equitable pricing of wholesale electric energy. Like so many other 1970's era energy policies still in place, many of PURPA's provisions are also a little bit out of date. In particular, Section 210 incentivized cogeneration and small power production by conferring certain advantages on qualifying facilities, but increasingly competitive wholesale electricity markets have made it inefficient and uneconomic for electric utilities to comply.

Reforms to this section were made in the 2005 energy bill, but several market participants and public utility commissioners have raised concerns that Section 210 still has adverse effects. The discussion draft will include measures to address those shortcomings as well.

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With regard to energy efficiency, we held a hearing in April on nongovernmental perspectives, so today we are focusing on the Department of Energy's point of view. Now I might say that manufacturers have worked closely with the Department of Energy in trying to obtain additional efficiency in a lot of appliances and a lot of other products. But that hearing in April really pointed out that price increases, because of these efficiency mandates and very small efficiency accomplishments or advantages was really hurting the consumer, and the manufacturers were really expressing great concern about that.

So, obviously, we all want more efficiency, but we don't want the consumers to be hurt unjustly for very minute and small efficiency advantages. So that is something that we look forward to talking to you all about as well as further considering.

So, I look forward to your testimony and the opportunity to ask questions. At this time I would like to recognize the gentleman from New Jersey, Mr. Pallone, for a 5 minute opening statement.

Mr. Pallone. Thank you, Chairman Whitfield. I understand that this hearing is the last of its kind on the majority's architecture of abundance discussion draft legislation. As we begin wrapping up these legislative hearings, I want to commend you and Chairman Upton. Regardless of whether I agree or disagree with all the policies put forth, the chairman and majority staff deserve credit for putting

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forward these many proposals and for working with us to put together these legislative hearings.

We continue to want to work with you to try to construct energy legislation that can garner support from a majority of each of our caucuses. While I believe it is possible to get there, it is important to note that we have a long way to go. I have already voiced my opposition to the efficiency draft, because I believe that in its current form it would actually result in a net increase in energy consumption. But I am glad we finally get to hear DOE's views on the language today.

The accountability title that is the primary topic before both today's and tomorrow's panels includes proposals that range from the relatively innocuous to the absolutely disastrous. In particular, I am strongly opposed to the section regarding FERC investigations, which, to me, defies all logic by casting market manipulation, big banks, and hedge funds as victims while handcuffing FERC investigators tasked with protecting energy ratepayers. The provision asks us to believe that JPMorgan Chase, which agreed to a \$410 million settlement in 2013 is really a victim rather than the California ratepayers who were defrauded. It wants us to be concerned about just and reasonable treatment for FERC enforcement order subjects like Barclays Bank and the Powhatan Energy Fund rather than preventing market manipulation to ensure just and reasonable rates for consumers of electricity, a

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regulated commodity.

I don't understand the majority's rationale, but I do know that its enactment would undermine confidence in the fairness of energy markets and ultimately the ability of those markets to function at all. It is clear from the inclusion of a market reform section in the draft that the majority already has concerns with the functioning of the regional electricity markets. What is not clear is exactly what problems the language is attempting to solve or whether it would solve them.

Nonetheless, I look forward to hearing from our expert witnesses with extremely divergent views of electricity markets. This is a complex but critical issue that should be the subject of multiple oversight hearings and vigorous debate.

Another matter that the committee should examine more closely before legislating is implementation of PURPA, Section 210, which laid the early groundwork for wholesale electricity competition and the growth of renewable energy. Ten years ago, this committee and Congress significantly reformed the law to essentially say that if FERC found that fair and robust competition existed in a given region, then utilities within that region no longer had to sign mandatory power purchase agreements with qualifying facilities, and that reform seems to have worked. Perhaps there are tweaks to be made, and I am willing to address demonstrated problems. However, the discussion draft goes

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way too far by essentially deeming competition to exist even where it doesn't, completely flipping the burden of proof and undoing the simple, fair, and elegant agreement we enacted in EPACT 2005.

In closing, I hope that we will take the time to try to work through these issues and not rush to meet some arbitrary deadline. While nothing is ever guaranteed, I think it is possible that working together, we can move from the architectural phase to the construction of broadly bipartisan energy legislation that could be enacted before the end of this Congress. Thank you, Mr. Chairman.

Would you like me to yield to you? I yield to the gentleman from California, Mr. McNerney.

Mr. McNerney. Thank you. And I just want to say a few things about the accountability section. I appreciate the thought that went into it, but there are some things that seem counterintuitive. For example, Section 4211 seems to be counter to what Republicans might want in terms of reducing regulatory burden, so I am kind of wondering what brought that about.

And on the section of 4212, California went through Enron manipulations in the year 2000, and we went about \$9 billion in debt. Undoing the constraints that were put into place following that episode are mysterious to me why we would want to move forward in that direction. 4221, it would be good to have some clear understanding of what that section is trying to accomplish because it is not clear from what we

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have seen so far.

So with that, I am just asking the chairman to consider working with us on improving these so that we have something we both can support. I yield back.

Mr. Whitfield. The gentleman yields back. Is there anyone on our side of the aisle that wants to make a comment? If not, at this point, I would like to recognize Mr. Rush for his 5-minute opening statement.

Mr. Rush. Thank you, Mr. Chairman, for holding the hearing today. This hearing, as has been stated before, is on energy efficiency standards and FERC accountability. I commend you for allowing members the opportunity to hear from DOE on the energy efficiency title of the discussion draft following the April 30 hearing when we also heard from energy stakeholders. In particular today, Mr. Chairman, I am looking forward to engaging Deputy Assistant Secretary Hogan on the pending final DOE rule updating efficiency standards for nonweatherized gas furnaces and mobile home furnaces. This is an issue that has gotten a lot of attention, and we have heard competing arguments on how this rule would impact low-income families and renters.

Mr. Chairman, I am pleased in hearing from the agency itself on the rationale behind promoting this rule as well as the impact it expects this rule to have on consumers and on the environment. Mr.

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Chairman, I am also looking forward to engaging FERC on the accountability title of the discussion draft and getting feedback on how these provisions, as currently drafted, would impact the agency's work. Specifically, I am interested in getting more insight from the agency regarding Section 4211, which would create a new Office of Compliance assistance with 10 full-time employees and a commission-appointed director, but does not include any additional funding.

The responsibilities that this new office will be tasked with, including making recommendations regarding consumer protections, market integrity, and consistent compliance of rules and orders seems comparable to the Office of Public Participation that was previously authorized under Section 319 of the Federal Power Act.

Similarly, that office, too, was never funded and duties from that office have since been dispersed throughout other offices within the agency.

Mr. Chairman, we need to make sure that this new unfunded office mandated in Section 4211 will not have the unintended consequence of unnecessarily pulling staff from their current duties to perform tasks that are duplicative in nature.

I also have serious concerns over Section 4212 and what impact this legislation would have any investigatory process. Section 4212 takes the unprecedented step of applying the Brady rule of disclosing

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any evidence favorable to an investigative phase among FERC enforcement effort rather than the adjudication or trial phase of a case. I am also concerned that Section 4212, which imposes an extremely burdensome requirement that all communications between the FERC staff be carried out in writing and made part of the record, which would negatively affect the agency's enforcement efforts.

Mr. Chairman, this section would take the unprecedented and particularly harmful step of giving subjects who are being investigated equal weight to the Commission's own staff with regard to communicating directly with commissioners during an investigation.

So Mr. Chairman, the accountability title we have before us would make significant changes on how the Commission conducts its business, and I look forward to hearing from agency officials on how their work would be impacted. With that, I yield back.

Mr. Whitfield. The gentleman yields back, and thank you very much for those statements. At this time I would like to introduce our panel of witnesses, and I am just going to introduce you as I introduce you to make your statement.

So the first one is Dr. Kathleen Hogan who is a Deputy Assistant Secretary for Energy Efficiency at the Department of Energy. And we appreciate your being with us. Sorry again for the delay, and you are recognized for 5 minutes for your opening statement.

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STATEMENTS OF 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

#### STATEMENT OF KATHLEEN HOGAN

Ms. Hogan. Terrific. And good afternoon, Chairman Upton, Ranking Member Pallone, Chairman Whitfield, Ranking Member Rush, and members of the subcommittee. Thank you for the opportunity to testify today on behalf of the Department of Energy's Office of Energy Efficiency and Renewable Energy, also known as EERE. As Deputy Assistant Secretary for Energy Efficiency at EERE, I oversee DOE's energy efficiency portfolio across buildings, advanced manufacturing, Federal energy management, weatherization, and intergovernmental programs. These efforts develop and help provide businesses, consumers, government agencies, with innovative, cost-effective, energy-saving solutions to improve their energy efficiency, from high efficiency products, to new ways of designing homes and buildings, to new ways of improving the energy intensity and competitiveness of American manufacturers.

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Energy efficiency is a large low-cost and underutilized U.S. energy resource. Increased energy efficiency offers savings on energy bills, opportunities for more jobs, and improved industrial competitiveness, and lower air pollution. So, indeed, I am pleased to be here today and look forward to working with Congress and this committee in particular on how we can better use energy efficiency to help address our Nation's energy challenges.

I have been asked to testify today on the energy efficiency provisions contained within Title IV, Energy Efficiency, currently before the committee. While the administration is still reviewing this bill, we support the ongoing bipartisan efforts to promote energy efficiency and look forward to continuing to work with the committee and the range of bill sponsors.

The administration strongly supports the goal of improving energy efficiency, and is making real progress in helping cut energy waste, save money, and improve energy productivity. For example, the Department is on track to set energy efficiency standards under existing authority, which will help save billions of dollars in coming years. We are making important progress helping States understand the energy savings achieved through building codes and realize the benefits that building codes offer, and we are engaged with hundreds of organizations of all kinds showing how to cut energy costs by 20 percent or more. In addition, the recent release of the executive order 13693

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will advance the energy efficiency and sustainability of the Federal Government, the Nation's largest consumer of energy, and the Federal Government is halfway to meeting a \$4 billion performance contracting goal by 2016.

The Department does have a number of concerns with the proposed language in Title IV that we believe undermines the Department's efforts to help cut energy waste, including its ability to effectively set product efficiency standards and the ability to help keep model energy codes up to date and help States understand and benefit from building codes.

