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OVERSIGHT OF THE FEDERAL ENERGY REGULATORY COMMISSION

TUESDAY, DECEMBER 1, 2015

House of Representatives,
Subcommittee on Energy and Power,
Committee on Energy and Commerce,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2123, Rayburn House Office Building, Hon. Ed Whitfield [chairman of the subcommittee] presiding.

Present: Representatives Whitfield, Olson, Shimkus, Pitts, Latta, Harper, McKinley, Pompeo, Kinzinger, Griffith, Johnson, Long, Ellmers, Flores, Mullin, Hudson, Upton (ex officio), McNerney, Tonko, Green, Capps, Doyle, Castor, Sarbanes, Welch, Yarmuth, Loeb sack, and Pallone(ex officio).

Also Present: Representative Kennedy.

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Staff Present: Nick Abraham, Legislative Associate, Energy and Power; Will Batson, Legislative Clerk, Energy and Power, Environment and the Economy; Leighton Brown, Press Assistant; Allison Busbee, Policy Coordinator, Energy & Power; Patrick Currier, Senior Counsel, Energy & Power; Tom Hassenboehler, Chief Counsel, Energy & Power; A.T. Johnston, Senior Policy Advisor; David McCarthy, Chief Counsel, Environment/Economy; Tim Pataki, Professional Staff Member; Chris Sarley, Policy Coordinator, Environment and Economy; Dan Schneider, Press Secretary; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; Timia Crisp, AAAS Fellow; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; and Tim Robinson, Minority Chief Counsel.

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Mr. Whitfield. I would like to call the hearing to order this morning and welcome everyone. Today, we are going to have an oversight of the Federal Energy Regulatory Commission, and I want to welcome all the commissioners and chairmen. We appreciate the four of you being with us. We had one vacancy over there, but we appreciate your time. We look forward to the dialogue with you on some very important issues. At this time, I recognize myself for a 5-minute opening statement.

America's energy policy is changing rapidly, changing not only from the dramatic increases in domestic energy supplies, but also from the unprecedented Federal regulatory burdens, and a number of other emerging threats. And FERC's responsibility places it right at the very center of these changes.

The rapid rise in domestic natural gas production and the increased reliance on it for electricity generation has created many challenges for FERC. For one thing, it has increased the burden on FERC to make timely decisions on many new natural gas pipeline project applications. We see bottlenecks in regions like New England, where high natural gas prices and limited supplies are harming consumers, destroying jobs and threatening wintertime electric reliability, even though natural gas in nearby Pennsylvania is plentiful and affordable.

FERC also plays a central role in the approval of LNG export facilities, which hold the potential to create jobs at home and help our allies abroad. In fact, on a regular basis, we have representatives of foreign European countries coming and asking for

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LNG exports. Both the substance and the timeline of FERC's review process for such projects have, justifiably, come under review. Challenges also come from the actions of other Federal agencies, and particularly, EPA. EPA's Clean Power Plan and other regulations pose a significant threat to fuel diversity and electric reliability.

The loss of existing coal-fired capacity, as a consequence of new rules, is already a cause for concern, and the number of retirements will only grow in the years ahead. At the same time, EPA has all but banned the options of new coal-fired generation, despite its proven reliability, and it even places constraints on natural gas in favor of intermittent renewables like wind and solar.

These and other actions by EPA and their impact on electric reliability and affordability, also raise questions about the working relationship between EPA and FERC. EPA has leap-frogged beyond FERC and granted itself authority over electricity well beyond anything set out in the Federal Power Act. There are valid concerns that FERC is allowing itself to become a bystander as EPA -- concerns that FERC is allowing itself to become a bystander as EPA increasingly dominates the electricity sector, and does so in ways that serve to exacerbate the very problem FERC is supposed to protect consumers against.

Grid security is another growing concern in FERC's jurisdiction. The electricity system faces all the traditional risk from severe weather and earthquakes and the like, but we also see emerging threats from things like cyber and EMP attacks. FERC's role in ensuring the

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security of the grid is more important than ever.

So in some respects, the energy situation in America is better than it has been in decades. But nonetheless, there are challenges in the years ahead, and FERC must play a critical role and meet its responsibilities as we deal with these transitions that we face today.

So I really look forward to this opportunity to have a dialogue with the commissioners, to get their views on these important issues, and let you hear some of the concerns that we have.

At this time, I would like to recognize the gentleman from California, Mr. McNerney, for 5-minute opening statement.

Mr. McNerney. I thank the chairman. This is an important hearing and I am glad that we have all four of our commissioners available here this morning. Our Nation's electric grid touches all of our lives. FERC's jurisdiction, your jurisdiction, and the cooperation with the States and the stakeholders throughout the transmission and distribution system make it critically important.

The grid, from both the technological and resource-mix standpoint, is evolving, and it is ours and your responsibility to ensure that the public and private sectors are prepared and working together while maintaining reliability, resiliency, and affordability.

And this is happening at a time when some feel that our electrical grid is our Nation's most vulnerable section of infrastructure. So we have challenges in front of us. Preparing for our future will

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require significant investments in our energy industry infrastructure. Utilities are often the ones leading the way on these efforts, but it will require cooperation among all stakeholders to maintain and improve our current energy and electrical systems. The needs are clear: Reduce carbon emissions; increase efficiency; affordability, affordable prices for consumers; job creation, reliability; and resilience.

So you know that when you flip on the lights, they will turn on. The shift to more natural gas, as well as renewables in places such as California, has forced utilities and consumers to rethink how they manage electricity. And electricity continues to shift to be consumer-driven with things like demand response, microgrids and the Internet of things. Well, these are positive developments, but ones that are still relatively new and will need continued oversight from FERC and Congress to analyze what works and what doesn't work. There is no shortage of challenges facing our Nation's energy system.

We will hear from the commissioners today. FERC is facing a daunting task with a seemingly endless increase in the number of your requests. Nearly 2 dozen LNG export facility requests now are under FERC consideration; approximately 500 hydropower licenses in the coming years; the need for timely investments in infrastructure; and the impacts of these and the increased physical and cyber threats to the electric grid are tremendous. FERC will be at the forefront of each of these, reducing carbon emissions while protecting reliability,

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increasing physical and cyber resilience while managing cost for consumers; fostering development and implementation of policies and technology that supports all grid stakeholders.

I look forward to your testimony, and I appreciate you taking time to be with us today. And with that, Mr. Chairman, I yield back.

Mr. Whitfield. Thank you very much. At this time, I would like to recognize the chairman of the full committee, Mr. Upton of Michigan, for 5 minutes.

The Chairman. Thank you, Mr. Chairman.

Quite a few energy-related issues in the news today fall under FERC's jurisdiction. So it is important and very timely for this subcommittee to hold this oversight hearing.

FERC plays a key role regulating the transmission, reliability and wholesale sale of electricity and interstate commerce, the transmission and sale of natural gas for resale in the interstate commerce, and the transportation of oil by pipeline in interstate commerce as well.

FERC is responsible for the approval of interstate natural gas pipelines, LNG export facilities, and licensing of non-Federal hydropower projects. America's growing energy abundance and its growing role as a global energy superpower has led to more infrastructure projects being proposed.

However, there are problems with the timeliness of FERC approvals. If left unaddressed, these delays may cost us lots of jobs,

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raise energy prices, and compromise reliability. H.R. 8, the North American Energy Security and Infrastructure Act, which will be considered by the full House tonight and tomorrow and Thursday, contains provisions that help expedite the job-creating energy infrastructure projects. First, FERC also has the responsibility related to the security of the Nation's electric grid, including physical and cybersecurity threats, geomagnetic disturbances, electromagnetic pulse and severe weather. H.R. 8 also includes provisions that seek to strengthen our ability to prevent these risks, and minimize the impact, when, in fact, they occur.

FERC and its predecessor agencies have addressed many issues since 1920. But over that span, it has never faced a rival Federal agency setting policy at odds with FERC's core mission. In recent years, the EPA has taken on such a role, especially related to electricity. In particular, EPA's so-called Clean Power Plan, which mirrors the regulatory cap and trade scheme that failed to pass in the Democratically-controlled Congress in 2010, places severe constraints on coal-fired generation in favor of renewables, jeopardizing reliability and giving priority to greenhouse gas reductions over cost considerations in setting the generation mix. Whether FERC can effectively fight back against EPA's agenda when it conflicts with FERC's responsibilities is a matter of considerable debate.

There are serious implications for a State like mine, Michigan, where affordable and reliable electricity and sufficient supplies of

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natural gas are vital to making it through the long and severe winters. Michigan and other industrial States also need affordable and reliable energy for manufacturers to remain globally competitive.

So I look forward to this important debate on FERC's current and future role. A better functioning FERC matters to jobs and affordable energy. And I yield back the balance of my time.

Mr. Whitfield. The gentleman yields back. At this time, the chair recognizes the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

Mr. Pallone. Thank you, Chairman Whitfield. I want to welcome the commissioners, particularly Chairman Bay and Commissioner Honorable, who are before us for the first time in their current roles. Frankly, this hearing is long overdue. I believe that we are in a time of great transition and uncertainty with regard to those aspects of our Nation's energy policy overseen by FERC.

Ten years ago, we enacted the Energy Policy Act of 2005, and that was quickly followed by the Energy Independence and Security Act of 2007. Both of these laws made significant changes to our Nation's energy policies, particularly in the areas regulated by FERC.

We continue to feel the reverberation of those changes today, and the commissioners are, in many ways, front and center in having to wrestle with the forces unleashed by those laws. In particular, we have seen tremendous expansion in the supply transmission and use of natural gas as prices have dropped. We have also seen a drop in

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electricity prices as a move towards market has spurred competition and innovation in many regions of the country.

The change is never easy, and with it comes questions, problems and new needs. The rise of cheap gas, falling renewable energy prices, and tighter competition has really called into question old assumptions and boundary lines. It is getting close to the time when we will need to consider fundamental questions about what areas are best suited for the State to regulate and what should be handled by FERC.

We also need to begin thinking about the diversity of our electricity regulations system and whether or not we need to have more certainty and conformity rather than the current patchwork of regulated and deregulated States and regional wholesale markets that might benefit from some common ground rules.

Are these markets providing real benefits to residential and other consumers? Are they setting the right price signals to developers of generation resources? What is the role and efficiency and demand response in the wholesale market? How do we prevent bad actors from manipulating the market while ensuring the rules are not overly burdensome for those suppliers who play by the rules.

These are but a few of the questions before us and before the Commission, and the Commission still has to grapple with similar questions regarding the gas and markets and pipeline siting, as well as dam safety, hydroelectric licensing, oil pipeline pricing, and so many other issues.

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I know that we will hear, we already have heard rhetoric about EPA's recent rules on carbon, and not just on the floor this afternoon. The truth is that the grid is reliable and no clean air regulation has ever resulted in the loss of reliability. The system is reliable and it is flexible and will adapt to the new carbon rules, just as it has to every previous action taken under the Clean Air Act.

So I hope that today's hearing will move on from the tired topic and worn out rhetoric that we continue to hear from the other side of the aisle. It is time to start having a real dialogue about the areas FERC regulates, about the future of our energy markets, natural gas pipeline systems, and hydroelectric resources. If we fail to engage soon seriously and thoughtfully, we risk harming consumers, the economy and the environment.

Thank you, Mr. Chairman, I yield back.

Mr. Whitfield. The gentleman yields back. And that concludes our opening statements, so we will get right to our panel. And I am going to introduce each one of you right before you give your opening statements.

So we will start this morning with the Chairman, the Honorable Norman Bay, and thank you very much for being with us Mr. Bay. We look forward to your testimony. You are recognized for 5 minutes.

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STATEMENTS OF HON. NORMAN C. BAY, CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION; HON. CHERYL A. LAFLEUR, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION; HON. TONY CLARK, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION; AND HON. COLETTE D. HONORABLE, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION.

STATEMENT OF HON. NORMAN C. BAY

Mr. Bay. Thank you. Good morning, Chairman Whitfield, Ranking Member McNerney and members of the committee. Thank you for the opportunity to appear before you to discuss the work of the Federal Energy Regulatory Commission. My testimony will discuss my priorities in light of the change that is happening in the energy space, a change a number of you have alluded to this morning.

Underpinning each of these priorities is a belief that in approaching matters that come before the Commission, it is essential to be fair, balanced, and pragmatic to decide cases on the merits based on the facts and the law and to be consensus-oriented.

My first priority is to focus on the fundamentals in the competitive markets, to continue to look for ways to improve the efficiency of the markets, and to deliver greater value to consumers. The Commission continues to work to promote greater efficiency,

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competition and transparency in the wholesale markets, including and reviewing the capacity markets and looking at price formation in the energy markets.

Second, the reliability of the grid is a core responsibility for the Commission. This encompasses not only the everyday responsibility over reliability standards, including physical security and cybersecurity, but it also includes gas-electric coordination issues. While the Commission's reliability authority is limited, it will continue to use what authority it has in a conscientious manner. In my view, it is important for utilities to push beyond the requirements of the standards to implement best practices on cybersecurity.

Third, I believe that infrastructure continues to be an important issue at the Commission. Right now, there is a need for more infrastructure in terms of both gas facilities and electric transmission, and FERC plays a critical role in permitting and incenting the development of that infrastructure.

Finally, to accomplish my priorities, I will need to focus on the human capital at the Commission. The work of the Commission cannot be done without its outstanding staff. And it is important to me that the Commission focus on retaining our current highly qualified employees, ensure knowledge transfer from those employees who do retire, and recruit highly-skilled people to replace any departures while maintaining our status as one of the very best places to work in government.

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I am very proud of the fact that the recent Federal employee viewpoint survey ranked FERC one of the very best agencies in government. We were third overall for employee satisfaction among large government agencies. We were fourth in terms of employee engagement. The challenge is that in the next few years, 30 percent of our workforce is eligible to retire.

