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ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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December 17, 2015

The Honorable Norman C. Bay
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Chairman Bay:

Thank you for appearing before the Subcommittee on Energy and Power on Tuesday, December 1, 2015, to testify at the hearing entitled "Oversight of the Federal Energy Regulatory Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on January 7, 2016. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby Rush, Ranking Member, Subcommittee on Energy and Power

Attachment

Additional Questions for the Record

The Honorable Ed Whitfield

1. Regarding EPA's Clean Power Plan, what authority does FERC have to protect the electric grid if state plans make assumptions regarding the impact on grid reliability of their plans that are not well-supported? What authority does FERC have to protect the electric grid if EPA rejects a request for relief under the Reliability Safety Valve?
2. The Supreme Court heard arguments on FERC's appeal of Order 745, the compensation of demand response programs.
 - A. What is your view of FERC's jurisdiction over retail energy markets?
 - B. Under what circumstances do you believe FERC can assert authority over retail energy markets?
 - C. Is there a bright line between your authority and that of the states?
3. FERC has recently begun to tackle reforming the energy markets as well as energy price formation concerns. On November 20, 2015, FERC directed each regional transmission organization (RTO) and independent system operator (ISO) to publicly provide information related to certain price formation issues. Specifically, FERC is seeking a report from each RTO/ISO regarding five price formation issues: (1) pricing of fast-start resources; (2) commitments to manage multiple contingencies; (3) look-ahead modeling; (4) uplift allocation; and (5) transparency.
 - A. What do you hope to achieve with these reports?
 - B. How quickly can we expect any energy market reforms to occur resulting from the reports?
 - C. Is there a sense of urgency to get the appropriate reforms in place?
4. The participation of renewables in capacity markets – such as wind and solar – continues to grow spurred by subsidies and tax credits. In many capacity markets, these types of resources are exempted from buyer-side mitigation rules in their entirety or, if they are subject to any buyer-side mitigation measures, they are provided with generous exemptions. Does this situation pose a concern for the viability of capacity markets given that an increasing large share of the resource mix will be subsidized and be incentivized to bid below their actual costs of operation?
5. How is the Commission supporting accurate dispatch-based pricing and commitment, increasing transparency, and limiting out-of-market payments in the organized wholesale electricity markets?
6. In June of 2014, the Commission issued Opinion No. 531, which revised the Commission's method of determining base Returns on Equity (ROE) for electric transmission. This revised

methodology is explicitly intended to restrain returns, keeping them in a narrower range of possible returns. In some cases, this revised methodology will eliminate some or all of the incentives that the Commission had approved for certain transmission projects only a few years ago. In approving this new policy, the Commission believed that the new policy would relieve uncertainty and promote needed investment in transmission.

- A. Do you believe that restricting returns to lower ranges and eliminating previously approved incentives creates certainty for transmission investors and developers?
 - B. Do you believe that there is a need for new transmission investment in the US? If so, do you believe that the new method of determining base returns, as well as other transmission policies (e.g., Order No. 1000) will promote timely investments in new transmission?
 - C. Does the Commission have any means of evaluating the success or failure of its new transmission policies?
7. Electric customers in New England saw enormous increases in electric prices last winter. In one case, customers were subject to increases in electric rates of 37%. A major contributing factor to higher electricity prices along the East Coast is the lack of adequate pipeline infrastructure needed to carry natural gas supplies to homes and businesses in the region.
- A. Do you believe that New England or the northeast more broadly needs new gas pipeline capacity? If so, what can the Commission do to promote/support investment in new natural gas pipeline capacity?
 - B. Would new pipeline capacity generally provide economic benefits, such as relief from 37% electric price increases?
 - C. Can the Commission identify reliability benefits for the region?
8. Does FERC consider whether proposals submitted are cost effective from a consumer perspective, or if there are competing proposals of equal merit, is FERC obligated to consider whether one proposal is more cost effective in terms of consumer impacts over another?
9. Nearly two years ago, in January of 2014, during the weather event dubbed the Polar Vortex, the PJM market alone experienced \$597 million in out of market make whole payments. In an Internal Market Monitor report evaluating the weather event, it was noted that the same units have been receiving the majority of these make whole payments in PJM for the last 5 years.
- A. We understand the Commission is working on several price formation efforts to address out of market payments but what actions are being taken in the immediate future to implement provisions for greater transparency as to which units are receiving these payments?
 - B. And what immediate steps are being implemented to decrease these costs for consumers?

10. The Commission consistently relies on the stakeholder governance processes of the structured RTO/ISO markets in its orders. However, we have heard concerns regarding the ineffectiveness of the stakeholder process in reaching consensus regarding major issues, such as cost allocation. How is the Commission balancing reliance on stakeholder governance processes with its responsibilities under the Federal Power Act to maintain just and reasonable rates?
11. What efforts is the Commission currently undertaking to ensure that both short-term and long-term financial products in the energy markets have some degree of fee or cost certainty? More specifically, what immediate actions is the Commission taking to resolve the underfunding of financial transmission rights and cost uncertainty for short-term products, such as incremental offers, decremental bids and up-to congestion transactions?
12. What is the Commission doing to foster competition and implement certain minimum standards for the real-time wholesale electricity market across the Independent System Operators, such as a voluntary day-ahead market for transmission?
13. A recent article posted in Forbes suggests that FERC is overzealous in its investigations of alleged manipulation of the wholesale electricity markets, to the point where the Commission is acting as judge, jury and executioner.
 - A. What is the Commission doing to ensure that all parties involved in its investigations of alleged market manipulation are accorded basic due process rights, including knowledge of the specific aspects of the investigation?
 - B. Likewise, when independent market monitors for the Independent System Operators refer potential enforcement matters to FERC, what does the Commission do to hold the market monitors accountable?
 - C. Given the due process concerns that have been raised about the FERC enforcement process, and without asking you to agree with those criticisms, would you oppose legislation making it clear that a trial de novo would be available for all FERC enforcement cases?
14. In July, FERC issued a proposed rule to address supply chain vulnerabilities for critical infrastructure. I understand this was prompted by the Havex and BlackEnergy malware campaigns in 2014.
 - A. What is FERC's level of concern about supply chain vulnerabilities?
 - B. Does FERC have a sense of the extent of the penetration of the Havex and BlackEnergy malware in the U.S.?
 - C. How effective do you believe FERC's rulemaking can be in addressing supply chain vulnerabilities, alone or in combination with steps taken through other federal agencies?
 - D. From where is FERC deriving its statutory authority to address supply chain vulnerabilities?