However, I do want to reiterate my appreciation for ongoing bipartisan efforts to promote energy efficiency, including this year's passage of the Energy Efficiency Improvement Act, and look forward to continuing to work with the committee. Generally the efficiency title addresses many important aspects of energy efficiency, including but not limited to, Federal use of energy savings performance contracts and utility energy savings contracts, energy efficiency for commercial and residential buildings, which, as we all know, consume more than 40 percent of the Nation's total energy and more than 73 percent of its electrical energy, and represent opportunities for significant savings, as well as appliance energy efficiency standards, which do have the opportunity to provide an estimated \$1.8 trillion in savings through 2030.

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So EERE's program offices are implementing strategies similar to the activities highlighted in the legislation before the committee today, and I am proud to report that with Congress' support, EERE is making headway in helping reducing U.S. reliance on oil, saving American families and businesses money, and reducing pollution.

So, again, I thank you for the opportunity to speak today and will look forward to answering any questions.

[The prepared statement of Ms. Hogan follows:]

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Mr. Whitfield. Thank you, Dr. Hogan. And our next witness is J. Arnold Quinn, who is the director, Office of Energy Policy and Innovation at the Federal Energy Regulatory Commission. Thank you very much for joining us, and you are recognized for 5 minutes.

#### STATEMENT OF J. ARNOLD QUINN

Mr. Quinn. Good afternoon, Chairman Whitfield, Ranking Member Rush, and members of the subcommittee. Thank you for the opportunity to appear before you today. My name is J. Arnold Quinn. I am the director of the Office of Energy Policy and Innovation at the Federal Energy Regulatory Commission. I am here today as a Commission staff witness, and my remarks do not necessarily represent the point of view of the Commission or any individual commissioner. My testimony will focus on those parts of the discussion draft that require reporting and planning to improve the wholesale electricity markets, Section 4221, and establish an Office of Compliance Assistance, Section 4211.

The Commission is in the process of exploring many of the issues identified in the criteria articulated in Section 4211 of the discussion draft. Further Commission action on these or other criteria articulated in Section 4221 prior to the enactment of the Act may diminish the need for and the benefit of congressional direction for the RTOs and ISOs to address these issues. The process Section

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4221 requires is somewhat similar to the process the Commission has used to develop new market rules as system needs evolve. Such a process allows each ISO and RTO and its stakeholders to describe whether and how current market rules address an identified concern or system need in a manner reflective of regional differences. If Congress directs the Commission to take action beyond what the Commission is currently pursuing, it would be useful to clarify that Section 4221 of the discussion draft would require a process that is consistent with the Commission's existing processes under Sections 205 and 206 of the Federal Power Act.

Further, the Commission prefers to focus on services and performance quality that the electric power system needs and establish market rules that ensure the cost effective provision of those services at the required level of performance. While the Commission recognizes the need to encourage an adequate supply of resources that provide operational characteristics that are responsive to system needs, some criteria in Section 4221 may impair the competitive actions of these markets to the ultimate detriment of consumers or may cause unnecessary conflicts between Federal and State regulatory efforts.

In light of the Commission's mission and existing practices, it appears that an Office of Compliance Assistance could create duplicative proceedings for consumers and regulatory entities. An office of compliance assistance within the Commission that is meant

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to be independent of the rest of the Commission staff, could undermine the current coordination amongst Commission program offices and impede the Commission's ability to fulfill its mission.

Finally, although Commission staff currently endeavors to provide timely guidance in response to requests for compliance matters, the information gathering and analysis necessary to provide the compliance guidance makes doing so in a real-time challenging in virtually all circumstances.

The Commission is always looking for ways to improve efficiency, transparency, and competitiveness of the markets its regulates, but it is important to recognize the duplication of effort and the potential unintended consequences that could result from this proposed legislation. Thank you for inviting me to testify today on the discussion draft. I look forward to working with you in the future on these issues, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Quinn follows:]

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Mr. Whitfield. Thanks very much, Mr. Quinn. And our next witness is Mr. Larry Parkinson, who is the director, Office of Enforcement at the Federal Energy Regulatory Commission. Thanks for being with us, and you are recognized for 5 minutes.

#### STATEMENT OF LARRY R. PARKINSON

Mr. Parkinson. Thank you, Mr. Chairman, and Ranking Member Rush and members of the subcommittee. My name is Larry Parkinson, Director of the Office of Enforcement at FERC. As with Mr. Quinn, I have to have the disclaimer that my comments don't necessarily reflect the views of individual commissioners or the Commission itself.

I have submitted a longer statement for the record, but I wanted to take a couple minutes just to give a little bit of an overview of the enforcement program. Congress, 10 years ago in EPACT 2005, I think, gave FERC a very strong direction when it came to enforcement. Much of the provisions relating to enforcement stemmed from the abuses by Enron, in particular. And I think the message was we expect FERC to have a strong enforcement program. We expect you to ensure the integrity of the markets. We expect you to catch bad actors, particularly those who manipulate the markets, and we expect you to protect energy consumers.

And Congress gave FERC very important enforcement tools,

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including significantly increased penalties; and FERC took that direction seriously. It quickly adopted an anti-manipulation rule. It built up its enforcement capabilities. Much of that credit is due to the current chairman, Norman Bay, who headed the Office of Enforcement previously.

We now have a very strong, capable, multidisciplinary group of professionals who are in charge of our enforcement program and carry it out. And I would say that we have achieved notable results. We are still relatively new. It is only a 10-year old program since we got the new authorities, but in those 10 years, we have returned almost \$1 billion to consumers and ratepayers and to the U.S. Treasury from malfeasance by market actors. We are committed to fairness and professionalism, and we are committed to ensuring the confidence in the markets.

It is important to point out that we have a bipartisan commission that owns and directs the enforcement program. The Office of Enforcement is not some standalone enforcement entity out there doing its thing without any oversight from the Commission. And there has been, over the last 10 years, remarkable consensus amongst that commission of virtually all of our enforcement matters, whether it is approving settlements that we have reached in the enforcement program, or issuing orders to show cause or other orders, have been virtually all unanimous. So we have had a couple of instances where an individual

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commissioner has dissented on one piece or another, but virtually everything has been unanimous.

I would point out, and we will get to this probably in questions, but it is a little ironic that a couple of the provisions at least in the draft are designed in part to seal off the enforcement staff, or at least to erect barriers between the enforcement staff and the Commission. And I think in that respect, they are particularly puzzling if one of the goals is to make sure that the enforcement program has proper oversight by the Commission.

I would point out that some, a couple of characters, a couple of individuals, have caricatured our enforcement program as a bit of an outlier in the Federal enforcement process. I will say I have been in the Federal enforcement world for almost 30 years. I have worked at a number of different places under both Republicans and Democratic administrations. I will say that when I came to FERC 5 years ago, I was a little bit surprised because we are an outlier. We are an outlier in the sense that we give an enormous amount of process to investigative subjects during the investigative phase. I still am surprised at how much process FERC gives during that phase of the process. And I would point out that process produces delay, and too much delay can be detrimental, not only to the investigative subjects, but certainly to the public and market participants.

One key to understanding the enforcement process is there are two

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phases, and it is not unique to FERC. It is the same in every Federal enforcement process. And that is there is the investigative phase, which is the fact-finding phase, and there is an adjudicative phase. And there has been, by some, an attempt -- not by this committee -- but by some in the community to conflate those two components. And part of the language that we are looking at today tries to engraft trial-type processes onto the investigative phase, and I think it is important to keep in mind those two processes are different.

A Federal investigation is a fact-finding process. It is not civil litigation. It is not ordinary civil litigation, and the attempt to engraft civil litigation process on a fact-finding process, I think would be highly detrimental to that process.

I have described in some detail in the testimony our concerns about the four specific provisions. I will just mention them briefly. We do have a Brady policy that works. It was voluntarily introduced. On the transcript issue, witnesses to get access to their transcripts, but in rare occasions access is delayed to protect the integrity of an investigation. And the other two provisions, restricting communications, which I think really would restrict communications, those provisions, between the enforcement staff and the Commission and other offices in the building, would seriously impede not only investigative process itself, but the Commission's ability to manage its own enforcement process.

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So in closing, I would urge the subcommittee to, before it adopts provisions like the ones that are drafted, to look at other Federal enforcement programs. I think some of these are unprecedented. They don't exist in other agencies. I think when Congress gave us new authorities in 2005, the intent was to give FERC enforcement the same sorts of tools and abilities that other Federal enforcement agencies have. We have used those, I think, responsibly and professionally, but I think some of the amendments, if adopted, would undermine that authority.

We welcome constructive critique of our enforcement program. I think we are known for that, and we analyze how we are doing our business on a regular basis, and we look forward to any suggestions from the committee. Thank you for the opportunity to participate, and I look forward to your questions.

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[The prepared statement of Mr. Parkinson follows:]

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Mr. Whitfield. Mr. Parkinson, thank you very much for that statement. And I recognize myself for 5 minutes of questions.

I think on both sides of the aisle while we frequently have different philosophies, political philosophies, and differ on a lot of these issues, I think all of us agree that this regular order process of bringing legislation, forming legislation, coming up with a final product, is the way to go. And when we have these hearings, and we have had a lot, we hear from the administration and we ask questions, and that is how we try to narrow this focus down and try to come up with the best product that we can, recognizing that you are not going to necessarily agree with everything that we are doing, and we don't necessarily agree with what we are doing sometimes with each other. But we come out with a final product, and that is what our goal is today.

So, Dr. Hogan, when the Energy Policy and Conservation Act was first passed in 1978 in the Carter administration, one of the missions and the intent was certainly to develop minimum efficiency levels for certain appliances as measured in kilowatt hours. Would you agree that that was one of the original intents of the original Act in 1978?

Ms. Hogan. I think it is to set minimum standards to, you know, look for efficient, to help set thresholds for efficiency so that people can save money through better efficiency products. That is right.

Mr. Whitfield. Save money as well save the use of energy, use less energy?

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Ms. Hogan. That is right.

Mr. Whitfield. And as I noted in my opening statement, that hearing we had with the private sector, not only the hearing but also letters, calls, there is more and more concern being generated by these manufacturers who worked closely with the Department of Energy in coming up with better efficiency standards that the additional efficiency being generated is very small, and the cost is going up. And some people may take offense at this question, but I am going to ask it because it is of concern to us.

It seems to some of us that DOE is using the Energy Policy Conservation Act to further the President's climate goals, an objective wholly outside the statutory purpose and requirements of EPCA. And so, this would lead me to believe that the DOE's aggressive efficiency push is to benefit the President's negotiating position in Paris this year, rather than what may be in the best interests of American consumers and manufacturers.