To meet all of these priorities, it is essential to use the tools that Congress has given the Commission. I look forward to working with you in the future on my priorities, and would be happy to answer any questions that you have. Thank you.

[The prepared statement of Mr. Bay follows:]

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Mr. Whitfield. Thank you very much, Chairman Bay. Our next witness is the Honorable Cheryl LaFleur. We are delighted you are back with us, Ms. LaFleur, and look forward to your testimony. You are recognized for 5 minutes.

STATEMENT OF HON. CHERYL A. LAFLEUR

Ms. LaFleur. Well, thank you very much, Chairman Whitfield, Congressman McNerney, and members of the subcommittee. I am Cheryl LaFleur, I have been on the Commission since 2010; appeared before this committee several times, and was also honored to be chairman from November 2013 to April 2015. I appreciate your holding this hearing and the opportunity to testify.

Since joining the Commission, my top priority has been reliability, focused on the reliability of the Nation's electric grid. And I am going to devote my comments this morning to two aspects of our work on reliability, the reliability standards, and the competitive market.

The Commission oversees the work of NERC, the North American Electric Reliability Corporation, in developing and implementing mandatory reliability standards for the bulk electric system. And I know the committee is aware this is one of the only pieces of critical infrastructure subject to mandatory standards, thanks to Congress' work in 2005. The standards range from nuts-and-bolts rule to keep

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the lights on, and more forward-looking standards on emerging issues. And on the emerging issues, in particular, we have worked hard to try to put in place meaningful cost-effective protections, even though things are changing and we know our knowledge is imperfect.

In March of last year, the Commission directed NERC to develop physical security standards for critical facilities. Those done, approved in November and are now in place and being implemented.

Since the beginning of our authority, we have worked on cybersecurity, a growing challenge that was recognized specifically by Congress in the Energy Policy Act. In late 2013, we approved a fifth generation of cybersecurity that requires that all cyber assets on the bulk electric system receive a level of protection commensurate with their impact on the system.

Also in 2013, we directed NERC to develop standards to address field magnetic disturbances caused by solar storms. This issue is one I have been very personally involved in, given -- and I am concerned about given the potentially catastrophic effects that a GMD event could have on the Nation. The first set of standards is already in place, it calls for operating procedures: What happens if a storm happens? What kind of immediate steps do you take?

What we are working on right now is a more comprehensive set of standards that would require transmission owners to put in place mitigation to prepare for, if a GMD event happened, to limit its effect on the bulk electric system, and those are pending right now.

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Secondly, I want to talk about wholesale electric markets, because they also relate to reliability because that is what they are for, to ensure reliability at just and reasonable rates. Two-thirds of the Nation are served by organized wholesale electric markets, although those markets differ in what kind of products they work on. The markets have been expanding. In recent years, we have seen huge additions to the mid-continent ISO, the Southwest Power Pool, and most recently, the California ISO with its Energy Imbalance Market.

The market operators across the Nation are working to adapt market structures to big changes in the Nation's generation resource mix set, several of you have already referred to. These changes are being driven primarily by the increased use of domestic natural gas, the growth of renewable generation and demand side technologies, and new environmental requirements, especially the Mercury and Air Toxic Standards, and the Clean Power Plan.

When so much is changing, and in many places we have a need for new investment, it is particularly important that markets send accurate price signals, both to existing resources, so they can stay in place if needed, and new resources where they are needed. We have been focused very hard on making sure the markets do just that. In the last year and a half, we approved capacity market changes in the eastern RTOs to help the markets identify and buy resources that will perform at the time when they are both most needed to keep the lights on, because the system is under stress, particularly baseload resources.

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We are also examining the energy markets, trying to make sure that the energy prices include all the things it takes to keep the lights on so they send accurate and transparent price signals, and we have been working on price formation and have several dockets started in that area.

Finally, we are focused on gas-electric interdependence, due to the increased use the gas for generation. We have put out rules to better harmonize scheduling of the gas and electric markets, and promote communication between them, that are intended to help sustain reliability at a time when the gas system is stressed, both by generation and heating load in the winter.

Finally, I know my colleagues are going to discuss it as well, but we have been engaged with the Environmental Protection Agency for the last several years on the Mercury and Air Toxic Standards, as it goes into place in different regions of the country, and really just starting our work, or we have been involved in it, but the implementing is just starting on the Clean Power Plan, which is something we will be very focused on in the next several years. Thank you and I look forward to your questions.

[The prepared statement of Ms. LaFleur follows:]

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Mr. Whitfield. Thank you very much. Our next witness is the Honorable Tony Clark. Mr. Clark, welcome back and we look forward to your testimony and you are recognized for 5 minutes.

STATEMENT OF HON. TONY CLARK

Mr. Clark. Thank you, Mr. Chairman and members of the committee, Mr. Ranking Member, for the invitation to be with you here today. My name is Tony Clark, and I am honored to be a commissioner on the Federal Regulatory Agency since June of 2012.

I don't plan to re-read my testimony verbatim for you, but what I would like to draw your attention to a few points, and perhaps expand on a few ideas and comments that I made in my submitted testimony.

The nature of my testimony is focused on those areas of Commission jurisdiction that relate to infrastructure development. The Commission has a lot of impact on infrastructure development of all kinds, be it generation, electric transmission. But most clearly where we have the greatest authority is over those areas where we have not only at economic jurisdiction, but siting jurisdiction as well, which is the case of hydropower and interstate natural gas pipelines. So the bulk of my testimony focuses on that, and then transitions to the importance of infrastructure in regard to EPA's 111(d) regulation.

On the hydropower side, the Commission has been active in implementing the Hydropower Regulatory Efficiency Act of 2013 that you

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all passed, and that has been going well.

I draw your attention to just a couple of things under that in the testimony. What I think is really important to folks in going forward is what Ranking Member McNerney pointed out, which is that we are entering a period in which there are going to be a lot of licenses that are coming up for renewal. As all of you who are members who have those hydropowered licenses in your district, know those can become contentious issues, the sorts of things that your constituents want to keep abreast of. So it is something that I know FERC will want to be working with all of you in terms of getting information out about how that process evolved and how it worked. It is going to be a great undertaking for the Commission.

I spent the rest of the bulk of my testimony talking about the issue of interstate natural gas pipelines, one of the tables that I submitted in there indicates that as of up to this point, we are within the historical norm of the number of certificates that the Commission has been processing in terms of compression, throughput and the number of applications that we have been getting.

Something that I really want to draw your attention to are the challenges that the Commission is going to face on a going-forward basis. This expands upon my testimony here. If you look at the number of pending applications that we have, as compared to the historical trend, we are truly seeing the impact of low-cost natural gas, and the environmental regulations which are shutting down coal and really

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requiring utilities to have some combination of natural gas and renewables.

If you look at in August of 2014, the Commission had pending pipeline projects of about 24 Bcf per day, and about 1,000 miles of pipe. If you fast forward just about a year later to November of this year, the number of pending applications we have is 50 Bcf per day capacity, so over a doubling in just 1 year, and 4,600 miles of pipe. The Commission is very proud that up to this point, we have been able to process in 92 percent of all cases, pipeline applications. Within a year, I think it is going to be very difficult to maintain that high average when you have this volume of pipelines.

And this is where I get into the 111(d) regulations, and I think it is important for the committee to understand the challenge that regulators at all levels are going to be facing, Federal level and State, which is, there are tremendous infrastructure needs in terms of pipeline development, in terms of generation on the State side of things, in terms of transmission. But all of this is being done in a time when we have heightened opposition to that very infrastructure itself. And it is very important to understand that in terms of where the 111(d) regulations are going in terms of timing. Although the EPA did extend timelines for compliance for States by up to 2 years. If you remember the timelines on that, in many States, utilities won't be receiving the State implementation plans until about 2018, compliance timeline begins in 2022. And yet, it is quite clear, at

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least historically, that it takes, for major pipeline projects and certainly for interstate transmission -- electric transmission projects, it is a 3-, to 5-, to 12 years or more timeline to develop that infrastructure.

The concern is, if you make a rapid transition to a new electric generation fleet before you have the infrastructure in place to accommodate that change, there will be an impact on cost and that has been the case just about everywhere that that transition has been made, but you don't have the adequate infrastructure. So it is going to place a lot of pressure on agencies like FERC to ensure that as we go through our processes, that we do it right, but it is going to create a timeline challenge, I think, potentially a consumer challenge as well.

I finally wrap up my testimony just indicating that where we stand on the CPP is often where you sit, and this plan does not burden all States equally. So there are certain parts of the country, certain States that shoulder a much greater burden under this, and will have a much more difficult time meeting it than other parts of the country.

Mr. Chairman, with that, I will be happy to take any questions that --

[The prepared statement of Ms. Clark follows:]

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Mr. Whitfield. Thank you very much. And our remaining witness is the Honorable Colette Honorable. And we appreciate your being with us today, and look forward to your testimony. You are recognized for 5 minutes.

STATEMENT OF HON. COLETTE D. HONORABLE

Ms. Honorable. Thank you, Mr. Chairman, Ranking Member McNerney, and members of the subcommittee, good morning. My name is Colette Honorable. And as ranking member of the full committee, Mr. Pallone referenced, Congressman Pallone referenced, this is my first appearance before this subcommittee. I am grateful for the opportunity.

Prior to joining the Federal Energy Regulatory Commission, I served as chairman and commissioner at the Arkansas Public Service Commission for 7 years, I also served as president of the National Association of Regulatory Utility Commissioners, and it gave me an opportunity to get to interact with a number of States that come from different places, different ideologies, and it gave me a great appreciation for the diversity in States and regions.

It also allowed me to continue my focus here in my present role on reliability, on infrastructure development, a new focus for me, markets, and also continuing to work on workforce development issues.

Our mission at FERC is to regulate the interstate transmission

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of electricity, natural gas and oil. This work is especially significant because our economy is increasingly dependent upon reliable and affordable energy.

My written testimony goes into more detail regarding my thoughts about reliability and infrastructure development and markets, but this morning, I would like to focus on something you want to hear about, and that is our interaction with the EPA concerning the Clean Power Plan.

Our focus on the EPA's Clean Power Plan finalized in August has involved engagement, collaboration and outreach with a diverse group of stakeholders. In early 2015, the Commission hosted four technical conferences on whether and how the plan would impact reliability of the bulk power system. We heard from State regulators, from utilities, from regional system operators, from environmental groups, and consumer organizations.

These conferences raised a host of issues that informed the Commission's advice and counsel in a letter we sent to the EPA in May of 2015. In this unanimous document, we advised the EPA to consider revising its interim compliance timeline in the draft plan to ensure flexibility in the early years of compliance. We also encouraged the EPA to consider including both a reliability safety valve, which would allow the Commission to work with the EPA to address temporary unexpected impacts on reliability, and a forward-thinking process to provide for ongoing reliability, monitoring an assistance which would

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rely upon existing planning procedures in States and regions to initially review State plans for potential reliability concerns. The EPA accepted our recommendations in the final rule.

Going forward, FERC stands ready to support the work of the States, the regions and NERC, and other reliability entities. The Commission has offered to review analyses or requests additional assessments as necessary. We continue holding technical conferences or other workshops as States and utilities will begin complying with the rule, and pursuant to a joint staff-working document that informs our interagency work, we will continue participating in future discussions with the EPA and the Department of Energy, and others as necessary.

Since the issuance of the Clean Power Plan, I have continued my engagement with diverse groups. For instance, in October, I participated in a workshop hosted by the bipartisan policy center in the Great Plains Institute, which focused on compliance in the Midwest. Although most of these States are challenging the rule in court, many are also working on compliance plans should the plan be upheld.

For example, agencies in my home State of Arkansas are evaluating compliance options, even though the State has joined the litigation. And 13 other States have reportedly indicated that they will follow a similar path. I mention this to say that many States are on a dual path.

A number of studies indicate that if the rule is upheld, fully

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contemplated compliance plans will have considerable potential to reduce compliance costs, particularly those undertaken in regional efforts. In the Midwest, both the Southwest Power Pool and the Midcontinent Independent System Operator has released studies completing that regional compliance with the Clean Power Plan is more efficient, less costly, and, therefore, better for consumers. It is imperative that all effective stakeholders engage and work collaboratively to maintain reliability, while minimizing any potential cost impacts of plan implementation.

I would like to take this opportunity to show my appreciation for our staff, which have worked very hard in this regard, and also to support the ongoing work in the sector by industry, regulators and other stakeholders, which is vital for a thriving economy. We take our job seriously, and I am proud to be a member of the Commission at this time. I am also appreciative and grateful for the important oversight work of the Energy and Power Subcommittee. I look forward to working with you throughout my tenure, and I stand ready to answer my questions you may have. Thank you.

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[The prepared statement of Ms. Honorable follows:]

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Mr. Whitfield. Well, thank you for your testimony. And we appreciate all of you for your opening comments. At this time, we will open it up for questions from the members of the subcommittee. And I would like to recognize myself for 5 minutes to begin with.

We all recognize we have different political philosophies in different regions of the country that we come from, and as a result of that, we have a lot of different views on a lot of these key issues. But the Federal Power Act was very explicit that interstate electricity transmission authority was given to FERC, wholesale prices issues were given to FERC. And the States maintain control over electricity generation in intra-State distribution, and yet the clean energy plan gives EPA a lot of authority, in fact, immense authority on what has traditionally been a State responsibility.

And this was done without any legislation being involved; it was done by regulation. And we heard EPA talk a lot about how they worked extensively with the States; they want to give the States maximum flexibility. And yet, 27 States have filed lawsuits on this as well as a multitude of other entities. And then one of the surprising things for many of us, and Mr. Clark touched on this, was these timelines, in trying to make this transition with the infrastructure needs that we have, EPA frequently, on major regulations, to give States up to 3 years. And yet in this instance, they are giving them until September of 2016. So -- and Ms. Honorable, you came from Arkansas, and you were on the public service commission there, I believe, and your State has

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filed a lawsuit as well.