15. The Department of Energy Inspector General found that former FERC Chairman Jon Wellinghoff improperly disclosed confidential information. You announced in June of this year that you would determine whether FERC should impose any sanctions.
 - A. Where are you in the investigation and what have you learned?
 - B. What controls are in place to ensure critical, sensitive data is not leaked to the press by former commissioners or FERC staff?
 - C. What assurances do we have that FERC can be trustworthy with sensitive information?
16. FERC recently took a number of actions related to NERC data base access (Docket No. RM15-25), supply chain (Docket No. RM15-14), and compliance audits on physical and cyber security.
 - A. Do these recent initiatives signal a change in policy direction for FERC's oversight role under Section 215 of the Federal Power Act?
 - B. What is FERC's justification for these actions?

The Honorable Bill Flores

1. As many natural gas pipelines are reaching the end of their useful life, FERC must consider an increased number of applications to abandon aging pipelines.
 - A. When addressing an application to abandon aging pipeline facilities, is FERC planning to consider the economic impacts of denying an abandonment application as part of its analysis of "all relevant factors"?
 - B. Would FERC consider granting an abandonment application even though abandonment may affect the "continuity of service" to a pipeline customer if FERC determines that replacement of the facilities would be uneconomic?
 - C. Is FERC willing to require a customer to financially support a project if they are objecting to the abandonment of the pipeline?

The Honorable Morgan Griffith

1. In some states where only an easement to flood is acquired, common law principles apply, therefore waterfront property lines and rights are extended out into the lake. Given this, in a situation in which the power company operating a FERC-licensed hydropower facility did not obtain rights to the land under the water but merely flowage easements for the right to flood, and tells a property owner that they cannot build a dock on their waterfront property, I would understand that to be a taking. If a power company has only obtained from the property owner the right to flood, would you agree that such restrictions on a property owner's actions on their land – provided such actions do not impede the right to flood – would be considered a taking?

- A. If not, please provide a memorandum from your legal counsel detailing your understanding in defense of this position.
2. FERC's procedures under the National Environmental Policy Act of 1969 (NEPA) relating to siting and maintenance of facilities are implemented through regulations found in 18 CFR 380.15. According to these regulations, the "use, widening, or extension of existing rights-of-way must be considered in locating proposed [pipeline and electric transmission] facilities."
- A. What steps does FERC take to comply with these regulations?
- B. Does FERC encourage co-location of pipeline and electric transmission facilities when it is safe to do so?
- C. In situations where the project applicant does not propose the use of existing rights-of-way, does FERC independently assess and verify whether co-location is compatible with the proposal?
- D. How are third party comments weighed in evaluating the potential to co-locate facilities?

The Honorable Richard Hudson

1. In recent Orders issuing a certificate to operate natural gas facilities, FERC has rejected the assertion that it should have conducted a "programmatic" Environmental Impact Statement to evaluate the effects of shale gas extraction.
- A. Would you explain FERC's rationale for rejecting these arguments?

The Honorable Joseph Kennedy

The Federal Energy Regulatory Commission's mission statement seeks to achieve "reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means."¹ FERC's role is critical to ensuring reliability at just and reasonable rates.

As you are all aware, New England faces great challenges now, and into the future, when it comes to our energy sector. We have limited natural resources and are quite literally located at the end of the line. Many of the decisions made that impact our energy policies are done at the local, state, and regional level. While FERC may not be able to directly set the energy rates, force a power plant to remain open, or pick and choose the appropriate path for new energy infrastructure, FERC has the final say on many issues as the federal regulator.

My district has faced capacity market shortfalls in each of the last two Forward Capacity Market Auctions, and we're quickly approaching FCA10 in February 2016. In mid-October, we got news that yet another power plant in Massachusetts would be closing, taking another 600-plus megawatts off an already overly stretched grid.

¹ <http://www.ferc.gov/about/strat-docs/strat-plan.asp>

For two years I have been told that the market is designed specifically to send appropriate price signals to industry to indicate and prevent a shortfall. But as I read it, this market is currently functioning with the consumers subsidizing energy manufacturers. The reverse auction system could allow producers to come up with their own inflated prices, which all other producers recoup as well, leaving consumers to foot the bill.

Given the current status of the energy markets in Massachusetts and on the federal level, I have several questions:

1. How is the Commission planning to deal with only four sitting commissioners for the foreseeable future when there is always the possibility of a tie ruling? How will the Commission ensure it functions properly so ratepayers are not left without any administrative recourse? We cannot have a replay of FCA8 if a rate change is filed and the four sitting commissioners deadlock.
2. Given that FERC cannot keep a plant open, order the construction of a new one, or physically site infrastructure, what tools does FERC have and how can they be used to permit and incent both infrastructure and a competitive market to ensure electric reliability at just and reasonable rates?
3. What is the definition of "just and reasonable" rates and how does FERC balance that definition in the name of reliability?