So I would ask you, I mean, that is a feeling that some of us have. That is statements we have heard from various manufacturing and consumer groups. I would ask you, do you feel like you are going beyond the original intent and purpose of the Energy Policy Conservation Act?

Ms. Hogan. I certainly appreciate you asking that question, if that is what you are hearing and that is what you may feel. You know, there is very clear language in the authorities that have been given

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to us by Congress, and that is for us to set standards that are technically feasible and economically justified. And that is being done on an economics basis. We also are asked to, once we set standards, to go back every 6 years typically and look to see if those standards are appropriate for being updated, a so-called 6-year look-back provision.

That is, indeed, what we are doing at the Department of Energy, is proceeding under the good direction that we have been given by Congress to set these standards in a way that makes sense on a cost-benefit basis for how we can help businesses and consumers to continue to save energy and save money.

Mr. Whitfield. Yeah, save energy and save money, but when it escalates the cost of the product, that is not helping the consumers. And, you know, I asked the staff to prepare a list of regulated residential products that you all are involved in right now: Clothes dryers, close washers, central air-conditioners, heat pumps, ceiling fans, battery chargers, dehumidifiers, heating equipment, dishwashers, kitchen ranges, ovens, microwaves, pool heaters, refrigerators, and it goes on and on; and then we get into the commercial and industrial side, and it is even a longer list. And so, you know, we are just trying to bring a more balanced approach to some of this, recognizing that you have your responsibility, but it is more than -- I mean, we all like to say, okay, we want to be more efficient, less

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energy, and save consumers money.

But at the same time, if it costs them so much going in, and it makes the products not work as well, maybe short-lived, then I am not sure that it is accomplishing the purpose that was intended. So we are going to continue to discuss about this because we don't have a final product yet, but I just wanted to get that out there, and my time is now expired. So, Mr. Rush, I recognize you for 5 minutes.

Mr. Rush. Thank you, Mr. Chairman. Deputy Assistant Secretary Hogan, one of the more contentious provisions included in the discussion draft is Section 4124, which would prohibit the Department from promulgating a final rule amending efficiency standards for nonweatherized gas furnaces and mobile home furnaces. And we have had several meetings in my office on both sides of this issue, and I want to hear directly from the Department on this issue for the record.

And let me begin by asking a question. First of all, Mr. Chairman, I am not offended, but I am kind of really startled by your question, but I am going to move on beyond it. I don't think the President would stoop to the level that he would use a Federal agency to buttress some kind of advantage at a conference in Paris, or in any other place in the world in the fall or the winter or any other time. I think the President has a sense of responsibility, and he is sworn to his office and duties just as we all are. I am not offended. I am just somewhat taken aback a little bit by that statement.

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Madam Assistant Secretary, in the previous energy efficiency hearing we heard several, as I mentioned before, conflicting comments in this room on low-income consumers. And I want you to speak on the record about the rationale behind this rule, and its expected impact on the lower-income communities, and if you will give us an overall expectation environmentally in terms of the impact of this rule?

Ms. Hogan. So we do have a rulemaking that is underway for gas furnaces. At the top level, this rule, as proposed, and let me stress that this is a proposed rule, would offer net benefits on the order of \$16 billion in the coming years, so significant benefits. When we do do our rulemakings -- again, it is a proposed rule -- we do look closely at low-income communities and senior households, so we do look at the impacts on the full set of households that are out there. Certainly, but I guess the other thing I do want to continue to emphasize is that this is a proposed rule. I think it is also a rule where we are trying to be and are being as open and as transparent and working with as many stakeholders as possible so that we can get all of the best information that we can and to hear their concerns before we would move forward to finalize this rule.

We have had multiple public meetings. We have extended the comment period. It remains open as we sit here today, and even after the comment period closes, industry and others can come in and engage with the Department to share data and issues, and we are open to all

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of that information. I know we have also been up on the Hill briefing various staffs, including yours. We are happy to continue this conversation, and I think we can find a way, the right place, for this rule to land.

Mr. Rush. Do you foresee the possibility that as a result of your actions, that your costs for furnaces and heaters, that that would be prohibitive to the poor in this Nation? Do you foresee that as being a likelihood or even a distinct possibility in the future?

Ms. Hogan. So like with any product, we see a range of costs, depending on the characteristics of a household. Certainly those people that are in the colder climates that have homes that have less insulation, for example, would be the type of households that would benefit the greatest from a furnace standard.

So we see that there can be really great benefit from this rule for some low-income homeowners that would be in certain situations. I guess the other thing I should just point out, because some people sometimes don't understand this, is when we do a rulemaking, it really affects the purchase of a new furnace. There is a lot of furnaces that would be in place that will be in place for quite a while because the real thing you will do for them if there is an issue, is you will repair them. There is a lot of repair opportunities for furnaces that are in today's homes, and the standard really applies at the point when you are totally replacing that furnace. I also think when you look

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at the low-income population, you will see a fair amount of use of radiators and boilers and other technologies that this rule will not apply to.

Mr. Whitfield. The gentleman's time is expired. At this time, I recognize the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. Olson. Thank you, Mr. Chairman, and welcome to Dr. Hogan, Mr. Quinn, and Mr. Parkinson. My first question will be for you, Dr. Hogan. In a prior hearing of this subcommittee, we heard concerns about how DOE sets appliance standards for efficiencies. The chairman brought up examples like water heaters and furnaces. I want to talk about how DOE considers the economics of these improvements. Obviously, there are some parts of the country where local situations dominate. For example, spending a few thousand dollars in New England makes a lot of sense on a furnace because they have two seasons of cold, cold, and one season of colder. In Houston, Texas, we have one season, hot and humid, with three seasons of 95 degrees and 95 percent humidity.

So clearly, some sort of furnace doesn't matter too much to me, but an efficient air-conditioner means a heck of a lot in Houston, Texas. So could you please discuss how you consider regional differences when you look at these new standards? Do you consider them?

Ms. Hogan. So we do look at a variety of options when we set standards for things like furnaces and air conditioners. Actually,

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if you look at air-conditioner standards in place in this country right now, you will see that we do have regional standards. Those regional standards are in place because industry came to us with a consensus recommendation that that is the approach that we should take. So certainly we have been able to consider that in the past and are certainly open to that conversation.

Mr. Olson. Great, because it is not a problem for air-conditioners. Obviously heaters, for instance, and just as well because, again, in Houston we use ours probably five times a year. My kids love to kick on the gas fireplace and keep warm with that. So please make sure you commit to making sure you take regional differences into account with these new standards, making sure that one size doesn't fit all because in Houston, Texas, it is much different than Boston, Massachusetts.

Ms. Hogan. We certainly understand the climate differences across the country. We do.

Mr. Olson. Okay. Take this into account, please, ma'am. Thank you.

Next question is for you Mr. Parkinson. You said a worth that makes Texans shudder, Enron. Houston still remembers local and national crisis caused by Enron's collapse. There is no place for bad actors in the energy market. However, I know there are plenty of good actors out there working through a very complex system. I appreciate,

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therefore, in the draft, discussion draft the concept behind an Office of Compliance assistance to help companies navigate through the FERC process. Can you tell me what resources are currently available today for companies to stay on the right side of the law, and do you believe that these resources are convenient and located inside FERC conveniently? What is out there, sir?

Mr. Parkinson. I do think they are sufficient, and Mr. Quinn may want to weigh in as well. We do have multiple avenues for folks to come in and receive guidance from FERC. On the market side, in particular, there is an opportunity for actors in the markets to come, and if they are wondering about whether a particular activity is lawful or not, they can request a no-action letter. There is a process by which any market participant can seek a no-action letter. Very few people do it in the enforcement world. And I am not sure why they don't do it, but I will say that that opportunity is there. We freely communicate in the enforcement side with counsel, and with our investigative subjects about what we think. There is very little mystery about what we have concluded and what we think the law is.

The Commission tries to set forth in detail its rationale for what it considers market manipulation. There are dozens of settlement orders out there where the Commission has tried to set forth that guidance, as well as in Order 670 itself. So the Commission does make a significant effort to educate. An example last week, the Commission

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issued an 89-page order in one of our market manipulation cases which laid out in great detail not only facts, but its legal conclusions and what it believed the standard should be. That is pretty unusual in the Federal Government to have a commission put that kind of time and effort and try to lay out that sort of guidance in that kind of detail.

Mr. Olson. Mr. Quinn, final comments? I am over my time, so make it quick please.

Mr. Quinn. I would just add that there is other informal methods for getting guidance. There is a compliance help line. There are also formal ways to do that through a request for declaratory order.

Mr. Olson. Thank you. Yield back.

Mr. Whitfield. At this time I recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. McNerney. Thank you, Mr. Chairman. And I appreciate the effort that is going into this bipartisan bill. Dr. Hogan, how much do you think the Clean Power Plan's goals could be met by energy efficiency improvements alone?

Ms. Hogan. As you know, the administration supports sort of an all-of-the-above strategy, and clearly, energy efficiency is part of that all-of-the-above approach. There is a substantial amount of energy efficiency that is available in all parts of the country, but I am not sure I want to go too much farther than that other than there is energy efficiency available as a low-cost resource in all parts of

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this country.

Mr. McNerney. And that wouldn't affect the grid's reliability?

Ms. Hogan. It should help the grid's reliability.

Mr. McNerney. Thank you. Mr. Quinn, on Section 4211, how much regulatory burden do you think that that section would add to energy producers in this country?

Mr. Quinn. I think our primary concern is simply that most of what Section 4211 requires is already being done by Commission staff with a secondary concern that to the extent that you had a separate independent office doing that, there is the potential that the guidance presented in the recommendations for improvement would become inconsistent with other guidance from Commission staff.

Mr. McNerney. Okay. Mr. Parkinson, do you believe this regulation would make the States more vulnerable to market manipulation like was experienced in California in the year 2000?

Mr. Parkinson. With respect to the four amendments that are in the draft, yes.

Mr. McNerney. Thank you. Mr. Parkinson, what are the implications of the phrase "helpful and potentially helpful" in Section 4212?