So it is one thing for EPA, as a regulatory body in order to implement the President's Clean Energy Plan, to come with this unprecedented regulation. And I understand people say, Oh, it is all the about politics, but it is more about politics; it is about existing laws; it is about customary ways that we do business in the country. And that is why I think you see so many lawsuits. But I would like for you, Mr. Clark, just to expand a little bit on this timeline issue that you touched on, and just give us some practical insight into that just from the standpoint of, say, North Dakota.

Mr. Clark. Sure, thank for the question, Mr. Chairman. My concern about the timeline that, say, you have the 2016 timeline, you have the possibility for States to push that out if they request from EPA to about 2018 for the State implementation plan, should they decide to go that route.

The compliance targets begin in 2022, some of them are quite steep for certain States, will be challenging to me. For example, a State like North Dakota, whose target emissions reduction went from 11 percent in the draft to 45 percent in the final rule.

Mr. Whitfield. Kentucky went from 18 to 41. And all of those caps were set by EPA.

Mr. Clark. It is the math, every State is impacted differently by the math, and the manner in which the historical generation plate is operated. So for some States, it is a bit of a non event for some

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States, depending on the vintage and type of fleet that they have. It will be much more of an event.

The concern with the timeline is, for a pipeline project, any sort of major pipeline project, 3 to 5 years is probably a conservative timeframe implement -- from engineering and permitting to construction and in service States.

Electric transmission lines typically are even more difficult than that. Five years to 10 might be a little bit more average. Heaven forbid, you cross any Federal land as happens out west. It could be 12, 15 years to get all the permits that you need to do for a major electric transmission line.

And so that is the concern. If you are going to change dramatically the generation fleet and you need to have a lot more renewables, which really only work over a larger geographic area, and you will need a lot more natural gas to back up those renewables or to replace baseload coal that may be going off-line. It is going to require some major infrastructure projects. We are starting to see it on the gas transmission side, likely happen on the electric transmission side. These are not projects that are conceived of, permitted and built within a very short timeframe. And the concern is, if you change that generation fleet, it could end up costing consumers.

Mr. Whitfield. Well, thank you very much. I had a couple of other questions, and my time has already expired. So, Mr. McNerney,

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you are recognized for 5 minutes.

Mr. McNerney. Thank you, Mr. Chairman. Again, I thank the commissioners for coming today. I got a lot out of all of your testimony, so thank you for your work. And this is an area that I care a lot about. I spent 20 years in the industry -- energy industry before coming to Congress.

Mr. Chairman, do you have a mission statement, or does the Commission have a mission statement? Could you sort of paraphrase what that statement is?

Mr. Bay. Yes. FERC does have a mission statement. And it is to provide efficient, reliable, and sustainable energy to consumers. That has been our mission statement for some time now.

Mr. McNerney. Sustainable, hmm, that is a whole different subject. But reliability, now, considering reliability, that is one of your primary missions is reliability. Do you feel, Mr. Chairman, that Clean Power Plan threatens the reliability of our electrical infrastructure or any of our energy infrastructure?

Mr. Bay. So reliability is one of our core responsibilities, and Congress gave us that responsibility in the Energy Policy Act of 2005. As Commissioner Honorable noted, FERC held a series of technical conferences. I am pleased to say -- on reliability and the Clean Power Plan -- I am pleased to say that the EPA sent someone to each one of those technical conferences, and they had a high-level official appear before us and testify.

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We later sent a letter to the EPA with certain recommendations. I am pleased to say that all five members of the Commission at the time signed that letter. And then the EPA issued its final rule. And I think it is noteworthy to focus on certain aspects of the EPA's final rule. One thing it did was to push back the initial compliance date from 2020 to 2022. So it allowed industry to have, in the States, to have 2 more years. It implemented a reliability assurance mechanism in that it required State plans to be reviewed by reliability authority, whether it is NERC, a regional reliability authority, and RTO or ISO, or someone else.

The EPA also recognized the reliability safety valve, which Commissioner Honorable noted as well. In addition, the EPA glide path towards compliance, so that the period 2022 to 2030 is broken up into 3-year periods, where if a State fails to hit its target in one year, it underachieved in one year, it overachieved in the next, that can still help make its requirements, meet its requirements.

Finally, of course, the EPA built in a lot of flexibility. One of the things that they did in the rule to ensure that reliability issues could be addressed was that they allowed States to consider using emissions credits as a means of achieving compliance.

The other thing that we have done at FERC is we have entered into an agreement with the EPA and the Department of Energy to meet on a quarterly basis at the staff level to discuss any potential reliability issues. I am pleased to say that staff has held its first meeting with

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the EPA and DOE. So this is something we are going to be watching very closely.

In my view, while it will take a lot of hard work, communication and collaboration between FERC, the EPA, DOE, the States, NERC, the RTOs, ISOs, and industry, I believe that any potential reliability challenges can be addressed.

Mr. McNerney. Thank you. Honorable LaFleur, do you feel the cyber threats and geo threats are significant -- are more significant threats to reliability than the Clean Power Plan?

Ms. LaFleur. Well, there are different kinds of threats, but I would say they are more significant because they are systemic, where the Clean Power Plan could have, as several of my colleagues have referred to, different impacts in different areas. Solar storm could have an impact over a larger part of the United States. They are both things we need to obviously focus on.

Mr. McNerney. Thank you. Mr. Clark, you mentioned the number of pending applications. What would help, how could Congress facilitate your response, the increasing number of applications?

Mr. Clark. I think one of the things that Congress could help with would be to encourage other agencies that inform the FERC siting process, whether it be through LNG siting, whether it be through the LNG side of things, whether it be on the pipeline side of things. There are a lot of different agencies that inform our process to the degree that they can do their work in a timely manner, to inform our process.

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That would be helpful from a timing standpoint.

Mr. McNerney. Thank you. Mr. Chairman.

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

Mr. Olson. I thank my friend from Kentucky. And welcome to our friends from FERC. You-all's good morning gets even better, because my own State of Texas, it is a fact that fellow Texans take care of our own grid for 90 percent of our State. So we don't get impacted but what you do in many cases, but, they are very important to our State. Critically important to our home State of Texas.

My first question is for you, Mr. Chairman, and Commissioner Clark. Chairman Bay, you have talked about the importance of building gas-electric infrastructure for quite some time. It was one of the key things listed in your Senate confirmation hearing. Obviously, when it comes from an energy State like I do, I want to know how resources get to market. And Commissioner Clark, your comments about these supposed pipeline application in the future and your testimony talked about how much more dramatic opposition to energy projects is becoming. It is out of control. We are going from a "not in my backyard," to a "not in anybody's backyard." So my question to both of you all is, can we speak for a moment on the LNG energy infrastructure, and whether you see any trends on efforts to block development? The range is clear, fire at will, no agency is spared. Chairman Bay.

Mr. Bay. Congressman Olson, I think at FERC, we have clearly seen

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increased opposition to infrastructure. One of the things that has happened at FERC over the last -- at this point, it has probably been 15 months or so -- is that our open meetings have been disrupted by protesters who will suddenly stand up during our meeting and try to interfere with our meeting.

So we are clearly seeing that, and even in the field when we are holding scoping hearings, it is not uncommon for the staff who do those hearings to report back that there seems to be a great deal of opposition in many communities to the construction of more infrastructure.

Mr. Olson. Commissioner Clark, your comments, sir, on a "not in anybody's backyard" attitude in America right now?

Mr. Clark. Sure. Thank you, Congressman, for the question. I reference this in my testimony that, for years, the Commission has always taken testimony from, say, affected landowners, who might prefer that a particular pipeline go on this piece of their property as opposed to that piece of the property, or maybe on someone else's property, but it is very specific to the line itself. We have seen a bit of a transition, a type of intervention that has appeared before the Commission, which is -- my testimony, I call it "just say no" intervention, which is no infrastructure anywhere. The challenge is that that causes all kinds of reliability and cost impacts to consumers if all energy infrastructure is blocked.

The Commission has a very important job in balancing the interest of all intervenors. The goal of our process is to ensure that the

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Natural Gas Act is faithfully implemented and that the orders that we get out are ultimately upheld by a judge who can review it and see if the Commission made a recent determination, and we have very a fairly good track record in that regard.

Mr. Olson. Chairman Bay, as you know, the cost of carbon is being discussed in Paris right now at the U.N. Convention on Climate Change. And as a former naval aviator, it seems to me that some world leaders are writing, proposing checks that they can't cash. I want to dive down on the cost of carbon, the social cost of carbon. FERC has said recently that the cost of carbon, quote, unquote, "calculator" isn't appropriate for individual LNG projects. You said so in a past decision back in June.

Can you give me -- you gave me a long answer in writing. But very shortly, can you tell me why it isn't appropriate to use the cost of carbon for individual projects, why it doesn't work, sir?

Mr. Clark. I would have to review that particular order, Congressman Olson. To my knowledge, FERC has not tried to calculate the social cost of carbon. It is true that when we are reviewing an infrastructure application, under NEPA, we were required to give a quote, "hard look" at what the courts require of us, a hard look at environmental look at claims that have been raised. So it may be that someone who was protesting the construction of that facility raised a claim tying into the cost of carbon. I do know that at the end of the day, the Commission did end up permitting that facility, the

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certificate was granted, as you know.

Mr. Olson. One final question for you, Chairman Bay. Former Chairman Wellinghoff made it his mission to clear a path for energy efficiency, he focused on things, like demand response. As you took over as the chairmanship, there were some people who said they didn't know what your number one priority would be. What is your number one priority as the chairman of FERC?

Mr. Bay. I thank you for that question, Congressman Olson. I have tried to take a very balanced approach to my role as chairman. As many of the members have noted this morning, we are going through this period of tremendous change in energy space. So I think it is important for FERC to use the statutory authorities that Congress has given FERC to help the markets, market participants and industry adapt to that change while maintaining reliability and just reasonable rates.

And so, I have been looking at what I have been calling the basic, the fundamentals, and that includes authority over wholesale markets, and thus, we have been engaged in this price formation of rulemaking proceeding. We have looked at reliability, and as Commissioner LaFluer noted, we have engaged in looking at GMD, and we are continuing to work on cybersecurity, gas-electric coordination issues. And then, of course, there is infrastructure. And that is always going to be an important part of what FERC does.

Mr. Olson. Thank you. I yield back.

Mr. Whitfield. This time the chair recognizes the gentleman from

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Texas, Mr. Green, for 5 minutes.

Mr. Green. Thank you, chair and ranking member, for holding the hearings. And following up my colleague and neighbor from Texas, I would hope my concern is electricity and reliability, I hope your goal is to make sure that the lights can turn on, and in August in Texas, we can still have air conditioning. I know FERC's responsibility to maintain the reliability of the grid, but you also have a lot of other responsibilities with pipelines, LNG facilities, or pipeline rates to name a few.

Chairman Bay, in your testimony, you cite the many responsibilities FERC is tasked with, including reliability, security and infrastructure.

Can you provide additional details on FERC staffing and work products? Does FERC have the resources and personnel necessary to meet the increasing demands placed on the Commission? If you could just briefly, because we only have 5 minutes.

Mr. Bay. That is a very important question that you raise, Congressman Green, in light of the workload that Commissioner Clark alluded to, and that workload is real. One of ways that we responded to it administratively is that we have added resources to the Office of Energy Projects, and they are going to need more resources. At some point, we may update our budget to Congress; I hope you look favorably upon that. But we are trying to respond by adding resources to the offices that need them.

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Mr. Green. With the growth and natural and implementation of the Clean Power Plan, what types of resources does FERC anticipate needing in the future to ensure projects and plants can still stay on schedule? Is that being built into the request to the appropriations process?

Mr., Bay. It certainly will be, and we are responding to that now, which is why we added resources to that particular office.

Mr. Green. I still have this concern about permitting approval of LNG export facilities. We spent considerable time working on these issues, and want to ensure our country's benefits for the nearly 389 trillion cubic feet of gas reserves we possess. Can you provide an overview of the current permitting regimen, and have you encountered any delays that would slow these important projects?

Mr. Bay. I think the main thing about those projects is that that they are complex projects, there has to be a review by staff. We worked closely with staff, and we work well as a Commission, to review those project applications. As Commissioner Clark noted, basically about 90 percent-plus of the projects that we receive are certificated within one year after the application is filed with FERC.

So we understand the importance of these projects and doing a thorough and timely review, and we are certainly very committed to doing that. But clearly, there is a high volume of work now than in the past, which is why we are trying to address that by adding more resources.

Mr. Green. I have one port in the State of Texas, actually had five pieces, tracks that were set aside for five different LNG export

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facilities. I think there is effort to do one in that particular port.

Chairman Bay, as director of enforcement, your office is responsible for violations and inquiries in the market manipulation. Unlike other Federal agencies, FERC does not have an office of compliance or any other resources to regulate community to address questions or answers. This week, the House will take up H.R. 8 that contains provisions relating to the FERC transparency. Do you believe an office of compliance would be of benefit to the regulatory community?

Mr. Bay. In my view, that office is not necessary. Certainly, if Congress creates that office, we will do everything that we can to implement congressional intent, but if I could, I would just like to explain, Congressman Green, the different avenues that an entity can pursue with FERC to get guidance. First, there is informal outreach where the company, or the entity, can seek a meeting with staff, or even with the Commission, at least if there is not an investigation.

Second, there is a compliance help desk, so an entity can call staff to get guidance. Then there is the no-action letter process. So if they want something more than that, they can seek a no-action letter from the Commission. And then, of course, an entity has ability to seek a petition for declaratory order from the Commission if it seeks greater regulatory certainty. So no-action letter comes from staff, the petition from declaratory order comes from the Commission itself. My own view is that given the many avenues in which an entity -- that many avenues an entity can use, can pursue to seek guidance from FERC,

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that it would not be necessary to create that office. I would also add that years ago, Congress created an Office of Consumer Advocate at FERC, but has never sought to fund that office.

Mr. Green. Well, I would hope that if we do create an Office of Compliance, we would fund it. It seems like some of things you are talking about would be rolled into an Office of Compliance. Mr. Chairman, I know I am out of time and thank you for your courtesies.

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[10:59 a.m.]

Mr. Whitfield. Thank you. At this time the gentleman from Illinois, Mr. Shimkus, is recognized for 5 minutes.

Mr. Shimkus. Thank you, Mr. Chairman, and welcome. I am going to get a little parochial. MISO released an issue statement acknowledging that no forward planning process exists to ensure long-term reliability in southern Illinois. And that reform to its capacity market process may be required to sustain existing investment and drive future investments and help ensure a reliable electricity supply for consumers. Of course, I am in southern Illinois, and we have talked about some of the concerns on the most recent auction. But so this is kind of a jump off for whoever wants it. How does the Commission plan to ensure sufficient existing and new generation resources are in place for MISO zone 4?

Ms. LaFleur. Well, thank you, Congressman Shimkus. As you know, we can't specifically discuss zone 4, because there are several complaints, including from the state of Illinois, pending before us now --

Mr. Shimkus. But you don't need to talk about the adjudication. This is just a generic question on the question.

Ms. LaFleur. Yeah. I think the primary thing we have been doing

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is looking very closely at the way the capacity markets actually define the product and what they call for to make sure that they properly pay for what it really takes to keep the lights on. In both PJM and ISO New England, they have set up structures where they create performance requirements and hold generators to them that are, in many cases, baseload generation are the ones that will be needed because they can be there at any time when they are needed. I think those are the sorts of things that have promised to make sure that I think there has been a concern whether there is something about baseload generation as being not properly valued, and we have to look closely at the market --

Mr. Shimkus. This follows up on my question. MISO has conceded with your endorsement, the FERC endorsement, to largely leave control of resource adequacy to the States. Is that appropriate?

Ms. LaFleur. That is different in different parts of the country. In the --

Mr. Shimkus. I am worried about southern Illinois right now.

Ms. LaFleur. Well, Illinois is in a somewhat unique situation because it deregulated generation, has merchant generation, like the Eastern markets do. Yet it is in the mid-continent ISO where the other States don't have that system. I think that there will be choices to make of both how MISO accommodates the States so different from the rest of them, and how Illinois does it.

Mr. Shimkus. Well, please keep an eye on this. Similarly, Chairman Bay, because we know we have decommissioning of coal-fired

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power plants because of the war on coal, and that is accepted. You all have basically said that. We also are concerned about the decommissioning of nuclear power plants now in Illinois because of just what Commissioner LaFleur just mentioned. So the question is, should baseload generation be compensated for other benefits they provide, such as reliable power, providing essential reliable services, and fuel diversity that they bring to the market, including on-site fuel availability?

Mr. Bay. One of the things that the Commission has done to try to address in a general way that particular concern, Congressman Shimkus, is to work on price formation in the energy market itself. And so for that reason, the Commission has held a series of technical conferences, and in September, issued a rulemaking that seeks to align the settlement periods and dispatch intervals in a real time market and then to allow a shortage pricing to be triggered when shortages occur. Those sound very complicated. The basic premise is simple, and that is, that resources should be compensated for the value they provide when they provide it. So that certainly will help baseload resources that can steadily produce power at many different times of the day. And so the hope is that with more effective price formation, that that can send better signals to different kinds of resources, including the kinds of baseload resources that you noted.

In addition, the Commission is doing more than that. In November, we issued an order that seeks to gain greater transparency

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into the causes of uplift and uplift drivers in the RTO/ISO markets. And we have also signaled that we are going to look at the offer price caps in the organized markets as well as mitigation issues. So we are doing a whole host of things that are seeking to improve the efficiency of the wholesale markets.

Mr. Shimkus. So should this occur in an organized wholesale capacity and energy markets subject to your jurisdiction?

Ms. LaFleur. Well, in Midwest and the southern Illinois as part of the mid-continent ISO does not have a mandatory capacity market. Just 2 weeks ago, we denied rehearing on an order allowing MISO to continue to have a voluntary capacity market. That would be a major change if they went to a mandatory capacity market as the eastern States have. So right now, Illinois does have the resource adequacy control because they are not required to participate in the mandatory market.

Mr. Shimkus. Thank you, Mr. Chairman.

Mr. Whitfield. At this time, the chair recognizes the gentlelady from California, Mrs. Capps, for 5 minutes.

Mrs. Capps. Thank you, Mr. Chairman, for holding this hearing. And I thank Chairman Bay and all the commissioners for your testimony today. You have covered the many and varied tasks that FERC is responsible for and how these activities directly impact the provision, the transport, and reliability of energy from a variety of sources.

However, it is also clear that as we better understand the ramifications of our energy use, we have a greater responsibility to

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minimize the negative impacts that are associated with our actions. And part of this responsibility is to ensure that appropriate sources of energy are utilized to minimize harmful emissions through the integration of renewables. But we also must look at the impact of transporting these dirty fuels. And that is where I would like to focus my questions today.

While this committee has recently been focused on the work of the Pipeline and Hazardous Material Safety Administration, or PHMSA, FERC also has jurisdiction over certain pipeline regulations. Pipelines are ubiquitous in this country. Whether transporting oil or natural gas, these pipelines crisscross the entire country, transporting fuels, both within and between States. And depending on the particulars of the pipelines, they are regulated by local, State, or Federal groups and agencies. It is also clear that transporting fuels and pipelines may have many risks associated with them. In my district, we witnessed this danger firsthand when the Plains pipeline ruptured and spilled full across the land and into the ocean this past May.

My first question is for Commissioner Tony Clark. Several agencies are responsible for regulating both oil and gas pipelines in various stages of siting construction operations. Can you please explain and elaborate on the responsibility of FERC in regard to both oil and natural gas pipelines?

Mr. Clark. Sure. Thank you for the question, Congresswoman.

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With regard to oil and liquid pipelines, the Commission's jurisdiction comes from the Interstate Commerce Act, and is primarily associated with economic regulation of the pipeline and nondiscriminatory access to the pipeline, common carrier-type regulations, but does not include safety or the siting of pipelines, things like that, which would be either under PHMSA or some combination of PHMSA and State and local government.

In the case of interstate natural gas pipelines, the Commission has much more -- a much greater degree of oversight of the interstate natural gas pipeline. So in addition to the economic regulation, the Commission also oversees the physical siting of the project itself, again, with regard to safety, although some of those safety costs work their way into FERC jurisdictional tariffs and rates, the actual safety regulations themselves would not be FERC jurisdictional. It, again, would be --

Mrs. Capps. As a follow-up, could you please describe how FERC ensures that sensitive environments like those in coastal regions of my district are not negatively impacted by the siting and construction of natural gas pipelines?

Mr. Clark. Sure. Thank you, again, for the question. The way that FERC ensures environmental protection is through being the lead agency for NEPA reviews on any interstate natural gas pipeline. And so FERC basically plays a role ensuring that all of the other agencies that might wish to comment, public which might wish to comment, and

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are able to do so in a way that we have a fully-developed record in front of us to ensure that we are meeting the environmental standards that are set up, both in the Natural Gas Act, but also those requirements that are set forward through NEPA.

Mrs. Capps. Thank you.

For Chairman Bay, while FERC has jurisdiction over some aspects of pipelines, as Commissioner Clark has just outlined, FERC is just one of several agencies with pipeline jurisdiction. After the Plains oil spill in my district earlier this year, we dealt extensively with both the EPA and PHMSA. But it is clear that our communities are relying on many agencies and their cooperation, or lack of, to protect our local lands.

So, Mr. Chairman, does FERC work with other agencies to ensure that the siting and operations of pipelines is done in a way to maximize safety and minimize risks? And how does this happen?

Mr. Bay. Yes. Thank you for the question, Congresswoman Capps. During the application process in which a pipeline is seeking to receive a certificate from FERC, as Commissioner Clark noted, we have to do a NEPA review. And as part of that NEPA review, we have to work with many other agencies; State agencies, but Federal agencies as well. And the Federal agencies include EPA and PHMSA. And so we work with them. We also work with State authorities. And if there is an aspect about the proposed pipeline route that is problematic, certainly we have the authority to tell the pipeline to reroute the line. During the

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application process, pipelines will provide alternative routes as well for FERC to consider. And then we have to do an analysis about what which pipeline route seems to be more prudent.

Mrs. Capps. Thank you. I am out of time, Mr. Chairman, but I had a follow-up question that I wish I could get a written reply to, and that is, the collaboration between FERC and agencies like EPA and PHMSA. Are they successful in working together to mitigate negative impacts? Or are there opportunities to improve the level of collaboration and communication? And, you know, these pipelines make a very complex intersection around the country. So if we could get that back in writing, I would appreciate it.

Mr. Whitfield. Absolutely. So we will note that. And we hope you can get back to us on that.

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

Mr. Latta. Thank you, Mr. Chairman. And to the commissioners today, we greatly appreciate you being here for your testimony. I am going to kind of follow up on the gentlelady from California on questions that she has. It is FERC's responsibility to make information available and notify the public about a project's status and its schedule. FERC staff testified in support of bringing this information together in one location on FERC's Web site. And this is addressed to the chairman and Commissioner Clark. Do you support the concept of a project dashboard where the public can see the schedule

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established by FERC and the list of actions required by each applicable agency to complete permitting? Chairman?

Mr. Bay. Thank you, Congressman Latta. I think that is an interesting idea. And certainly, I share the goal of providing transparency into the project applications that FERC is considering. Currently, that information is available through eLibrary, where all the filings relating to a project are placed and where they are accessible to the public. It can be harder, I think, for a member of the public, however, to find the right document.

So the idea that you presented is an interesting one. And I would like to talk to staff some more, as well as my colleagues on the Commission, to get their views. Certainly, though, we support the idea providing transparency into the work that we do.

Mr. Latta. Thank you. Commissioner Clark?

Mr. Clark. Congressman Latta, I think it is an absolutely worthy goal. The issue of transparency into exactly how commission processes work is very important in terms of -- especially a land owner who, for example, may be being contacted by an infrastructure development company, a pipeline company, and doesn't know where to turn to next. And for those of us who live and breathe the world of regulation every day, sometimes it can seem simple to maneuver our processes. To someone who has never seen the FERC Web page before, they may -- might not be quite so simple. So I think a -- sort of a look at that with fresh eyes is probably something that makes a lot of sense.

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Mr. Latta. Thank you. And, again, both to Commissioner Clark but also to the chairman, based on hearing from my constituents' reviews of such as route planning and safety coordination would be important to include in this project dashboard to make the information more easily accessible to the public. Would these kinds of ideas be included? Chairman?

Mr. Bay. I am certainly happy to consider those ideas, Congressman Latta. One thing I would note is that FERC actually has a toll free number for landowners who have questions or concerns. We receive hundreds of calls each year from landowners. The calls go to our dispute resolution service. And I am pleased to say that they oftentimes can provide helpful information and guidance to landowners who have some sort of concern.

Mr. Clark. I would concur in the chairman's comments. I would also add that one of the things that I have talked about with FERC staff is, as we go out into the public and have scoping meetings and hearing -- public meetings and things like that as we have talked about before, there is a lot more interest in these hearings than we have had in the past. Sometimes it is from interveners and folks who just simply don't want infrastructure at all. But what is, I think, very important is that we ensure, from a staff standpoint, that we continue to ensure that the actual landowner who is affected when they walk into that room has that opportunity to speak on the record so that they can have their views known about a particular infrastructure project that

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is directly affecting them. And it is getting to be more of a challenge because the hearings -- there are a certain number of hours, and there is a lot of people that show up. But we need to make sure that we have those avenues for people who are directly impacted by the infrastructure.

Mr. Latta. Thank you. And, Commissioner Clark, I understand that under the Clean Power Plan, municipal electrics and a rural electric cooperative that are not currently regulated by State public utility commissions would be required to come under State regulatory jurisdiction for purposes of the Clean Power Plan compliance. In your experience, is this a dramatic change? And how will this impact the ways munies and co-ops do business in the future?

Mr. Clark. Congressman Latta, I think depending on the State, and how the State decides to go about an implementation plan, or a Federal implementation plan, it could be a big change. I know in my home State of North Dakota it would be. The issue is that you are effectively requiring a State to come up with a sort of carbon integrated resource plan for the State as a whole. Obviously municipals and co-ops are a big player in certain States, but traditionally have not been regulated in an integrated resource plan way that traditional utilities have been. So depending on the State, it could be a big change.

Mr. Latta. Thank you very much.

And, Mr. Chairman, my time is about to expire. And I yield back.

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Mr. Whitfield. Gentleman yields back.

At this time, recognized the gentleman from Pennsylvania, Mr. Doyle, for 5 minutes.

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Mr. Doyle. Thank you, Mr. Chairman. And Chairman Bay and members of the Commission, welcome. And thank you for appearing before the committee today.

Commissioner Honorable, welcome to your first hearing. In your testimony, you mention reliability measures in the final rules of the Clean Power Plan. And one of the concerns that I have voiced repeatedly in these hearings is that the Clean Power Plan may jeopardize our fuel diversity. And in particular, that we could lose baseload power like coal and nuclear. Do you share these concerns? And if so, what do we do about that?