Mr. Parkinson. That is really a pretty dramatic rewrite of what people refer to as the Brady doctrine, even in a criminal context, which is where it really applies. Brady does not apply legally, at least

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constitutionally, in a civil context like we are under, even though we voluntarily adopted it as a Commission in 2009. But it really, under that standard, essentially what it would end up being is an open file discovery policy. If you say you are entitled to information and possession of FERC that is helpful or potentially helpful to the defense, I don't know what wouldn't be, whether it is inculpatory, exculpatory or anything even neutral.

If I am defending an investigated subject, of course everything that the government has is helpful to me, or potentially helpful, even if it is -- maybe especially if it is inculpatory, I would like to know that because it is helpful to me in preparing my defense. I think that that language, in particular, is our biggest concern about that part of the proposed 4212.

Mr. McNerney. So you feel it would be an advantage to eliminate that terminology?

Mr. Parkinson. Absolutely.

Mr. Whitfield. Would you tell us what that terminology is again?

Mr. McNerney. Helpful or potentially helpful in Section 4212(1). Next question, in Section 4212(4), would that section compromise the attorney-client privilege or affect impartial fact-finding conducted by FERC?

Mr. Parkinson. It certainly could. I don't think there is any question it would impede the ability of the enforcement staff to

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regularly communicate with the Commission and with others in the agency. It simply is unworkable to restrict the enforcement staff from those communications unless we ignore the fact that the Commission itself owns and manages its enforcement program. I mean, it does wear two hats in this world. It is responsible for having a strong enforcement program, and it is also responsible at later stages in particular cases to be adjudicators.

But much of the discussion around this has been focused only on the adjudication phase. I don't know how a commission effectively oversees an enforcement program if the enforcement staff isn't able to regularly communicate with them without having to put it in writing or without having to give the investigative subject the opportunity to address the Commission in the same way. We are counsel to the Commission, and our investigators are lawyers, and we give legal advice to the Commission on an ongoing basis.

Mr. McNerney. Thank you, Mr. Chairman.

Mr. Whitfield. At this time I recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. Shimkus. I just got back, Mr. Chairman, so I will yield to the next member.

Mr. Whitfield. Okay. Mr. McKinley of Virginia for 5 minutes -- I mean, from West Virginia.

Mr. Griffith. Mr. Chairman, some of us in Virginia never

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acknowledged that they lawfully were transferred.

Mr. Whitfield. Well, Mr. McKinley is such an easygoing guy. I knew it wouldn't bother him.

Mr. McKinley. Just like this all the time. The question that I was wrestling with a little bit on the efficiency issue has to do with a little bit deeper from an engineering perspective, and that is on indoor air quality and the impact that has on energy efficiency, and I am just curious as to how you have taken that into consideration, because as we know, we can be, we can have the best equipment available, but if we are not using it properly, we are going to defeat the purpose. And we know that -- that was one of our practices in architecture engineering, what we did was we went into schools, and we found out schools all over America that we were called into are not operating their equipment. They may have new equipment, but they are not operating it properly. So we can spend all this money to put all this new equipment in, but if it isn't operating, so where are we going within energy efficiency within FERC or with the DOE?

Ms. Hogan. Certainly we pay attention to indoor air quality at the Department of Energy as we think through energy efficient homes and buildings. We have got a program now that we are working on with builders across the country, called Zero Energy Ready Homes, which is really a way of saying energy efficiency first, and then rolling in renewable energy as it makes sense. And that is a high-performance

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home specification that builders are building to that gives a lot of thought to indoor air quality issues, water management, home design, sort of the whole package.

Mr. McKinley. And in conjunction with that, that is where some people are saying, and I am just taking into consideration from the professional engineering position, is that the tighter we make our buildings and more efficient, or effective with this wrap and the closed windows and we don't get in fresh air, it is its no wonder that we are having more indoor air quality problems, that people are having asthma and other health-related issues as a result of this.

I am not convinced yet that we have the answer. We know the EPA, in and of itself, has said that indoor air quality is probably 90 times worse than the outdoor air quality, and they relate it to the levels of formaldehyde that we have in our indoor air because of our carpet, our furniture, our clothing, all giving off these gases; and we are not circulating the air the way we are supposed to. So we may have the best equipment, but if we are not handling it right, what are we doing?

Is anyone willing to acknowledge that perhaps some of the health risks that we have -- you have heard the rattle off. I have heard it from across the aisle -- all the asthma attacks, the early health risks, sick days, are all caused by coal. Well, I want to submit to you that perhaps it is a lot caused by indoor air quality when we are not

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operating our homes in the most efficient way. How can you respond to that? Would you agree that indoor air quality is a problem?

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RPTR YORK

EDTR ROSEN

[3:43 p.m.]

Ms. Hogan. I certainly agree that indoor air quality is something that we need to place close attention to.

Mr. McKinley. Is it a problem?

Ms. Hogan. We work with EPA on indoor air quality issues.

Mr. McKinley. Do you think -- I am sorry.

Ms. Hogan. Absolutely it is an issue that --

Mr. McKinley. Okay. I just wanted to hear you say that it is a problem, because I haven't been able to get anyone else to acknowledge that it is a problem. So thank you for stepping up. Okay. Thank you.

So where do we go from that?

Ms. Hogan. We continue to work on it. I think one of the other ways that we are working on it, we are a participant in the ASHRAE committees that are looking at, you know, standards around airtightness for homes and --

Mr. McKinley. And school classrooms. We know that school systems, public buildings, Federal buildings, they will close dampers so they will shut off so that fresh air -- they are not bringing fresh air into it, so that they don't have the air turnover. We know a classroom should have two to four air turnovers per hour, and they are

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not getting it. Little Johnny is sitting there sneezing next to Nancy, and they are dealing with the same air all day long, and then they wonder why does little Johnny get sick.

Ms. Hogan. That is right. And there is a lot of effort being put on ongoing continuous commissioning of buildings so that you can keep the buildings and their equipment in sort of top notch operating, you know, performance, and that is another effort that the Department of Energy is continuing to work on for really buildings of all types.

Mr. McKinley. Well, I am just saying that I know the frame -- we are running out of time, but I just hope as we develop this final draft and as we work down through it is that we take into consideration into indoor air quality because -- and thank you for acknowledging that it is a problem and that -- see how we can work that into it because having the best equipment doesn't always solve the problem. And having the most efficient doesn't solve the problem if people aren't operating the building properly.

Thank you. I yield back my time.

Mr. Whitfield. Chair now recognizes the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

Dr. Hogan, Section 4115 of the Energy Efficiency Discussion Draft repeals a provision of the Energy Conservation and Production Act that sets out an aggressive set of energy efficiency goals for Federal

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buildings. I don't support repealing this provision, and I believe the Federal Government should be a leader in demonstrating what can be achieved with new technologies and building design.

The administration has a number of executive orders that address energy efficiency goals for the Federal Government.

Would you please talk a bit about these and what the administration believes are achievable efforts for Federal buildings.

Ms. Hogan. Sure. So, you know, we have a very recent executive order as of March of this year that came from the White House that outlines a set of extended and/or new goals across much of the Federal facilities, fleets, and so that includes things like reducing our greenhouse gas emissions by 40 percent by 2025 relative to a 2008 baseline. It includes continuing to improve the efficiency of our Federal facilities by two and a half percent per year through 2025, though that 2-1/2 percent per year does not just have to be energy efficiency, it can be through the use of on-site renewables. It also includes continued goals for saving water, as an example, and continued growth in the amount of our electricity use that we would get from renewable energy sources growing to about 30 percent by 2025 relative to where we are right now, which is a little under 10 percent.

So what -- these are what we believe to be aggressive but achievable goals, and if you actually cost it out from the savings that we think we can deliver to the taxpayer as we would meet these goals,

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we estimate about \$18 billion in savings from working to achieve these goals.

Mr. Tonko. Thank you. Thank you.

And the Department has been working on a number of important standards to improve the energy efficiency of various products. Now, the effort to develop a standard for residential non-weatherized gas furnaces is one of those.

I have seen the projected savings for consumers for this rule, and it is very impressive. Since these furnaces are in place for about 20 years, it is important so have an aggressive standard.

This discussion draft sets this rulemaking back, I believe, by a considerable period, further delaying progress on efficiency. I am also not convinced this study will do anything to resolve the potential problems the rule's critics have noted, primarily, that some low income homeowners might not be able to afford the installation of these furnaces, or that all homes and buildings cannot accommodate these furnaces. I believe the experience has been that installation costs drop and new installation methods develop as familiarity with new products and their installation goes forward. In fact, this usually results in the cost estimates for these rules being high relative to actual experience.

My understanding is the furnaces the rule is recommending are already on the market and account for between 40 and 50 percent of new

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sales. Would you agree with that?

Ms. Hogan. I certainly know that the products are on the market. They represent a fair amount of new sales. I would have to go back and confirm those specific numbers, and would be happy to do that.

Mr. Tonko. Okay. And also would you happen to know the projected consumer savings for this rule?

Ms. Hogan. We think the net present value of savings for the rule is \$18 billion.

Mr. Tonko. Thank you. And DOE's proposed rule takes a different view from that of the rule's critics with respect to the cost effectiveness of this standard.

Do you believe the rule meets the statutory requirement that the standard be, quote, "economically justified"?

Ms. Hogan. The proposed rule clearly meets that requirement, absolutely.

Mr. Tonko. And I also note that the statutory requirement -- that the statutory requirement is that a new standard achieve the maximum improvement in energy or water efficiency.

Does the rule meet those given requirements?

Ms. Hogan. Yeah. We believe that this rule is within our statutory responsibilities.

Mr. Tonko. Okay. Well, I thank you, Dr. Hogan. I think this rule offers tremendous benefits to consumers.

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With that I yield back, Mr. Chairman.

Mr. Whitfield. Chair recognizes the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. Shimkus. Thank you, Mr. Chairman, and thank you for letting me defer to -- and welcome. This is a great committee. We love talking public policy and these relationships.

Ms. Hogan, I hope that in this debate about efficiency, I have kind of -- I am from rural Illinois, 33 counties, small communities. I understand efficiency, and I have accepted some of the arguments that there is return on investment, but I think, you know, Mr. McKinley -- and there are some points about new technology that ends up being more costly. Get a new furnace, you have to get new filters. You don't get these little ones anymore, you get the -- you don't get the \$12 filters, you get the \$60 filters. A service call is not 100 bucks, it is 250 bucks. Are some of those costs to middle income, lower income folks taken into consideration?