Ms. Honorable. Thank you for the question, Congressman Doyle, and thank you for the welcome. I, indeed, share your concerns, even hearkening back to my days as a State regulator. I believe that fuel diversity is really key in ensuring reliability in going forward, even in these dynamic times. Even aside from the implementation of the Clean Power Plan, industry and States are already moving toward cleaner and more efficient energy portfolios. And so, it is imperative that we protect fuel diversity. I believe we need it all, and we especially will going forward.

Mr. Doyle. Thank you. Commissioner LaFleur, in your testimony, you highlight the recent shift in resources used to generate power. And you go on to highlight FERC's oversight of capacity and where it

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could change to ensure reliability as properly valued and sustained. So given the pressure from markets and rules like the new Clean Power Plan that shift away from traditional baseload sources of power, what is FERC doing to ensure our constituents that we can turn on the lights when they are needed most?

Ms. LaFleur. Well, thank you, Congressman Doyle. I think we are really working on several fronts. First of all, in the markets, we are trying to make sure that the markets properly and transparently value the reliability, including the reliability that baseload provides. And that has resulted in changes in the capacity market and ongoing work that may lead to changes in the energy market to make sure that those resources, especially the existing resources, are fairly paid for what they contribute. Secondly, the reliability standards have a role in making sure that essential reliability services, things like Black start and voltage support, that some of those big plans provide are properly accounted for and required. And there is a lot of work going on under the auspices of NERC to adapt the standards to changes in power supply.

And finally, I think we need to work closely with the EPA as we did on MATS so that as implementation starts, we keep an eye on regions of the country that may have an issue and be there early enough to intervene if we need to.

Mr. Doyle. I know in light of the polar vortex at PJM included additional capacity performance standards in their markets. Do you

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think these are properly -- that they properly value baseload power?

Ms. LaFleur. Well, we do have a rehearing pending, but I voted for the order and strongly supported the early order because I thought that it was a fuel-neutral way to define what reliability meant in a way that, yes, it has an impact on baseload power, but it was defined in a neutral and fair way. So I supported that order. Now we are starting to see the results, and we will be looking very closely as it is implemented.

Mr. Doyle. And since the adoption of those reforms, have you seen any adverse effect on renewables, demand response, energy efficiency, or any other non-baseload products in PJM?

Ms. LaFleur. Well, there has only been one transitional auction run so far, but no.

Mr. Doyle. I want to talk briefly, too, about cybersecurity, because I believe that is very important, too. And, Commissioner, you have mentioned the growing importance of that and how this presents a relatively new challenge for FERC. You said that these issues present different challenges and continue to say, in many cases, we don't have the benefit of decades of experience to draw upon. Well, I am proud to point out that we do have decades of experience in Western Pennsylvania, particularly at Carnegie Mellon University CyLab, which is a global leader in this field. And to what extent can FERC grow and develop relationships with institutions like CyLab to ensure our grid remains secure?

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Ms. LaFleur. Well, institutes like Carnegie Mellon are doing critically important work. And we do have an office of energy infrastructure security. They don't work on standards, but they work on collaborative relationships with universities, industry, and other agencies. And we would welcome more engagement with Carnegie Mellon. One of the things that is going on at the university level that I think is so critical right now is designing parts of the grid to build in more resilience on the front end. So we will get away from standards and retrofitting and really building the grid better. That is where the future lies.

Mr. Doyle. Thank you, Mr. Chairman. I yield back.

Mr. Whitfield. Gentleman yields back.

At this time, the chair recognizes the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. Harper. Thank you, Mr. Chairman. And thanks to each of you for being here and the work that you are doing.

Chairman Bay, if I may ask you, many retail tariffs allow net metering of consumption of electric power by end use customers against on-site generating sources. In particular, we are seeing a proliferation of these on-site rooftop solar arrays by commercial and residential retail customers. The cost of distribution grid and transmission grid are interconnected, and both constitute the stream of interstate commerce. Should FERC exert jurisdiction over net metering arrangements in any respect?

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Mr. Bay. The Commission issued an order in 2009, Congressman Harper, called Sun Edison, in which the Commission ruled that rooftop solar was not subject to FERC's jurisdiction over wholesale markets as long as, during the relevant billing period, the person who owned the rooftop facility or unit was a net user, not a net seller of energy. And so that has been the line that FERC has drawn in its order.

And I think it is important to note that that order, as a result, respects traditional State authority in this area. One concern that I think some would have were FERC to go further, would be that there -- would be a fairly dramatic preemption of State authority by FERC. And so, I think that poses some real questions about where you want to draw that line regarding the allocation of authority between a Federal Government and the States.

Mr. Harper. Yes, sir. You know, of course, technically, you could argue that these net metering arrangements constitute a wholesale sale. And wholesale sales are expressly identified in the Federal Power Act as being FERC jurisdictional. So with that, why isn't FERC exerting jurisdiction over them?

Mr. Bay. Well, as I said, there is that decision from 2009, Sun Edison, which is the controlling FERC precedent now.

Mr. Harper. Right. Has there been any thought on revisiting that?

Mr. Bay. Well, certainly, I have heard rumors that we may be receiving a complaint from different entities in industry regarding

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this very issue. But when you look at the Federal Power Act, the purpose of it, when Congress passed it decades ago, was to ensure competition in the markets, and to ensure that rates remain just and reasonable. And so, to my mind, it is not clear that when Congress passed this law, it intended some individual who has a rooftop solar unit to be viewed as a utility within the meaning of the Federal Power Act, and to be subject to Federal regulation.

And I think the further argument can be made that those kinds of units, far from impeding competition, are actually furthering it. So I think that there are a number of arguments there, not only based on the language and the history of the Act, but also based on a traditional recognition of State sovereignty in the area.

Mr. Harper. Chairman Bay, I appreciate your insight on that. But, you know, while a companion memorandum of understanding to the final Clean Power Plan rule outlines conferencing powers between the EPA, FERC, and DOE, neither that Memorandum of Understanding nor the final rule provide for a formal role or process for the Commission to carry out its statutory duty to maintain reliability. As a practical matter, how will the Commission actually ensure reliability as the CPP is implemented? And what will the Commission's role be in the event reliability and environmental regulations conflict?

Mr. Bay. Thank you for the question, Congressman Harper. One of our core responsibilities is reliability. And we are going to remain very engaged on reliability issues and any potential reliability

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issues relating to the Clean Power Plan. So we have already entered into this agreement with the DOE and EPA to have staff meet on a quarterly basis. As I indicated, staff has already met. And we are going to be monitoring what happens during the process.

And also a potential resource, if States have questions of us, with respect to their plans. And as Commissioner Honorable noted, if necessary, we will hold technical conferences and do other follow-up. But I want to assure you that we are very engaged on this issue.

Mr. Harper. Do you think reliability may become subject to litigated outcomes?

Mr. Bay. Not clear to me since there is a reliability safety valve, and there is this -- basically this glide path towards compliance. So we will have to see what happens.

Mr. Harper. Thank you. And I appreciate that very much, Chairman Bay, and I yield back.

Mr. Whitfield. The gentleman yields back.

At this time, the chair recognizes the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair. I know numerous Members of the House and Senate have expressed their concerns with the pipeline permitting process. And, Mr. Chair, your testimony states that there is a need for more natural gas pipeline infrastructure. I don't necessarily disagree, but I do know many communities to which these pipelines pass have legitimate concerns about safety, noise, and air

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and water pollution from construction and the operation of those associated facilities.

And I know Commissioner Clark's testimony mentions a just-say-no attitude to any new project. That might be the case for some, but there are many, many people that have legitimate concerns and believe the public has been shut out of the process. So, Mr. Chair, can you explain FERC's public comment process for pipeline siting?

Mr. Bay. Thank you for the question, Congressman Tonko. FERC tries to provide a tremendous amount of process to stakeholders who could have an interest in a pipeline project. And so, throughout the process, whether it is pre-filing when scoping meetings are being held, or even after a filing has been made by the project developer, we welcome comments from the public. And so, there are many ways that people can get those comments to us. They can get those comments to us at the meetings, the scoping meetings that are held. But they can also send us written comments as well. And those comments will be made part of the record.

But it is very important for us to hear from members of the public who have an interest in the project, whether they are for it or against it, and for us to consider those comments when we evaluate the project.

Mr. Tonko. And just specifically, how does FERC proactively conduct its outreach to affected communities?

Mr. Bay. One thing that we do is to provide notice of the scoping meetings that we hold. And so those notices go out to communities along

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the path of the pipeline. They typical last for several hours. There is a court reporter there. The meeting can be transcribed. So that is one of the ways we get notice to the public. But certainly, throughout this process, staff tries to make clear to the public that their comments are welcomed, and that they can submit those comments to FERC for FERC's consideration.

Mr. Tonko. And then how are comments from Federal, State, and local officials, as well as the general public considered, particularly concerning the request to extend those deadlines that are associated with the review process?

Mr. Bay. So we certainly consider the requests of other officials as well, including State officials; and we then decide, when we get those requests, whether or not more time is warranted. I should note that even if a formal window has closed with respect to some stage of the processing of an application, if a member of the public submits a comment, that can still be made part of the record. So it is not like the door is slammed shut on someone.

Mr. Tonko. And have you found engaging local stakeholders to be productive in determining the appropriateness of a project or its scope?

Mr. Bay. I think it is critical that we engage with local stakeholders. And one of the things that we have also done is to publish a best practices manual for pipelines. And one of the things that we do in this manual is to encourage them to do the outreach to

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the communities along the path of the pipeline. That it is very important, in other words, for the pipeline to start to develop a relationship with the members of the public who could be impacted by the infrastructure.

Mr. Tonko. And when a project is changed, such as being rerouted to pass through different communities, does FERC make an effort to extend the public comment period and engage newly impacted people?

Mr. Bay. It probably depends upon the stage of the process when that change is occurring. Many changes can actually occur during a pre-filing process. And so there might be an opportunity there for the public to provide comment. You know, I might have to talk to staff and get back to you on that one, Congressman Tonko, so that I can explain in a more specific way how the record can be developed. So I would be happy to do that. I can tell you, though, that even when we issue a certificate, there are dozens of conditions that are attached to the certificate. And these conditions are intended to remediate any potential impact from the pipeline.

Mr. Tonko. And when any of that new information is released late in the scoping process, do you believe it warrants more time for public comments and analysis?

Mr. Bay. I think it depends upon what the development is. But certainly, again, we welcome comments from affected stakeholders.

Mr. Tonko. I thank you, Mr. Chair. I yield back, Mr. Chair.

Mr. Whitfield. The chair, at this time, recognizes the gentleman

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from West Virginia, Mr. McKinley, for 5 minutes.

Mr. McKinley. Thank you, Mr. Chairman. I guess to understand FERC, you have to understand how we got here, what are the issues that you have to face. And I am looking back on just globally with what has been said over the years globally, and certainly being said in Paris today and in the next few weeks. Because all of this sets the tone for the issues that you have to face. And I look back at some of the quotes that have been used over the years. People have said things like that the IPCC, one of the lead authors said, on energy, he said that, We must clearly, must redistribute, de facto, the world's wealth by climate policy. Then you have a former Canadian minister who said that, that no matter, this science of global warming is all phony. Climate change provides the greatest opportunity to bring about justice and equality in the world.

Or then we go to, at the Earth Climate Summit down in Rio is that, We may get to a point where the only way of saving the world will be for the industrialized civilization to collapse.

That sets the stage, then, for this administration and the EPA to be emboldened to enact a lot of regulations because they are drinking the Kool-Aid. So here is what we have is they have moved on this. And as a result, I feel sorry for you at FERC because I don't think -- I think primarily, you are just cleaning up after someone else. You don't seem to -- it doesn't come across to me as you have a seat at the table on our national energy policy. You are just having to

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implement what someone else has done, how they have been influenced by the global community. It is almost as though -- you remind me, Captain Smith on the Titanic, just managing a sinking ship.

So I am wondering, given that that is the attitude all these regulations, and I can remember sitting here just a few years ago when Commissioner Moeller made the remark that if we don't do something to replace the coal-fired power plants that have been shut down across America, his quote was The new Federal environmental regulations could lead to rolling blackouts in Midwest by the summer of 2016, unless action is taken to boost reserve generating capacity.

I don't think we are doing anything on that. And 2016 is just around the corner. And then I look at your own policy statement that says that you are to regulate reasonable cost, at reasonable cost. I live in a State that 98 percent of the power is generated from coal. And because of the regulations and the closure of seven power plants, and ultimately more gigawatts of power, we are already experiencing a 47 percent rate hike on utilities. How is that reasonable? I think you failed. But maybe you failed, because I don't know that you have a seat at the table.

So I guess it would go back to, Commissioner Clark, how would you respond? Where are we building the coal-fired power plants? How are we going to reject this globalization that is going on and the attitude that has got us to the point that we are afraid to burn coal, we are afraid to burn gas?

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Mr. Clark. Congressman, as I indicated in my testimony, I think the Clean Power Plan 111(d) regulations certainly put regulators at both the State and Federal level in a very precarious position, which is that while it is not being promulgated by FERC or by a State public utility commission, most of the potential negative outcomes that could be related to it, whether it is matter of affordability or reliability in that State, all directly fall on our shoulders because those are the areas that we have responsibility over. And we know if the lights go out, or if costs are to spiral out of control, it will be public utility commissions at the State level, and FERC at the Federal level that will be answering those questions. So certainly, it creates challenges for us.

With regard to the concern about cost, I think in certain States, it is something that is a very real concern to have. It is one that I have as a North Dakotan. I indicated in my testimony that our State health department who is putting together our CIP estimates that if we were to enter a carbon credit trading program in North Dakota, it would be a 400- to \$450 million annual tag. It is an estimate. It could be more; it could be less. But that is the figure that they are using in a State of about 750,000 people. That is, obviously, a huge impact. So these are all concerns that are legitimate.