Ms. Hogan. So when we do our work, our analysis, we look at all the installation, O&M costs, associated with a change to a higher efficiency unit, absolutely --

Mr. Shimkus. Because I am personally starting to have a debate just in my own house about how much savings I have versus the actual cost, because you got to have those technicians out all the time. You know, spring and fall, and, I mean, I just think there is -- I hope

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we are because I am not sure how people, middle to lower income, can afford high efficiency, and the maintenance requires you keep them running at the standard, I think Mr. McKinley was raising, to get that return on investment. Because most people -- those old furnaces, they would work. They would work 20 years. Not efficient, but they weren't high tech. If a belt broke, you replaced the belt. Right? So I just want to highlight that.

The other thing is, Mr. Quinn, did we meet recently? I met with FERC on a recent auction. Were you part of that meeting?

Mr. Quinn. I ways not part of that meeting.

Mr. Shimkus. Okay. I couldn't remember. I am trying to ask my staff.

So this is also timely, and just the auction issue, I am in the MISO area. So we had an interesting auction. I found out that those auctions happen every now and then throughout the country. So these questions kind of deal with that a little bit.

In the committee's legislation, you make a statement that some of it is unnecessary because did you already have a lot of pending documents to address several of the wholesale electricity market criteria that the committee highlights in its draft market reform legislation, including price formulation in energy markets, fuel assurance, and performance assurance in capacity markets.

Do you have any idea when these pending docket decisions will be

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made?

Mr. Quinn. Congressman, I can't say when the Commission will take action. Just simply --

Mr. Shimkus. No. That is fine. Just getting it on the record.

Since you can't provide additional details on timing at that moment, will you commit to following up for the record to provide information regarding the expected timeline for the Commission action on these initiatives?

Mr. Quinn. Congressman, staff has limitations on -- legal limitations on saying when the Commission will take action, partly just by matter of law. Second, because it is a five-member Commission, you have got to get --

Mr. Shimkus. Yeah. So here is our problem. The dilemma is we believe in markets, we believe in competition, but sometimes they go awry and we have a hard time understanding how that happens. I mean, in my briefing, I think the formula per laid out probably was right, but the answers -- when you have, in essence, a 300 percent increase, which I think it was in the MISO region, to the average person, there is a concern that something is not right with the form -- something is not right with the process. If -- so we -- maybe a lot of members, Republicans specifically believe in markets, we believe in competition, but -- and what our concern is that if we don't get some warm and fuzzies from the FERC, that there may be a call to legislate

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in the areas of electricity markets in the absence of concrete and timely action by the Commission, we may not have any other choice. So maybe that is a message you can take back to the commissioners, and you can respond if there is anything else you want to add to that.

Mr. Quinn. The only thing I would add is simply that the amount of work that the Commission staff has done on a number of efforts, including price formation, fuel assurance, has brought together a large number of stakeholders, offered a large number of perspectives on what are really complex issues, allowing the Commission to pursue those activities as they currently are now, understanding the need for timely action would allows us to get the benefit of what that stakeholder community has provided.

Mr. Shimkus. Thank you.

Thank you, Mr. Chairman.

Mr. Whitfield. At this time, the chair would like to recognize the gentleman from Vermont. And I want to a apologize. I had two Democratic orders. In one of them you were before Mr. Tonko, and the other you were behind, but you are recognized for in 5 minutes and 15 seconds.

Mr. Welch. I am happy to get my time. Thank you.

A couple of things. One, I am so grateful to DOE and FERC and all of the advocacy organizations that have worked so hard for so long on focusing attention on energy efficiency. And there is two things

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I think we need in order to ultimately be really successful. One is we need bipartisanship on the jurisdictional committee, and we have got that. It is tremendous.

And, number two, we need to have cooperation and communication between the advocacy community, the regulatory agencies, DOE, and FERC, and the private sector who are in the real world dealing with some of Mr. Shimkus' concerns, because if we have a standard that has the maximum efficiency but nobody can afford it, it is not going to save money and it is not going to save on energy.

So I appreciate this sort of cooperation that recognizes that all of us have to be involved in some give and take, taking into account the real world where home builders are out there banging nails, where the energy efficiency folks are looking at policy and seeing best practices, and where the legislature has a responsibility to try to find that common ground.

But so, Dr. Hogan, I just want to ask you a couple of things. We have got a great bill here. And there is a few things that have to be wrinkled out. Mr. McKinley and I have some provisions in there that are being debated, and our colleagues, Ms. Blackburn and Mr. Schrader, have an alternative offer on that, and we want to try to work that out. But I want to just ask you a couple of questions about that because that has to do with the DOE rule.

Under current practices, when new building codes are being

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developed, does DOE consider the cost effectiveness of the codes that it proposes? And, if so, can you describe what that analysis looks like, because there has been some debate on if a 10-year simple payback period analysis would be more effective. You know, it is simple and straightforward, or if a life cycle cost analysis provides also, in some cases, a more complete picture of the cost and benefits of these codes on homeowners?

Ms. Hogan. Well, thank you for the opportunity to address that question.

DOE does do assessments of measures to take to an independent code body for their consideration as part of updating the national model energy code. And in doing that work, we do do a life cycle approach, life cycle cost effectiveness approach, because we do believe that is a better representation of the cost of more efficient measures that aligns with the way most people buy homes these days. Most people are taking out mortgages.

Mr. Welch. Can you also do 10-year analysis too on the payback?

Ms. Hogan. We can do any analysis that we are asked to do. I think we do believe that a life cycle approach is one that tells sort of the best story aligned with the way most people buy their homes. But we certainly can do multiple approaches.

Mr. Welch. Okay. Well, that makes sense.

Another thing, DOE does provide right now robust technical

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assistance to States and model code development bodies upon their request in the development and adoption of building energy codes. What would be the impact if we were to restrict this technical assistance to only providing those bodies that have requested it with information on proposals with a payback of 10 years or less using simple payback only, and not also providing with the life cycle analysis that they could consider and accept or reject?

Ms. Hogan. Well, we haven't looked in great detail in terms of what specifically would change if we were limited to a 10-year simple payback. We don't think it would be as helpful to the States in terms of understanding what the measures are, and what the savings are that they could then deliver to home buyers in their State. We do think having, you know, as you can tell, we think doing a life cycle approach is really a better approach, but also just having the opportunity to do multiple approaches so people can actually figure out truly what works for them would be much better.

Mr. Welch. Okay. And just my last quick question, the draft text includes a provision to repeal Section 433 of the 2007 Energy Independence and Security Act. Mr. McKinley and I are working on an alternative proposal to reform it rather than repeal that provision. Our proposal would replace Section 433 with an extension of energy efficiency improvement targets in Federal buildings and require Federal mortgage agencies to include energy efficiency as a factor in

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determining value.

What is the DOE view of repealing Section 433? And what do you think about the McKinley-Welch approach as an alternative?

Ms. Hogan. So we think it is great when the Federal Government has sort of a full tool kit of things to help guide its investments. We think Section 433 provides an aspect of that, particularly focused on what we can be doing in major renovations of our buildings. That is in a gap currently in sort of the Federal tool kit. DOE's been making some important progress in, you know, moving forward on 433. So -- but it is really that gap that we think is the important part.

So the extent there are, you know, direction from Congress on how we can continue to have a full tool kit, you know, that is the type of thing we would be happy to work with Congress on to find something that is workable there.

Mr. Welch. Thank you.

Ms. Hogan. And we are certainly excited about some of the things going on in the SAVE Act.

Mr. Welch. Well, good. I thank all the panel members, and I yield back.

Mr. Whitfield. At this time the chair recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. Latta. Well, thank you very much, Mr. Chairman. And to our panel, thanks very much for being with us today.

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If I could, Dr. Hogan, Representative Welch, who was just speaking, and I have also introduced legislation that would ensure customers are protected when products are disqualified under the Energy Star program by requiring the EPA to make a determination as to whether consumer compensation is required. This language is supported by many outside groups, including the Alliance to Save Energy, the American Council for Energy Efficiency Economy, and the National Association of Manufacturers.

Let me ask, do you agree that consumers benefit from a strong Energy Star program?

Ms. Hogan. Yes. As you may know, the Department of Energy is a partner with EPA in the Energy Star program, and we are very supportive of efforts that would help maintain the integrity and the credibility of the Energy Star program, absolutely.

Mr. Latta. And, again, because the reason I ask is that, you know, we don't want to have manufacturers out there fearing that if they get caught up in lawsuits certain times and with warranty issues and things that there are implied warranties that all of a sudden, you know, they just start saying, you know, we are just going to start dropping the Energy Star program from their lines, and I think you -- you are absolutely right that Energy Star is something that we have to maintain, and that is why we are very much for it in the legislation.

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If I could ask another question, that is, you know, for over 60 years air conditioning, heat pump, furnace, boiler, and water heating manufacturers relied on voluntary independent certification programs that determine efficiency compliance with both the Department of Energy and the Energy Star program. These industry-led voluntary certification programs continue to be the gold star for market surveillance and for ensuring product compliance. And, again, I have introduced bipartisan Voluntary Verification Program Act which would require the Federal Government to recognize voluntary industry verification programs to demonstrate energy efficiency standards.

And would you comment on your willingness to work with us to make sure that we can get this enacted into law?

Ms. Hogan. Yeah. We are very supportive of industry-led voluntary verification programs. You know, we see that that can play a very important role in that verification space, and we would be very happy to work with you to make sure that something can be constructed that can do that -- do that well.

Mr. Latta. I appreciate that. Also during our April 30 energy efficiency hearing, we received testimony from one appliance manufacturer who stated that the legislative approach taken in the committee's discussion draft regarding the voluntary independent verification programs conserves DOE resources, reduces taxpayer costs, and provides clarity for a manufacturer bringing products to market.

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Would you agree with that statement?

Ms. Hogan. We would agree that a well-constructed, you know, industry-led verification program can absolutely do those things.

Mr. Latta. Okay. Let me just follow up. When you say a "well-constructed," how would you define well-constructed?

Ms. Hogan. Well, just one that works well with the Federal Government in terms of sharing information back and forth so that we sort of know what is going on there and can -- and can leverage and benefit from that information.

Mr. Latta. And right now do you think that there is that good back and forth from the industry to the Federal Government on that between the industry?

Ms. Hogan. So we have a model program that we do work with with AHAM, and we have been in conversation with the heating and cooling and, you know, industry as well about how to structure such an effort through -- through, you know, a fairly lengthy conversation.

Mr. Latta. Okay. In that conversation that you were having, what is the feedback you are getting from the industry side?

Ms. Hogan. So we are talking with them. We are also talking with people on the Senate, really, who are also constructing similar legislation, and we think we are really close in getting to some good language.

Mr. Latta. Mr. Chairman, I yield back the balance of my time.

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Mr. Whitfield. Gentleman yields back.

At this time, the chair recognizes the gentlewoman from Florida, Ms. Castor, for 5 minutes.

Ms. Castor. Thank you, Mr. Chairman, and thank you to our panelists today.

I have to say like the ranking member, Chairman Whitfield's comments got my attention at the beginning of the hearing. I know he is a zealous advocate for his district, and, Mr. Chairman, if you believe that we need to broaden the authorities of FERC and the Department of Energy to more directly address carbon pollution, and to reduce carbon pollution and make it more explicit as part of their missions, I would be willing to work with you on that.

Mr. Whitfield. Thank you.

Ms. Castor. But you mentioned the -- at the outset the Energy Policy and Conservation Act which is the bedrock -- one of the bedrock components of energy laws in America, and I do believe it was signed into law by President Ford and not President Carter. So the history of energy efficiency has always been bipartisan because that -- the goals of that law were to increase production and supply, energy supply, to reduce demand. We have done a good job on those things. You look around America now, and we have robust energy supplies, and we are going to be a net exporter. We have done this while being able to reduce demand. And Mr. Olson left, but I can talk about a hot and humid

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climate as well, and we rely on air conditioning, and we need to make sure that we have both, we have a robust supply, but that it is cost efficient for all of our neighbors. The law also said: America, you have the tools to address an energy crisis, and then importantly it said: Let's unleash American innovation through energy efficiency and conservation. Look what has happened in our fuel economy standards for cars, and now we are setting goals for trucks. This has been an enormous success for Americans, for consumers, for the auto industry. It has put a lot of money back into the pockets of my neighbors at an important time.

Also the businesses that have been created across our great Nation in conservation and lighting, building, building on a lot of the bipartisan efforts here with Mr. Welch, Mr. McKinley, Mr. Kinzinger. I have been focused on benchmarking buildings across the country so that we can measure this and hold folks accountable.

This -- while climate change and carbon pollution may not be the overriding goal of our energy efficiency agency, it does dovetail nicely with their mission while lowering costs for consumers, addressing the impacts of climate. I know there has been discussion about cost and do these energy efficient appliances, do they -- are they really cost efficient? And I think when you look at the decades gone by you, the overwhelming answer is yes. This has been incredible to create jobs, lower energy bills for so many of our neighbors. And

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now it is even more important now that we understand the impacts of the changing climate.

And when you talk about costs, if we do not do some things to become more efficient and reduce carbon pollution, the costs are going to be enormous. They are going to be astronomical. Already increases in property insurance, flood insurance; we are having to make investments in water supply due to droughts and sea level rise. We are anticipating more intense lightening storms. Tampa is known as the lightening capital of the world, and I am not just talking about the Stanley Cup finals that begin tonight. But think about that. If electrical storms begin and they are more intense, the risk that we put our businesses and neighbors at.

So we -- I think part of the problem, Mr. Chairman, is the old traditional electric utility model on selling as much energy as we possibly can simply doesn't fit the modern challenges we have today. We have got to build in additional incentives to become more efficient. And based upon the evidence of the past that it helps create jobs, it helps lower costs for our neighbors, we can do this.

So I don't have any questions today. Thank you for letting me go on on that, Mr. Chairman. You inspired me to make some comments, and I look forward to working with you on this draft.

Mr. Whitfield. Well, I am glad I got you excited there, Ms. Castor.

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At this time I would like -- inspired. Maybe I should say inspired. This hasn't really been a good afternoon for me, truthfully.

At this time I would like to recognize the gentleman from Virginia, Mr. Griffith.

Mr. Griffith. Well, I got inspired too. I have got to tell you, Mr. Parkinson, I am really curious. What is the worst-case scenario offense that you all would investigate?

Mr. Parkinson. Worst case offense? Manipulating the energy markets.

Mr. Griffith. Okay. And I was a little surprised in regard to the Brady information, and you said what would be helpful, inculpatory information would be helpful. Yeah, it is helpful. If you are trying to defend somebody who is being accused of doing something improper, having all the information is helpful. And you said, well, this would be you like an open file policy. Well, I always found in my years of lawyering that the really good prosecutors, and I don't know how you all did it wherever you were, but the really good prosecutors, unless it was a serial murderer, child sex offender, something really heinous, they gave you the open file because it helps you reach a settlement.

And so I don't understand the resistance. I am having a real hard time sitting here listening to you talk about how there is -- sometimes this is our problem, giving people information so that you can reach a settlement is a problem. That is not a problem. That is the way

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you want to get a lot of these cases resolved. It would make you all more efficient. You could get on to bigger problems. It is the people that you are not talking to. And then you seem to have a problem with giving a witness their own statement.

How in the world is that not just regular course of order? I mean, maybe it is just a Southern thing or a small town thing, but I think if I make a statement to you, I ought to have a copy of my statement.

Now, if you want a court order that says I can't talk to anybody else, that is fine. But I am going to remember most of my statement to the ability that if I am going to go out and try to collaborate or get our stories straight, I am going to do that without a written transcript of my statement, but if I want to be able to show my lawyer what is going on, or maybe get advice from a second lawyer, that seems to me to be reasonable. Can you answer any of these questions for me? And I got more.

Mr. Parkinson. Yeah. Sure. I would love to, Congressman. Let me start with the first one about this is not a hide-the-ball kind of process.

Mr. Griffith. Because that is what you made it sound like.

Mr. Parkinson. If I made it sound that way, then I misspoke or was misinterpreted.

We are talking about a pretty narrow issue about Brady, which is what the amendment does. We have a process at FERC and FERC enforcement

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where we lay out in extraordinary detail for the subjects of our investigations everything we have concluded, both factually and legally. We lay it out often in preliminary findings letters. They go on for dozens and dozens of pages, unlike any other Federal agency that I am aware of. This is -- we have regular communications with counsel throughout the investigation. We -- and during the -- near the end stages of the investigation we lay out our preliminary findings. They have an opportunity to submit with no limitation on length. Whatever they want to submit. There is two other additional opportunities to do that.

Mr. Griffith. But I guess my problem is your testimony earlier was you were opposed to some of the language that does just what you are saying you do. Why would you be opposed to something if you agree with me that it is the right thing to do and the fair thing to do, why would you be opposed to it?

Mr. Parkinson. There is a significant difference between laying out everything we have concluded and laying out during the course of an investigation, which is what this is talking about. This is not the adjudication phase. This is not the phase where we brought charges and there is a process in place.

Mr. Griffith. Well, let me go there because I am -- I could probably go on for an hour. I am troubled about so many things. So let me get this straight. You all have a process -- I mean, I think

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the bill ought to be expanded, Mr. Chairman. You all have a process by which the commissioners are involved in the investigation, because you then establish an attorney/client relationship with the commissioners, and then, those same commissioners are judging the case.

Now, let me give you an analogy that I think is fairly close. You got a building official who is investigating somebody who may not have followed the building code in building a building. And they go talk to the judge in advance and say, how do you think we ought to investigate? How do you think we ought to lay out our case on this? And then you expect that the defendant, or the person who is accused, whatever terminology you use, thinks they are getting a fair hearing when they walk in front of the judge who has an attorney/client relationship with the person who is prosecuting them? How does that work? How is that fair? How is that due process?

And I am running out of time, but you said a couple times that, you know, that some of these things could be burdensome. Yeah. Due process is burdensome. Liberty is hard to hold on to. And having the government not take your property, your money, without a fair hearing is burdensome. But it is the American way. And so next time you start talking about how these requirements might be burdensome, you might want to think about in the real world, people hearing that think that you have got some kind of cloak-and-dagger operation going on that is not a due process or fair system.

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And I am out of time. So I yield back.

Mr. Rush. Gentleman yields to me a few seconds?

Mr. Whitfield. Sure.

Mr. Rush. I want to yield -- you don't want to respond to that -- Mr. --

Mr. Parkinson. Sure. It would take a while. I mean, burden -- we recognize that there are burdens. I am not complaining about burdens. We believe deeply in due process. I think the example -- there is nothing unique. I think one thing that is really critical to understand is there is nothing unique about FERC, and the notion that the Commission -- in particular on the Commission, the Commission wears two hats. You can't -- unless you are going to separate the Commission, which, again, is a bipartisan commission, there is five members.

Unless you are going to say the Commission has no role in enforcing -- in administering its own enforcement program, you can't isolate the Commission from the investigative and from the enforcement process. You can't. I guess you could legislate that, but it would be -- it would be different than every other commission process in the Federal Government.

Mr. Whitfield. Well, you know, Mr. Parkinson, I think --

Mr. Parkinson. And just one other point if I might --

Mr. Whitfield. Yeah, and I think what would also be helpful in

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4212, which is what we are discussing, that we have an opportunity to sit down with you and some others and Mr. Griffith and just go in more detail.

Mr. Parkinson. I would be delighted to do that.

I just wanted to make one more point if I could, Mr. Chairman, and that is -- and that is ultimately everything the Commission does is reviewable by the Federal courts. If there is a trial within FERC, that can be appealed to the D.C. Circuit or Court of Appeals. If the Commission orders -- issues an order assessing a penalty as it did last week in one of our manipulation cases, we go straight to district court, and then we are in a Federal court process and -- and the ultimate -- ultimate say belongs in the Federal court. So it is not an adjudication that is unreviewable.

Mr. Whitfield. Well, like I said, we look forward to having further discussions with you about it. Because 4212 was the subject of this, and there are some language in here that seems pretty judicial normal process to us, due process, and so we will discuss that more with you and others.

At this time I would like to recognize the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. Green. Thank you, Mr. Chairman.

Secretary Hogan, in 2007 Congress passed the Energy Independence and Security Act. EISA in 2007 was the last energy package this body

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has passed. In that legislation there is a provision under -- and it has already been mentioned -- Section 433 that required the reduction of fossil fuel-based energy consumption. Section 433 required Federal buildings to eliminate 100 percent of fossil fuel consumption by 2030. In October of 2010, the Department of Energy issued a notice of proposed rulemaking to begin the rule propagation process.

What is the current status of that rulemaking?