Mr. McKinley. Okay. Mr. Chairman, in the time I have left, what are we doing? What is FERC doing about authorizing more power plants to be constructed or was Moeller wrong?

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Mr. Bay. Under the Federal Power Act, we don't have the authority to order the construction of new power plants. And under the Federal Power Act, FERC has always taken the position that it has to be resource neutral. But what we have tried to do is to improve the efficiency of the energy markets and the capacity markets so that they send the right signal to resources. And so that is where we have focused our attention, while also, always making reliability a priority.

Mr. Whitfield. The gentleman's time has expired.

At this time, we recognize the gentlelady from Florida, Ms. Castor, for 5 minutes.

Ms. Castor. Thank you very much, Mr. Chairman. And good morning and thank you all for being here.

The former FERC Chair, John Wellinghoff, recently raised a concern over the very significant investments in natural gas resources by utilities. He said that these huge investments are happening at a time when battery storage and renewable resources appear to be growing. And that such significant, maybe even unbalanced investments in gas resources could put customers at risk, the folks we represent back home, for future -- we could be -- our neighbors could be on the hook for these investments.

You can't argue with the fact natural gas, the prices have remained very low. This has been a benefit. But Mr. Wellinghoff warned that the falling cost of renewable energy and energy storage could outpace cheap gas in the future. He called it very risky for

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consumers. And some utility leaders have echoed this concern.

Chairman Bay, you just talked about how FERC has a responsibility to look at the energy markets. What is FERC's view, especially now with the incentives of the Clean Power Plan to reduce carbon pollution?

Mr. Bay. FERC has relied upon economic signals from the market to determine whether or not additional gas infrastructure is needed. And one of the ways we evaluate that is when a project developer holds an open season, we look to see whether or not the capacity that would be provided by the pipeline is subscribed, whether there are precedent agreements.

And so that can be a pretty clear signal as to whether or not the market thinks that that capacity is necessary. But it is important to note that it is the market that is driving these decisions. So it is not like ratepayers are necessarily on the hook for the contracts that might be entered into with the gas pipelines. And so that does, I think, provide some protection to consumers. And if the payoff time is quick enough on this pipeline, and the investment, I think that that investment in the pipeline can be a benefit to consumers. It really depends upon the capacity constraints in a given region in the country.

Ms. Castor. And, furthermore, on consumer protection and demand response, traditionally, demand response was viewed as applicable to retail electricity policies and, therefore, within the jurisdiction of the State public utility commissions. However, as electricity markets evolved in the wake of the Energy Policy Act of 2005, demand

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response began to evolve into a wholesale issue, and, accordingly, FERC issued Order 745 which attempted to deal with compensation for demand response offered at wholesale. I mean, and demand response is -- if you are a consumer out there, I mean, the benefits are quite robust. It can -- and for States now under Clean Power Plan, reduced short-term electricity costs, avoid the need for more investments in generation transmission of very expensive plants, you have to build, and bring environmental benefits.

Now, the order was challenged. It was argued before the U.S. Supreme Court. Chairman Bay, you have a very distinguished legal career. Did you attend the oral argument at the Supreme Court?

Mr. Bay. Yes, I did, Congresswoman Castor. Actually, I think every member of the --

Ms. Castor. Ah, everyone did. Isn't it interesting to -- you should do that if you are ever here in Washington. Please go to an oral argument. It is fascinating. But can you read the tea leaves for us and give us what the outlook is? I know one Justice had to recuse himself. So what is your expert analysis of the Court?

Mr. Bay. You are right. Justice Alito recused himself. Eight members of the court will be deciding the issue. If there is a tie, then the decision of the D.C. Circuit stands. I think it is really impossible to read the tea leaves. I have to confess --

Ms. Castor. I knew you were going to say that.

Mr. Bay. I have to confess to you, though, Congresswoman Castor,

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that every time I have ever tried to read the tea leaves, I get it wrong. So probably, if I ventured an opinion today, you would do well to bet on exactly --

Ms. Castor. So could you go through -- there are a couple of potential outcomes. Could you run through those quickly? I mean, the awful thing would be if FERC does not have -- if we don't continue to promote demand response.

Mr. Bay. I think there are a number of possible outcomes. The Court could say that FERC does have jurisdiction. And it could also affirm the compensation that Order 745 allowed for demand response. So that is at one end of the spectrum. At the other end of the spectrum, the Court could either deadlock, which means the decision of the D.C. Circuit stands. Or the Court, a majority of the court, could decide that FERC lacks jurisdiction, in which case it doesn't reach the compensation issue.

Somewhere in between, the Court could say that FERC has jurisdiction but that its compensation scheme was not sufficiently explained and could remand on that particular issue. So there are a range of possible outcomes. My colleague, Commissioner LaFleur, likes to cite to Yogi Berra for that famous saying that the difficulty with predicting the future is that it hasn't yet happened, and I have to confess to sharing Yogi Berra's sentiment in that regard.

Ms. Castor. Thank you very much.

Mr. Whitfield. Gentlelady's time has expired.

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

Mr. Kinzinger. Thank you, Mr. Chairman. And thank you all for being here today and spending your morning with us. I am sure it is exciting.

Chairman Bay, as part of FERC's responsibility to oversee the reliability of the bulk power system, you recently approved new critical infrastructure protection standards to address physical threats and weaknesses of the grid. These standards are designed to enhance the grid's physical security, and reduce areas of vulnerability. In your mind, what more can and should be done to ensure the physical security and reliability of the grid?

Mr. Bay. Thank you for the question, Congressman. I have to say that Commissioner LaFleur and Commissioner Clark deserve a lot of credit for the physical security standard because they were on the Commission at the time that the Commission adopted it. And under Commissioner LaFleur's leadership, that standard was adopted. So I think that is a very important start. In addition, there are critical infrastructure protection standards that have been in place for some time now. We are up to version 5. The Commission is considering version 6. One of the things that we are looking at with respect to the CIP standards is GMD, the second stage of that particular standard, which would create a benchmark event, require utilities to assess their system against that benchmark event, and then come up with strategies

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to deal with any potential problems. So that is certainly something that we are looking at.

Another aspect of cybersecurity that we are looking at deals with the supply chain, and whether or not there should be a standard in that area. We had issued a notice of proposed rulemaking. And we have decided to do a technical conference on that issue. So we will be bringing in industry and we will be getting their views.

Mr. Kinzinger. Okay. I might have to cut you off because I have two more quick questions, if you don't mind.

And in regards to the EPA's Clean Power Plan, what position would FERC take if it were asked to issue a declaratory order related to the reliability impacts of State plans and requests for the exercise of the reliability safety valve?

Mr. Bay. I guess I would want to know what the specific details were with that particular proposal. Under MATS, the EPA can request a technical opinion from FERC relating to the reliability issue that would be posed if a unit closed down. Under the reliability safety valve currently contemplated by the EPA's Clean Power Plan, there is no mechanism, no formal mechanism, requiring FERC input, although certainly we are happy to provide it if the EPA requests our views.

Mr. Kinzinger. So if you were asked to make a declaratory order, you would be willing to, or be open to working with them on that?

Mr. Bay. Yeah. I don't know that I would call it a declaratory order, but certainly, we could provide them with our technical views.

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Mr. Kinzinger. Okay. And then, Mr. Clark, recently you spoke on efforts at the State level to support nuclear power. Specifically, you pointed out that States that encourage the growth of nuclear power are going to end up with two different regulatory regimes that don't fit together very well. And that this is going to impact FERC and negatively impact how prices are formed in wholesale markets. If you want to expand on that, and also, you know, doesn't a two-tier system basically already exist since all clean resources, other than nuclear, have out-of-market payment subsidies and everything that impact their bid price?

Mr. Clark. Thank you for the question. It is an excellent one. It often comes into play with regard to nuclear power, and it especially becomes a question and an issue with regard to the Clean Power Plan being out there because remember, the grid operates on a regional basis in terms of market signals that are sent, but States, State by State, have to meet their in-State requirements or will should the Clean Power Plan be upheld. So they are managing their fleet in a way that is sort of agnostic of the market itself. The concern with nuclear power is right now if you present a scenario where you have a restructured State, so it is a merchant generation State, you have high State renewable portfolio mandates, you have low cost natural gas that is the marginal unit and you have big nuclear investments, it is very difficult for that plant to stay open in that regard. So what it will cause States to do that have restructured is to probably, in some way, if they want

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to keep that nuclear plant open to meet their Clean Power Plan goals, it will probably cause them to, in some way, soft re-regulate utilities that they had previously restructured.

The concern is, if you end up in a market that, from a wholesale standpoint, has been set up to allow pure price signals to determine where investment dollars go and where investment decisions get made, you can reach a tipping point where there are so many out-of-market solutions that are being imposed on the market, that the market isn't creating the proper price signals that are needed.

Mr. Kinzinger. Okay. Thank you. And, you know, from my district with four nuclear power plants, it is very important.

So I yield back, Mr. Chairman.

Mr. Whitfield. The gentleman yields back.

At this time the chair recognizes the gentleman from Iowa, Mr. Loeb sack, for 5 minutes.

Mr. Loeb sack. Thank you, Mr. Chair. This has been an enlightening hearing. I really appreciate all of you being here today. The poor folks who are still here, they get to hear me talk about Iowa all the time, and how much wind energy we have in the State of Iowa. The last report was 28-1/2 percent of our electricity comes from wind. It will probably be 30 or more by the end of this year. And we are pretty proud of that, I have to say.

I really think we have to move not only towards wind but solar, and, you know, go as far in that direction as we possibly can,

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recognizing that it is going to take some time, you know, obviously, to get to a portfolio that I think would be more sustainable, be cleaner, be better for our environment, no question about it, and also would provide a lot of jobs, and has, in my State, and other States. But I have a question about reliability. I know we have all been talking about that today. And that seems to be the big issue out there in moving from fossil fuels to more sustainable energy.

What specifically can we do? What measures have been taken, can be taken, as we make that transition, assuming, you know, that the Clean Power Plan, it is now, in fact, there and that we do implement that? What specifically can we do, Chairman Bay, when it comes to reliability? And what specifically is being done at the present time?

Mr. Bay. I think the main thing that we can do is to work closely, we at FERC, to work closely with the EPA, DOE, State regulators, NERC, the regional reliability entities, the RTOs, ISOs, industry. I think we just have to work very closely together, and to monitor the situation to see whether or not there are any potential reliability issues. And if so, you know, what needs to be done to address them. I am not -- I don't think that you necessarily need a new reliability standard or anything like that, but I think you take the standards that you do have and you make sure that they are being followed, and you make sure that you work well with others.

Mr. Loebsack. Did you want to say something, ma'am? I do have a question for you, Ms. LaFleur. Yeah. When we were talking about

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the grid, you know, I have a real concern about the physical protection of the grid. Cyber is one thing, but actual physical protection of the grid is another thing entirely. You know, we are a big country. It is very, very difficult, obviously, to protect the grid from some kind of attacks from someone abroad, domestic, whatever the case may be. But can you address that question?

Ms. LaFleur. Yes. I think the physical security of the grid is very important. I think the most frightening thing would be some kind of coordinated attack that was a physical attack or a systemic attack on different parts of the grid. I think that the standards that we have put in place, which require every transmission owner to identify the most critical facilities and then protect them are an important step. But I think beyond that, a lot of the protection has to come from how we build the grid. Building in more redundancy, so we kind of decriticalize those places so that a physical attack won't cause as much damage. And building in more standardization, so if something goes wrong, we can share transformers more rather than having to build a custom one in every place.

Mr. Loebsack. You are kind of answering my next question, which was building the grid better, that is what you mentioned earlier, that, specifically, is the kinds of things that you are talking about when you say building the grid better?

Ms. LaFleur. Yes. I think that is really the future, is to think about how do we build a more robust grid in a world where there is so

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much more security -- so many more security issues?

Mr. Loebsack. Right. Does anybody else want to weigh in on that particular issue on the grid? Did you want to say anything, Mr. Clark?

Mr. Clark. I would second everything that Chairman Bay and Commissioner LaFleur have indicated. One of the -- it occurred to me during one of the questions, something that I think the Commission can do in terms of reliability and integrating the renewables that you talked about is something that the Commission recently had a series of presentations on at one of our recent meetings, which is the issue of energy storage. If renewables are to be brought on in a way that really makes sense and makes them even more valuable, energy storage as a means of compensating for their inherent intermittency, is something that could be very important. So the Commission has been studying that.

Mr. Loebsack. I think that is a great idea. Thank you very much. Thank you, Mr. Chair. I yield back.

Mr. Whitfield. The gentleman's time has expired.

At this time recognize the gentleman from Missouri, Mr. Long, for 5 minutes.

Mr. Long. Thank you, Mr. Chairman. And I figured you were going to ask me where I am going after this hearing. And where I am going is down to the Rayburn Foyer to sign cards for our troops for the American Red Cross. And I would like to remind our other members of the committee that they can join me down there. So you just looked

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like you wanted to ask that question, Mr. Chairman.

Mr. Whitfield. I really appreciate your letting us know about that. Thank you.

Mr. Long. Commissioner Clark, in referring to the EPA's carbon regulations, you mention in your testimony that there is a potential tension between the 111(d) rules and infrastructure, especially in the timeline for compliance and in potential for a large generation resource shift away from coal in order to comply. In my State of Missouri, for instance, we rely on 83 percent coal for our energy generation. My question is: What is FERC doing to help ensure that the reliability resource adequacy is maintained during this period of transition given the length of time needed to develop and implement infrastructure projects?

Mr. Clark. Sure, Congressman. Thank you for the question. I think it comes forward in a number of different ways. As I indicated, the infrastructure challenge is a key one. So FERC needs to continue to do its work in terms of how we process those applications that are in front of us. In terms of the Clean Power Plan, I think it is going to be critically important for FERC to be actively involved with other stakeholders. Sometimes it is with the markets in a region that is very market-oriented; sometimes it is going to be close collaboration with States since those States have chosen to remain fully vertically integrated. But collaboration with those stakeholders is going to be absolute key.