Ms. Hogan. The most recent action on that rulemaking that is public is that we put out a supplemental notice of proposed rulemaking in the fall and took comment on that. And in that supplemental notice, what we proposed was any number of ways to provide the Federal agencies with increased flexibility in terms -- in -- in how to meet the requirements of Section 433.

Mr. Green. Okay. There had been considerable debate on regarding the length of time that DOE took to begin the rulemaking.

What issues has DOE faced while attempting to draft this rule?

Ms. Hogan. I think we are looking to provide, you know, good flexibilities to the Federal agencies as they would, you know, be required to meet the fossil fuel requirements as -- that which, you know, get increasingly more stringent as you walk through time. You know, this is a provision that looks at major renovations as well as our buildings, sort of newly-constructed buildings, but we do see it playing a really major role with our major renovations. So really

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being thoughtful about the types of flexibilities that we could offer up to the Federal agencies has been sort of the big subject of solving that we needed to do.

Mr. Green. This last March, the White House issued an executive order entitled Planning for Federal Sustainability in the Next Decade. The executive order requires about 2025 no less than 30 percent of the electricity energy consumed is attributable to renewable energy.

Does DOE consider the executive order an admission at the administration that 100 percent by 2030 of no fossil fuel is not attainable?

Ms. Hogan. No. We view these as complementary tools, and that the executive order which would go through 2025 is, you know, is a management framework for the Federal agencies through 2025 of ambitious but achievable goals.

Mr. Green. I think the reason 433 is part of the package is that -- I think all of us would hope that we would not need fossil fuel by 2030, but, you know, that includes natural gas also, and typically that is going to be the fuel of the future. We can do wind power, and in Texas we are doing a lot of wind. I wish we could do solar. We could use some help from our legislature sometime to do what we have done with wind, but I just don't think that by 2030, 100 percent without, you know, fossil fuels is possible.

I would like to discuss natural gas furnaces. In 2007 the DOE

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made the first attempt to -- in more than 20 years to increase efficiency standards for indoor furnaces. And I think it is safe to say there has been some disagreement over the proposed rulemaking standard setting.

Where does the DOE rulemaking process stand today?

Ms. Hogan. So, again, we have a proposed rule out right now for comment. The comment period remains open. We were asked to extend it. We have extended it. And we are actively looking to get as many comments as we can so that we can really look at each and every one of those comments seriously and then take the next steps with --

Mr. Green. Do you know if there is any groups that DOE hasn't talked to about the -- regarding the proposed rule? I think that might be a smaller group than who you have talked to.

Ms. Hogan. No, we have certainly talked with a lot of stakeholders around the furnace rule, and at many levels of the agency.

Mr. Green. Do you have any possible effective date for the new gas furnace rule?

Ms. Hogan. You know, typically a rule is effective within 3 years of it going final. Maybe this one is longer. So -- but we will get back to you with that timing. I mean, we are proceeding with our rulemaking process. Once we complete the public comment process, take the time that we need to take to go through all the comments that will come in, and then put together a final rulemaking.

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Mr. Green. Thank you.

Mr. Chairman, I know I am out of time, but I appreciate this section of our energy bill on efficiency, and I am glad we are reworking some of the things may not -- it may be have been an earlier law that may not be really practical in 2015. Thank you.

Mr. Whitfield. Well, thank you. Yeah, we have a long way to go, but I think we are making progress, and these types of hearings certainly help.

At this time I recognize the gentleman from Illinois, Mr. Kinzinger, for 5 minutes.

Mr. Kinzinger. Well, thank you, Mr. Chairman. And to our witnesses, thank you for being here. We appreciate it.

First to Assistant Secretary Hogan, we have heard from our manufacturing communities that when it comes to developing new efficiency standards they prefer a consensus-driven approach that includes input from government, from stakeholders, and NGOs as a preferred approach to developing efficiency standards more than a formal notice and comment method.

Will DOE commit to a more consensus-driven approach as it moves forward with new standards?

Ms. Hogan. We also really do like the engagement that we can get through what we call negotiated rulemakings. This is something that the agency has taken on in the last several years where we have stood

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up a Federal advisory committee, a FACA, and then through that, we can participate in a negotiated rulemaking process. That is a little bit different than a consensus -- some of the consensus agreements that have been brought to us in the past where DOE isn't actually a party to the conversation, but the stakeholders get together, come to consensus, and then bring it to us.

Certainly this is one where we can be at the table bringing all of our analytical abilities to the table and having very robust conversations around what can really work for everybody. We are quite excited that over the last several years, we have been able to participate in nine rulemakings through such a process, and four of them have been brought to completion, and we really are committed to using this tool wherever it makes sense.

Mr. Kinzinger. You know, obviously, I think the more we can strive to consensus. So several of DOE's recent final standards have been challenged in the courts by manufacturers.

Does this suggest a flaw in the current rule development process?

Ms. Hogan. We certainly, you know, are being challenged in the courts. We do not think that suggests a flaw in the current rulemaking process. We do, again, to your earlier question, we do believe that a negotiated rulemaking process does help in getting a lot of information on the table. But I also think that the traditional process really can work. Because we are also working hard to run the

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traditional process in as open and as transparent a way as possible, putting really good information on the table, holding public meetings, walking people through our analysis assumptions, and also --

Mr. Kinzinger. All right. Well, let me -- I have been lucky enough to work with Congressman Welch to have some sections included in the discussion draft in relation to ESPCs and -- in order to clarify their authority. And the committee has been very supportive of these efforts so far, which I appreciate.

In relation to the current use of ESPCs and UESCs, do you have any idea what percentage of the Federal energy intensity reduction goals is a result of their use?

Ms. Hogan. So the Federal Government has a long history of improving Federal energy intensity, and let me just say that performance contracting has played a really important role. You know, currently, we have got a \$4 billion challenge for investment that the Federal agencies are working toward. We have got \$2 billion of that \$4 billion in place, and will continue for that next \$2 billion. And as you can imagine, that is an important amount of money to be bringing into the Federal Government through third-party financing and not having to look to appropriations.

Mr. Kinzinger. Okay. And we have been told that the administration is currently trying to use a ESPC for data center consolidation.

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Could you update us on the status of that?

Ms. Hogan. Just -- so the Department of Energy is -- you know, does have a goal as part of this performance contracting challenge. The Department of Energy has done a number of projects. It is considering this data center project as one of its projects, and I don't know sort of the latest, but we should have some information on that soon.

Mr. Kinzinger. Okay. And then, Mr. Quinn, just very briefly, wind power and other renewable resources get a very generous Federal credit of about \$23 per megawatt hour. It is very generous, and so generous that wind generators bid into the market at zero sometimes or they often bid in at a negative price. That is, the taxpayers pay them so much that they the market to take their electricity. The discussion draft requires FERC to consider how such market distorting incentives impact wholesale markets.

So just quickly, how often does wind power bid at or below zero in the PJM market, and what effect does this have on other generators in the market?

Mr. Quinn. Congressman, I don't have data on how often that happens. We would be happy to take the question for the record.

With regard to how that affects the rest of the market, various markets have taken steps to automate the process so that the prices are clear and reflective of wind doing that, and that when prices get

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low, that wind can be curtailed or other generations can be curtailed based on price rather than some manual process, and those things ensure reliability.

Mr. Kinzinger. Okay. Thanks, Mr. Chairman. I yield back.

Mr. Whitfield. At this time recognize the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. Johnson. Thank you, Mr. Chairman. I appreciate the time and thank the panel for being with us today.

Dr. Hogan, continuing with you, a few questions here, we have heard complaints from various constituencies who have interpreted the Section 433 fossil fuel ban as limiting, and ultimately prohibiting, the adoption of highly efficient technologies using natural gas in Federal facilities such as combined heat and power, fuel cells, and waste heat recovery systems. Based on the express statutory language of Section 433, would you agree with this interpretation?

Ms. Hogan. So I spoke a little earlier to some of the flexibilities that we think we have been able to provide the Federal agencies as they would, you know, respond to Section 433 once there would be a final rule. And we have figured out how to allow the Federal agencies to take advantage of things like combined heat and power as the fossil fuel rule would be in effect. So we do think we have been able to do a good job in terms of finding a good balance for this section that, you know, allows agencies to take advantage of these

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technologies.

Mr. Johnson. Okay. Well, a follow-on. Does the Department of Energy measure the cost implications to homeowners of increasingly stringent model building energy codes? And, if so, what are those costs?

Ms. Hogan. Yeah. So the Department of Energy participates in the code process in a number of ways. One is we will take proposals to the code body that is responsible for updating the code, you know, on approximately every 3 years, and we certainly do do cost effective analyses on the measures that we think are ripe to be considered as part of an update cycle. And then the, you know, the code body votes. So it is sort of hard to speak holistically about those costs. You know, each measure is a little bit different. Certainly we look to things that are life cycle cost effective, and we think that that is a great metric to use because it works -- it is very well aligned with the -- taking a mortgage out on a home because it then -- you know, you can see that the total cost of ownership leaves the homeowner in a cash flow positive --

Mr. Johnson. Can you take a question for the record, then, and get us that information on what some of those costs would be in that analysis?

Ms. Hogan. In sort of the recent code cycle?

Mr. Johnson. Sure.

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Ms. Hogan. Sure.

Mr. Johnson. Okay. Thank you.

You know, we are coming out of the worst economic downturn since the Great Depression. Housing is just barely coming back and families are still living on strict monthly budgets. Don't you think that any energy mandates that are imposed on homeowners should be cost effective? I mean, it seems to me a 10-year payback seems completely reasonable. What are your thoughts?

Ms. Hogan. You know, I think we are in the area where we think multiple ways to look at cost effectiveness makes sense because people make decisions a little bit differently. And we certainly --

Mr. Johnson. People at home make decisions with their checkbook around the dining room table. That is how they make decisions.

Ms. Hogan. Absolutely. But I think also when you think through that most homes are financed these days through mortgages that a life cycle approach also makes sense in that context, and particularly when you align it with the other cost that go with --

Mr. Johnson. Wait a minute. Hold on. You just lost me there for a second. What -- we are talking about the monthly budget. The energy efficiency of their home doesn't affect their mortgage payment. We are talking about the monthly out-of-pocket expenses as it relates to some of these energy mandates. So help explain. You lost me for a second.