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I think we are going to need to do a lot of work with entities like NERC, who have technical expertise in terms of the operations of the grid. It needs to be under constant assessment, and we need to do that assessment as soon as we know what these those State implementation plans look like, because until we know what the State implementation plans and Federal implementation plans for those States that chose to go that route, until we know what they look like, we are kind of shooting in the dark here because we can't really model scenarios that are that open ended.

So I think after we begin to see what those look like, we will be able to do more substantive work. But I think it is something that we absolutely have to have a voice in given our technical expertise in both markets and reliability at FERC.

Mr. Long. Okay. Thank you.

I found something else real interesting in your testimony. You also state that intervention in regulatory proceedings is trending towards "just say no," which is designed to block entire classes of infrastructure projects through a strategy of outright denial, or defeat through delay. Can you expand on that?

Mr. Clark. Sure, Congressman. What I was noting is something we have talked a little bit about here this morning, which is the trend towards intervention that we typically didn't have in the past, which is that certain resources, in and of themselves, you have intervenor groups that wish to block the entire development of that resource; not

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that they believe that there is a particular problem with a particular line, it is that they have a concern with all infrastructure and would like to see it blocked. But the challenge becomes in an era where it is quite clear, in my mind, that to meet environmental regulations, and where the market is going, in some cases, in an affordable, reliable manner, you are going to have to have the infrastructure. Dealing with that tension is going to be a challenge for Commissions at both the State and Federal level going forward. We want to ensure --

Mr. Long. What kind of impact will it have on the Commissions?

Mr. Clark. Well, from one standpoint, I think the Commissions, and we have seen this here at FERC, I think you probably have seen it at the State level as well, you have a lot more applications that are being put forward in terms of infrastructure needs. So you have more pending dockets. At the same time, you have more intervention and opposition to those dockets. It creates a challenge for commissions. Ultimately, if the infrastructure is blocked in total, it creates challenges for consumers because you don't have access to the otherwise affordable energy that you might have.

Mr. Long. What type of projects are you talking about that --

Mr. Clark. In the case, Congressman, of the electric sector, it can be transmission lines which are sited at the State level, although FERC has a lot of authority over interstate transmission, we don't site it. But the interstate transmission lines are often put up to accommodate renewables that have seen significant growth. In the case

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of interstate natural gas pipelines, it is because you have coal plants that are going off. And as of right now, the market signals indicate that in most cases you are building natural gas to replace the coal. So you need to hook up the new natural gas plant.

Sometimes it is because you have to have peaker units that tend to be natural gas, because they pair well with renewables, because they have fast ramping resources. So everywhere where there has been a transition to higher intermittent resources and more natural gas units, but you don't have the electric transmission lines and pipelines in place at the time that that transition is made, you end up with very high costs for consumers. It has been the case across the world where that has happened. It has been the case in certain regions of the country, as the chairman noted in his opening statement.

Mr. Long. Okay. I see my time has expired, Mr. Chairman. I yield back.

Mr. Whitfield. The gentleman yields back.

At this time the chair recognizes the gentleman from Vermont, Mr. Welch, for 5 minutes.

Mr. Welch. Thank you very much, Mr. Chairman. I have got two questions, one relating to renewables, and then the other about how we pay for natural gas infrastructure. By the way, what you were just saying about the "just say no," I mean, it really does sort of have an element of public participation, whether it is about coal plants or it is even about solar. So we in Vermont, have a lot of renewables.

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But the siting issues are oftentimes very, very controversial. So it is something that we have to wrestle with independent of what that power source is.

And the chairman indicated in his opening statement that the whole array of power sources, from coal to renewables, is a big deal. And depending on what your State mixes, it really has a significant impact on what you think is the proper approach on infrastructure.

In Vermont, we have had a long tradition of utility-supported renewables. In fact, Green Mountain Power, our major utility, has been the leader in this. Efficiency has played a major role, again, with the support of our major utilities, and demand response, obviously.

So I will ask first, Mr. Bay and Mr. Clark, in respect to infrastructure planning, where does that fit in to your scheme? Because the decisions that are made about an infrastructure decision really do have an impact on the power that can be deployed with the benefit of that. I will start with you, Mr. Bay. And just quickly on it, because we don't have much time.

Mr. Bay. Sure. I think that is an important question, Congressman Welch. States obviously engage in integrated resource planning. FERC itself does not. And FERC has always taken the position that it should be resource neutral under the Federal Power Act. So as a matter of choice, we have not tried to evaluate or to pick which resources should prevail in a market.

Mr. Welch. Right. But there is a practical issue. If

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you -- this is something we are debating in Vermont. If you put in a major infrastructure item, it is going to then drive power decisions to that. So how do you find that balance? By the way, I want to say thank you to Member Honorable for coming to Vermont. We were delighted to have you up there. I mean, can you comment on that?

Ms. Honorable. Certainly. And great to see you again, Congressman Welch. It goes back to our embracing fuel diversity while we recognize we need to move toward a cleaner and more efficient energy infrastructure, for all of the reasons that have been discussed, to ensure reliability, diversity, energy security.

Mr. Welch. Go ahead. I only have a couple minutes. I didn't mean to interrupt, but thank you.

Let me get to financing of natural gas infrastructure by electric ratepayers. We have had a lot of discussion in New England about natural gas supplies. Traditionally, it has been addressed and paid for by the merchant generators. Now there is a move among some to suggest that be spread out across all electric rate customers. Obviously that would have a significant impact on energy markets. What is FERC's view on this? I will ask you, Mr. Clark, first. And thank you all for your work and your testimony.

Mr. Clark. Sure, Congressman. Thank you for the question. I understand this has been -- undergone a great deal of debate in New England, as you have certain States especially that have a concern for getting more natural gas access -- access to natural gas

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infrastructure. As I understand it, the New England States originally had through NEPKA or NESCOE, the State council, some thoughts about potentially building into ISO New England tariffs the cost of the buildout of natural gas. They came in and talked with, I know, each of us individually about that -- well, I didn't prejudge any matter. I think that there are probably some challenges to that type of approach. I understand in recent months, New England governors have gone back, taken a relook at that, and are now not planning that particular approach, but are looking at potentially financing pipelines through the State authority that each of the States still retain over their load-serving entities.

I am interested in seeing how that plays out, in addition to their authority that they have over the natural gas distribution companies. So it is a little bit different approach. It hasn't been presented to the Commission yet. I am interested in learning about it. I think that that stateside approach probably has more opportunity to be successful than what --

Mr. Welch. Commissioner LaFleur, do you have anything to add? And then my time is up. So you get the last word.

Ms. LaFleur. I agree with what Commissioner Clark said. This has arisen in New England, as you know, because there is tremendous pipeline constraints there. And the way the markets are structured, it is difficult for any merchant generator to commit to firm capacity. I believe the issue is raised indirectly in the Kinder Morgan pipeline

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that has been filed. And there is another one that is in pre-filing that will raise it more directly. While not prejudging it, I would seek to be as flexible as we can under our authority to try to find a way to accommodate something a region is trying to do, but it would have to be lawful. That is why the transmission solution has been turned away from.

Mr. Whitfield. At this time, the chair recognizes the gentle lady from North Carolina, Mrs. Ellmers, for 5 minutes.

Mrs. Ellmers. Thank you, Mr. Chairman and Ranking Member Rush, for holding this hearing today so that we can continue our oversight. And thank you, panel. Commissioners, thank you so much for being with us today. As co-chair of the Grid Innovation Caucus, I look forward to hearing from each of you regarding the threats that the Clean Power Plan poses to affordable and reliable electricity, as well as the path forward to securing our grid, as well as modernizing our Nation's infrastructure, energy infrastructure.

Chairman Bay, I would like to start with you. I have a question regarding cybersecurity. Currently, the electric sector has mandatory cyber asset and incident reporting requirements through FERC, NRC, and DOE regulations. Chairman Bay, do you think FERC has sufficient authority over cybersecurity?

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RPTR DEAN

EDTR ROSEN

[12:00 p.m.]

Mr. Bay. I think we do at this time. While recognizing that there is always more work to be done. So we are up to CIP version 5, and we are considering CIP version 6. There are additional standards that we are examining right now. A lot of work has happened, but there will always be more work that we have to do given the nature of the threat.

Mrs. Elmers. Do you believe that FERC needs help with your statutory mandate to protect the bulk power system with cyber threats and harm?

Mr. Bay. I should note one caveat. There should be emergency cyber authority. So thank you for that follow-up question. I understand that the House is addressing this very issue. That emergency authority does not need to reside with FERC. It could reside elsewhere in the Federal Government, but someone needs to have it.

The other suggestion I would make, and again, the House legislation considers this issue, is whether or not FOIA rules should apply to information that is shared between industry and government and vice versa. I think a fix there could be very helpful as well.

Mrs. Elmers. Thank you very much, sir.

Commissioner Honorable, I have a question for you. Last year,

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NARUC approved a resolution seeking to -- and I am going to quote -- "preserve States' authority to decide the type, amount, and timing of new or existing generation facilities that will be constructed or maintained within the State to achieve legitimate State policy objectives." Then it goes on to say "to safeguard and guarantee States' continued right to operate programs to procure new generation or maintain existing generation for reliability, affordability, and environmental purposes."

Does the EPA's Clean Power Plan impact any of these areas which NARUC has expressly resolved to preserve?

Ms. Honorable. Thank you for the question, Congresswoman. I certainly think this will play out. Clearly, the EPA endeavored to provide the States with flexibility. I served as NARUC president during that time that the resolution evolved, and that was very important and continues to be very important that the States maintain control, and I support that, even in my current role.

I do believe that the States have the ability to plan their own resources. There is certainly a lot of opportunity to ensure fuel diversity and reliability as we move forward to a cleaner energy infrastructure.

Mrs. Ellmers. Thank you so much. My last question is for Commissioner Clark, this has to do with some of the EPA rulemaking, and I am going to use an example. The reliability safety valve, though very well intended, is really only useful after the rule has gone into

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effect. Is this correct?

Mr. Clark. Congresswoman, that is correct.

Mrs. Ellmers. And that is wonderful, and we are happy that that safety net is there, except it is kind of after the fact, it is an afterthought. And these decisions are already being made by many of these companies, you know, in our States having to prepare. So in your opinion, do you believe that as far as the rulemaking for EPA goes, FERC should have a much earlier and much more formal role in the rulemaking process?

Mr. Clark. Congresswoman, there is contemplated in what EPA issued, as a final rule, some sort of consultative process with regional planning authorities. I think FERC needs to ensure that we have a robust part in that particular project that will be undergone. So that would be answer number one. I think there is a second related part of your question that I might address which is this: There is a concern in States that will need to be moving forward potentially if this is upheld, that they get going on it rather soon. The problem is, I hope we don't end up with a MATS-type situation, a mercury and air toxic standard situation, where you may have certain States make enormous investments in meeting a rule that ultimately, 3 of 5 years down the line, is vacated by the Supreme Court. I would, either through legislation or through litigation, that there at least be a pause in this so it doesn't go into effect, and we don't start having some of these large investments being made and then have the States find out

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that the rule itself wasn't valid. I think that is a concern.

Mrs. Ellmers. Thank you, sir, and I agree, and I have gone over my time. Thank you, Mr. Chairman, and thank you to our panel.

Mr. Whitfield. Thank you. At this time, the chair recognizes the gentleman from Maryland, Mr. Sarbanes, for 5 minutes.

Mr. Sarbanes. Thank you, Mr. Chairman. I want to thank the commissioners for being here today. Your testimony has been very helpful. Commissioner Bay, it is a pretty straightforward question. There is, I think, bipartisan interest on this committee already reflected in some of the hearings we have held, and some of the markups on how to continue to increase the intelligence of our grid, if you will, kind of smart grid technologies, how we stimulate more thinking in that regard and advance those technologies.

And there is a recognition, obviously, that there is a major role to play in that on the part of States, also ratepayers can become a part of the equation, the private sector for sure, and that that advances all of our goals in terms of dealing with resilience and cybersecurity and distributed energy resources, giving customers more choice in how they relate to the grid, obviously going forward.

I am interested as well, and I know there are others on the committee; I think Congresswoman Ellmers and Congressman McNerney share this perspective in what, for example, the Department of Energy might be able to do by establishing some sort of grant opportunities, programs, collaborative initiatives that they could initiate with the

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States, and with other partners that come together.

So for example, utilities partnering with entities such as National Labs and universities, State and local governments where they are developing some of these advanced smart grid technologies, and benefiting with some support from the Department of Energy. I want to ask you to speak to whether that would be helpful and useful in continuing to push forward that effort on the smart grid?

Mr. Bay. Thank you for the question, Congressman Sarbanes. I think that is an important question that you are raising. Many of these developments, as you know, are very exciting and they are happening at the distribution level. And so I do think it is very important for Federal agencies, including the DOE and FERC, to work with State agencies and State authorities to see where we can be helpful.

My sense is that DOE will be more helpful than FERC in the sense that DOE does a lot of research and development, but FERC certainly can be helpful in incenting some of those technologies as well, not at the distribution level, but at the transmission level because of incentives that we can offer under section 219 of the Federal Power Act. But as Commissioner Clark noted, we just did a panel recently on energy storage, and a lot of exciting things are happening there with some analysts predicting that costs will drop another 50 percent over the next 5 years from 2015 to 2019. So, I guess, that is actually 4 years. So a lot of things are happening, and ultimately, they will impact both the transmission network as well as the distribution

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system.

Mr. Sarbanes. Thank you. Actually, President Obama this morning, at his press conference in Paris, spoke about how goals were set on where the cost of certain kinds of power generation would be. And 2, 3 years ago, we set these targets and we have already exceeded them. It shows what happens when you get these synergies in place, and I think you are right to point to the opportunity for a number of different Federal agencies, like the Department of Energy and like FERC and others to collaborate in helping to stimulate that in partnership with States, with ratepayers, with the private sectors, so I appreciate your answer. Thank you very much and I yield back.

Mr. Whitfield. This time the chair recognizes the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

Mr. Mullin. Thank you, Mr. Chairman. And commissioners, first of all, I want to thank you for your thorough review of the Grand Lake Dam Authority, GRDA, for granting the variance. It was very important to Oklahoma and to that area, so thank you. I really do appreciate that.

I would like to first start with an issue going on with the nuclear plants. Several nuclear plants that operate in the wholesale competitive markets have recently announced premature retirements for economic reasons. These plants tend to be highly reliable. Is FERC concerned about potential impacts of reliability of the electrical grid due to these retirements? Commissioner Bay, I might start with you

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on that.

Mr. Bay. So this is something that we are monitoring very closely. Certainly, we are aware of the news of some of the retirements of those plants, and, again, one of the things that we are doing is using our authority over the wholesale market to see whether or not more effective or efficient price signals can be sent, and that is both in the capacity market as well as in the energy market.

So that has been where we have been focusing our efforts. We can't -- as I said, we don't pick winners in the energy markets. We try very hard to be resource-neutral. I believe we have to be under the Federal Power Act. With that being said, improved price signals, improved transparency can be helpful to all efficient resources.

Mr. Mullin. One of the things that is going on, obviously, is with the coal-fired power plants coming down too; now we have nuclear plants coming down. And one area that we are lacking in is the ability to build new gas pipelines, too, to get some of these plants. We find, through the industry, very difficult to get the permits that are needed. And so, I will stick with you, Chairman Bay, for a little bit. Does FERC have the needed resources to handle these permitting issues? I mean, considering the reliability, we can only take so much off the grid before reliability becomes an issue. And being that we are already concerned with the alarming amount of electricity leaving our grid, surely there is a way that we can speed up this process.

Mr. Bay. So we are very much focusing on the issue of the

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resources that we have, that we devote to infrastructure project reviews. And one of the things that we have done in this past year is to increase the number of staff who are assigned to the division that does that particular work. So this is something that we are watching very carefully.

Mr. Mullin. Watching, Chairman, no offense here, but watching isn't actually engaging. We are going to speed this process up of the amount of electricity hitting our grid going backwards at a very alarming rate. And so watching it is watching a crash happen. I would like to try to use the word of being proactive and not reactive. And if I am hearing you correctly, what you are going to end up being is reactive.

Mr. Bay. I probably was not clear enough. We added more resources, so we created an additional branch of staff who are doing project reviews in the Office of Energy Projects. Having added those additional resources, we are continuing to monitor what happens, and as Commissioner Clark's testimony noted, actually more than 90 percent-plus of the projects that we receive are certificated within 1 year after receiving the application. So it is important for us not only to do our work in a thorough way, but also a timely way, and we are very much aware of that.

Mr. Mullin. Is there a way that we can help you with this? Is there a resource that we can help you streamline? Is there a process that we can help engage in? I say "we" as those sitting up here on

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the committee.

Mr. Bay. I certainly would be interested in hearing the views of my colleagues on that particular question. But one thing we may be coming to you with for our next budget request is a request for more resources.

Mr. Mullin. Money?

Mr. Bay. I think you could characterize it in that way in as far as the money results in our ability to hire more people.

Mr. Mullin. I think all of that would come, too, with the idea of making sure we are being very responsible with the resources we have, that has already been given to FERC under the current circumstances. My time has run out, and Chairman, thank you so much for allowing me to ask these questions, and Chairman Bay, thank you for being very thoughtful with your answers.

Mr. Whitfield. At this time, the chair recognizes the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. Griffith. Thank you very much, Mr. Chairman. I appreciate what you all do. I know it is a tough job. I will say we have some natural gas pipelines coming through my area, and earlier, Commissioner Clark indicated, and I think some of you all have touched on it as well, that there are folks who are saying that they just want to slow everything down in order to stop gas pipelines and other things. But I have a situation where I have got folks who may feel that way, but I have got a lot of folks who just want answers to questions, and while,

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in regard to the Mountain Valley Pipeline, certainly some of those issues were raised by the Mountain Valley Pipeline not contacting folks like the Roanoke County Board of Supervisors before announcing they were coming into the community and starting to do work.

But likewise, the Roanoke and New River Valley has a population of roughly 300,000, you have a pipeline coming through. West Virginia, they had four hearings; in Virginia, we had two. Only one was in the Roanoke Valley, New River Valley area directly. And so as a result of that, the Roanoke County Board of Supervisors requested an additional hearing.

I am not saying it would have been fun for your folks, but it would have been helpful, and likewise, because both Congressman Goodlatte and I thought that it was appropriate. We sent a letter saying we agree with them, and we would ask you to hold additional hearing. You signed the letter, Commissioner, saying yeah, we can't do that. I think that does, sometimes, makes the problem a little bit worse. I know it is not easy, I know, as you just said to my colleague, you may need more resources because of what is going on. But a lot of my folks are reasonable people, but when they feel like they are not getting answers, they become more aggressive, and as a result of that, both Craig County and Roanoke County, and I am sure there were other factors, but one of the factors they both intervened in the process because they felt like this a was the only way they could keep a finger on what was happening.

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So I don't know there is anything you can comment on in that specific case, I just pointed out as a note.

I have got a lot to get over and not as much time as I would like, of course. The first regulations currently require the Agency to consider the use of existing right-of-ways, Commissioner Bay, Chairman Bay. What do you all do to make sure they actually look at existing right-of-ways, because we recently had a factory that brought in natural gas, and now, here we have another gas pipeline coming through generally the same area of Giles County, and then that is where the factory was.

What do you all do to make sure that they actually did look at using co-location possibilities, particularly when you are looking at -- we have -- my district has a lot of natural forest and the Appalachian Trail. So what do you all do in that regard? And if you could be quick, I would appreciate it.

Mr. Bay. Sure. During our review process, we examined the impact of the proposed route, but also alternatives. And so, if there is an existing right-of-way that is feasible, that can be very helpful, both to the company and to FERC in making a decision about whether or not to certificate the project. So it certainly is a factor we take into account.

Mr. Griffith. So if folks in Roanoke County, Giles County, Craig County think that there is a better path that would be co-located, they should let you know, is that what you are telling us?

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Mr. Bay. I should say that that is an option to be considered. In some cases, it is not easy to co-locate two pipelines where they are side by side, that can present its own challenges.

Mr. Griffith. And I recognize that and appreciate that. I am going to switch gears on you. I am concerned with grid reliability; I am concerned with the problems we had with MATS, when several facilities in my district were closed down just before the Supreme Court ruled that they didn't do it right at the EPA. I am concerned that you all don't get noticed under the Clean Power Plan for interaction about what is going to happen when the plants close down. These are great concerns. But I have one that may not seem as big, but a number of my colleagues have touched on the grid reliability issues, and that is the shore issues related to lakes where there are hydropower facilities and plants.

And I am concerned about private property rights. And I can't speak for any other State, but I have several of these located in or near my district, and as many of the members of the committee know, I am a recovering attorney, I used to be a small-town country lawyer, and I have looked at the deeds. So one of things I have that I don't know that you all take into consideration, not only do I think folks ought to be able to use the lakes for recreational purposes, but I think there may actually be a taking that you all are unaware of, because in some of those deeds that I had occasion to look at over the course of 28 years of private practice, the power company didn't get the land

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under the water. They only got the right to flood. And in that case, under Virginia law, you extend those property lines out.

So if you come in and you say somebody can't build a dock, you are actually telling them they can't build a dock on their property, which I would think is a taking. I don't know if you all are aware of that. I don't expect an answer today, but could you look into that for me and see if you all are aware of that issue, and whether or not -- how that impacts your requirements on the shoreline, because that is where people are very, very concerned, and I am concerned that there may be some liability for the Federal Government there that people aren't really aware of. I have seen the deeds written three different ways, two of them you all are in control, one of them you aren't.

So I just raise that for your attention. Let's go back to grid reliability now that I have raised that issue in regard to the shore, and I think it is very important people be able to access big money generator in our area where we are losing lots of jobs. I am already over. I thought I had 30 more seconds. Thank you, Mr. Chairman. I appreciate that and I yield back.

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

Mr. Johnson. Thank you, Mr. Chairman. And I want to thank the members of the panel for being with us today. Chairman Bay, or Commissioner LaFleur, you know, consumers in our economy need reliable power, but some feel that FERC-approved market constructs may not be

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adequately compensating baseload power plants for the reliability attributes they bring to the grid. Therefore, some States in competitive markets, Ohio, New York and Illinois, for example, have begun to look at ways to consider options to preserve those baseload plants. So the question is, why do you think that these States find it necessary to step in to try and prevent the loss of these resources?
Mr. Chairman.

Mr. Bay. States have the authority to engage in integrated resource planning, and as part of that planning, they often look at the generation next within the State. And if, in the competitive marketplace, certain resources are not doing well, then the State may feel a need to support certain kinds of units. One of the things that is happening right now is that gas is very, very cheap, in part, because of gas production in States like Ohio and Pennsylvania, and many other States around the United States. You know, last night, I checked the futures contract price for natural gas on NYMEX, it is, like, \$2.22 going into January, which is the heart of the heating season. It was at that, you know, the \$2.20 range throughout the rest of the winter. And so, I think that is putting a lot of pressure on different resources across the United States.

The difficulty for FERC is that in markets, signals are being sent, right? And FERC does not view itself as having the authority under the FPA to pick the winners and losers for a marketplace.

Mr. Johnson. Okay. Commissioner LaFleur, do you have a

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response?

Ms. LaFleur. I think that the biggest thing that we are doing is trying to work on the markets and make sure they compensate what it takes to keep light on for customers, including what baseload brings. And I believe the markets will protect reliability. It is difficult any time a power plant closes, and I used to work for a company that owned them, they had their huge economic drivers in their communities and all, and I think it is natural that a State would be concerned, but we are trying to do our job to make sure that where the power plants that are needed for reliability they don't close, because they are fairly paid.

Mr. Johnson. Okay. Well, if reliability attributes and essential reliability services are being adequately compensated under current market rules, why do we see units that are essential to maintaining reliability leaving the market?

Ms. LaFleur. Well, it is a little bit of a circle, if they are essential to maintain reliability, and we still have reliability, they should not be closing. Some of the rules --

Mr. Johnson. But they are.

Ms. LaFleur. Well, some of the rules that we put in place are fairly new, and we just started to run the first couple of auctions, and I think we will see impacts. We did see baseload plants that previously didn't clear the auctions clear in new auctions under the new rules.

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Mr. Johnson. Uh-huh. Commissioner Clark, I understand that under the Clean Power Plan, traditional State-based, least-cost resource planning will need to be replaced with carbon resource planning. What are the implications of such a shift? Would this be environmental -- would this environmental dispatch be more expensive than traditional economic dispatch, and if so, how so?

Mr. Clark. It depend on how each of those States decide to implement their plans, it could be through some sort of credit trading program. It could be through some sort of, perhaps, environmental dispatch, which really would conflict with the market. So we don't know exactly how they will all be proposing to meet their standards. It probably does mean, in certain States, significant increased cost. I would say another impact -- a similar question of what you asked Chairman Bay and Commissioner LaFleur is, I think 111(d) regulation, the potential of that is having an impact on some of these States that have restructured their marketplaces. They see nuclear units closed, even if they may not be needed for a quote, unquote "reliability," in order to meet the Clean Power Plan they may be needed because it is very difficult to replace a large baseload unit that emits no carbon.

So, I think it is causing some of the States to go back to, as I said earlier, some form of soft reregulation of their marketplace, simply to keep that plan open in the State, not for market efficiencies or for reliability, but to meet the constricts of the Clean Power Plan.

Mr. Johnson. Okay. Well, thank you, Mr. Chairman. My time has

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expired.

Mr. Whitfield. The gentleman's time has expired.

That concludes the questions from the members. I want to thank the commissioners. Once again, we appreciate you being here with us, we look forward to continue to work with you.

Just one follow-up question I had, Chairman Bay. How many people are in your legal department? Do you know that number?

Mr. Bay. I believe there are about 180 people in the Office of General Counsel.

Mr. Whitfield. Do you know how many pending lawsuits are against FERC in which FERC is a defendant?

Mr. Bay. Do you mean in a regulatory context or --

Mr. Whitfield. I mean, the regulatory context has been exhausted and now we are in Federal court or Court of Appeals or Supreme Court.

Mr. Bay. I know that there are two matters pending before the Supreme Court. I can probably get this information for you. I don't know it off the top of my head. Certainly, every year there are commission orders that are appealed to the Court of Appeals.

Mr. Whitfield. Right.

Mr. Bay. And then there are some other matters that are being litigated at the district court level.

Mr. Whitfield. Ms. LaFleur?

Ms. LaFleur. Well, just to chime in, most of those 180 lawyers work on generating commission orders that are outgoing for the 6,000

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cases we do a year, including there are ones that work on projects and ones that work on regs. There may be 10 to 20 people that work on our cases in the courts of appeal, something like a dozen. It is small group.

Mr. Whitfield. And what is the total budget for FERC at this time?

Mr. Bay. I believe FERC's total budget is a little over \$300 million.

Mr. Whitfield. Okay, okay. Do you have anything else?

Mr. McNerney. No.

Mr. Whitfield. Thank you all so much. We look forward to working with you and the hearing is adjourned. The record will be kept open for 10 days for additional materials. And thank you all once again.

[Whereupon, at 12:33 p.m., the subcommittee was adjourned.]