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Ms. Hogan. So what a life cycle analysis helps you do is understand so what is cost effective sort of over the lifetime of a measure, and then you can put that on a monthly cash flow bases also with the mortgage that goes with the home. Because as you are saying, the home may cost a little bit more up front, but if -- and so that gets rolled into your monthly mortgage. But if your energy bill is then lower on a monthly basis and then the homeowner is better off on a monthly basis from a cash flow perspective, then truly that is what leaves them in a good place from their pocketbook.

Mr. Johnson. No, homeownership is something that most Americans aspire to. And the cost of that mortgage in the early years of a new family, that is what -- that is what makes the difference. That is what determines whether or not many people can get a mortgage and own a home or not. So I am -- I am not sure -- I understand the life cycle perspective, and I understand why that would be -- that might be meaningful to people inside the Washington Beltway, but for the people that are writing the check and trying to get into their new homes, I am not sure that that is an argument that sells.

Ms. Hogan. Well, we would be happy to talk with you about that further. I mean, the -- you know, reducing their energy bills is also an important part of people's sort of monthly budgets as well, and I think the benefits that you get there really do help these families.

Mr. Johnson. Mr. Chairman, I yield back.

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Mr. Whitfield. At this time I recognize the gentleman from Texas, Mr. Flores, for 5 minutes.

Mr. Flores. Thank you, Mr. Chairman.

Dr. Hogan, there were three quotes that I wrote down from your testimony and your answering of some earlier questions.

The first one was that you standards are technically feasible, and, number two, that they are economically justified. The second thing you said is that the DOE is open to the rulemaking process. And the third is just a more detailed example, said the gas furnace net benefits are about \$16 billion.

Look, we all believe in efficiency. We believe in saving energy. We believe in saving money. But we are getting to the point of diminishing returns. And so if you look at the average house, it has been estimated that the recent standards that have been proposed by DOE raise the cost of a house by \$7,000. So let's say you have a house that started at \$50,000 and then you overlay your standards onto it that raise the cost to \$57,000. Who does that hurt the worst? Who are the typical buyers for that \$50,000, now \$57,000 home? Well, it is lower income America. And so if the average payback is like forever. I mean, you talk about the life cycle of a house, most people don't stay in a house 17 years, which is the life cycle -- or the payback periods of many of the new rules that you proposed. In some cases there is no payback.

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And so the policies that the DOE has adopted, although they seem altruistic, are hardest on low income and lower middle income Americans. So what winds up happening when we price those people out of a house, or let's say they are even in a multi-family unit. If they are in a condo, they can't buy the condo. Or if they are in an apartment they can't afford the rents because the rents have gone up because the developer had to pay more for it. So who gets hurt? And what happens when that -- because they are hurt. They wind up in a low efficiency dumpy apartment or a home that is low efficiency and nobody has been helped. Everybody has been hurt.

You know, you talk about the furnace situation. I mean, some of the furnace standards today are set up in such a way where you cannot retrofit an older house with some of the newer technology furnaces. And it seems like even though I have heard the word "flexibility" a lot from your testimony, it seems like DOE does seem to be very rigid and not really looking at the real world impact on real families about what is happening.

Now, you could do this to me all day long. It doesn't hurt me. I have converted most of my home to -- you know, to LED. I produce about 50 percent of my annual power for solar-generated electricity. I have got high efficiency everything, and I have swapped it out continuously. So it doesn't hurt me, but it hurts the people that, you know, we think the government is trying to protect.

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So -- and the contracting community, the manufacturing community, is telling me that DOE has been -- is not listening to those arguments. So tell me that you are listening to those arguments, number one; and, number two, what are you doing about it.

Ms. Hogan. So let me clearly say to you that we do listen to those arguments. We make sure that our work takes in what is going on in the low-income communities. And, again, we -- you sort have raised two issues here, one around the building codes and the cost of a new home, and you have raised issues around the furnaces. So, I mean, let me repeat that our --

Mr. Flores. The furnace is more of a detailed example, but keep going.

Ms. Hogan. Yeah. That the furnaces is -- you know, it is an open comment period that we have right now, and we want all and every comment that we can get so that we can make this rule be the best that it can be for all the households --

Mr. Flores. So let's dig into that for a minute. So, you know, we have just told you what folks are telling me. So what would your change be to your rules to deal with that comment?

Ms. Hogan. You know, we do have to make, you know, data-based decisions. What we ask for as we go out for public comment is -- you know, first we present our analysis. We present it, you know, for households across the country. We present it with a special analysis

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looking at low income and elderly households.

Mr. Flores. Do you look at what happens when you price them out of the market and you have kept them in a low efficiency environment?

Ms. Hogan. So let's sort of separate the furnaces. So what do we do around building codes again? The Federal -- DOE does not make the national building codes for the country. We take proposals that we have analyzed to an independent code body, and then the independent code body, you know, runs a process by which they come up with the next updated --

Mr. Flores. But I think you know that -- I think you candidly know if we peel the layers back from this, that DOE is really pushing these code bodies to adopt your recommendations. It is not just these are recommendations anymore, it is we want you to do this. You know, we are strongly advocating that you do this.

Ms. Hogan. We are a stakeholder in a many-party process. And we -- we believe what our role is and what we are committed to do is to take good data-driven analysis to that process so people can have that conversation. So that is what we are doing.

Mr. Flores. Well, I have run out of time. I hope that is what is really happening. I am just not hearing the same thing that -- from the real world that I am hearing from you. So I hope that we can have a better discussion later.

I yield back.

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Mr. Whitfield. At this time I recognize the gentlelady from North Caroling, Ms. Ellmers, for 5 minutes.

Mrs. Ellmers. Thank you, Mr. Chairman. And thank you to our panel for being here today.

I do want to take a moment, Mr. Chairman, to start off and thank you and the committee staff for working with me and my colleague, Jerry McNerney, on the promotion and implementation of grid innovation technologies, especially the inclusion of the smart grid capable appliances on energy guide labels. I believe we need to promote energy efficiency, but in a transparent way, and with industry and stakeholder input. Energy efficient technology should benefit consumers and be affordable to working American families, very much like the conversation we were having just a moment ago.

So with that, Mr. Chairman, I will go ahead and ask my questions.

Dr. Hogan, I have two questions for you, and in the interest of time I am going to try to -- I have an example I want to give you first. You know, the DOE's process rule requires DOE to use qualitative and quantitative methods that are, quote, "fully accessible to the public" and that -- and that produce results that can be, quote, "explained and reproduced." DOE is not using third party validated models for information, thus the only way to effectively validate the models is by allowing full access by the stakeholders. DOE has violated this requirement by relying on the analysis determined through models that

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are not fully accessible to stakeholders.

And as an example, I will just use this. In the automatic commercial ice maker ruling of January 2015, DOE relied upon a model developed in the mid 1990s that had few minor updates. But the DOE, Navigant, claimed was fully protected by copyright. DOE refused to allow stakeholders access to the model to run their own data analysis or validations, only allowing the submission of the data from DOE -- or, excuse me, to DOE's consultants.

Why is the DOE not following its own process rule and what can be done to ensure the agency adheres to its own process rule?

Ms. Hogan. Certainly we do strive to be as transparent and open as possible. At the same time, one of the things we also have to do is protect proprietary information that business does give us as part of the rulemaking process. You know, one of the things that we do do so that we can have access to the best information that we can is organizations like Navigant under contract to DOE, they go out and they do do interviews with manufacturers, and manufacturers provide information that can be very important to their own, you know, business objectives, and that type information, of course, is then held in a way that we cannot -- I mean, it is business sensitive. So we do have to protect --

Mrs. Elmers. Right.

Ms. Hogan. -- their proprietary information.

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Mrs. Ellmers. So, but along that line, do you see a way forward that we can actually ensure that this process is moving -- I mean, that -- that we are ensuring that the agency is adhering to this? I mean, is there something that you see that we can do that can change this?

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RPTR BAKER

EDTR ROSEN

[4:48 p.m.]

Ms. Hogan. We are happy to continue that conversation with you because, again, we want to be as transparent and open as we can and sharing of the data that we get so people can see what our assumptions are and help us make these rules be the best.

Mrs. Ellmers. Good. I would appreciate that, and our office, we will work with you and committee on this then. My last question is, by comparing the Department's current life cycle costs, which we have had this discussion, cost analysis, issued by the proposed rule for the life cost analysis DOE issued in the 2011 direct final rule, some disturbing inconsistencies become evident. For example, I will use this example: The Department maintains that the cost of buying and installing a noncondensing furnace increased by approximately 25 percent between 2011 and 2014, even though these are mature products that have been on the market for decades. Meanwhile, the Department asserted that the more technically sophisticated condensing furnaces increased by only 9 percent during the same period.

Based on these questionable numbers, the cost differential between the current standard furnace and the proposed standard furnace has dropped by nearly 30 percent between the two rulemakings. If the Department used the 2011 cost estimates, in its current analysis,

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wouldn't that undermine the economic case for the proposed energy efficiency standard? It is a word problem apparently. I apologize for the numbers. But I guess the point is, is are we moving in the right place so that we are making sure that these products are cost efficient for the consumers, but at the same time, the effectiveness is there.

Ms. Hogan. Certainly that is what we are really striving to do; and, again, I would point to the furnace rulemaking as one of the places where we are trying to be absolutely as transparent and as engaged with stakeholders as we can be. Again, we have held multiple public meetings so that we can go through the details of the DOE analysis, you know, as much as stakeholders want to so that they can understand what we have done. And we have had multiple meetings, multiple stakeholder engagement, extended the public comment period. And, again, we want to get as much good data from people as possible so that we can make this be a very good rule for people.

Mrs. Ellmers. I would like to continue to work with you on that as well then. Thank you, Mr. Chairman. I yield back.

Mr. Whitfield. Well, thank you. And we appreciate you three witnesses being here with us today. We have a lot of work to do; and as you can tell from the questions on both sides, there are a lot of concerns about the impact of these regulations in the pocketbooks of many people in America. I mean, I just think 50 years ago, no one would

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have imagined that there was an agency of the Federal Government here in Washington, D.C. making all these decisions about all of this litany of appliances and what can be used and what cannot be used. It is really kind of amazing, but we thank you very much, and we are going to recess the hearing until 10:15 in the morning, at which time we will reconvene for the second panel. So we look forward to working with you all, and thank you for being here.

[Whereupon, at 4:51 p.m., the subcommittee recessed, to reconvene at 10:15 a.m., Thursday, June 4, 2015.]