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A LEGISLATIVE HEARING ON EIGHT ENERGY

INFRASTRUCTURE BILLS

TUESDAY, FEBRUARY 2, 2016

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.

Members present: Representatives Whitfield, Barton, Olson, Shimkus, Latta, Harper, McKinley, Pompeo, Kinzinger, Griffith, Johnson, Long, Elmers, Flores, Hudson, Upton (ex officio), Rush, McNerney, Tonko, Green, Capps, Doyle, Castor, Welch, Pallone (ex officio), and Kennedy.

Staff present: Gary Andres, Staff Director; Will Batson,

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Legislative Clerk, Energy and Power and Environment and the Economy; Allison Busbee, Policy Coordinator, Energy and Power; Rebecca Card, Assistant Press Secretary; Karen Christian, General Counsel; Patrick Currier, Senior Counsel, Energy and Power; Tom Hassenboehler, Chief Counsel, Energy and Power; A.T. Johnston, Senior Policy Advisor; Brandon Mooney, Professional Staff Member, Energy and Power; Dan Schneider, Press Secretary; Jeff Carroll, Minority Staff Director; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; John Marshall, Minority Policy Coordinator; Alexander Ratner, Minority Policy Analyst; and Tuley Wright, Minority Energy and Environment Policy Advisor.

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1 Mr. Whitfield. [presiding] I would like to call the
2 hearing to order this morning.

3 This is our first hearing in the Second Session of the 114th
4 Congress. I want to take this opportunity to wish everybody on
5 the committee and those in attendance a very happy and productive
6 2016.

7 This subcommittee has continuously examined legislation
8 aimed at reducing red tape when it is standing in the way of
9 economic development and development of energy infrastructure
10 that would benefit this country. Projects that update and expand
11 the nation's energy infrastructure will create jobs and lead to
12 greater supplies of affordable domestic energy for our homes and
13 businesses. Affordable energy is very important because we are
14 in a competitive world today. We are competing with other
15 countries, and the price of electricity and energy goes a long
16 way in determining where businesses locate and jobs are created.
17 So, this is the unifying theme behind the eight bills that we are
18 going to be discussing today.

19 H.R. 3021 is the AIR Survey Act of 2015, which was introduced
20 by Mr. Pompeo. It is an overdue measure to incorporate data
21 collected through aerial surveys into the approval process for
22 natural gas infrastructure.

23 H.R. 2984, the Fair Rates Act, which was introduced by Mr.

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24 Kennedy, sets out a process to deal with those situations under
25 the Federal Power Act in which FERC neither approves nor denies
26 an electricity rate change such as when the Commission is
27 deadlocked.

28 A draft bill entitled "A Bill to Amend Section 203 of the
29 Federal Power Act" would serve to address an oversight in the
30 Energy Policy Act of 2005. That law amended Section 203 of the
31 Federal Power Act which pertains to the sale, disposition, merger,
32 purchase, and acquisition of certain utility assets and
33 facilities.

34 Along with these three bills making procedural changes, we
35 also have before us five bills dealing with new hydroelectric
36 projects on existing dams. Given the low cost and low emissions
37 of hydropower, these projects ought to be among the least
38 controversial issues of increasing the nation's electricity
39 supply.

40 However, the FERC-issued licenses for these projects have
41 expired, or soon will expire, largely because of regulatory delays
42 or unforeseen circumstances that have prevented construction.
43 These bills extend the life of the license by six to eight years,
44 allowing these job-creating projects to move forward.

45 The result of the passage of these eight bills will be more
46 jobs, more energy for the American people at an affordable price,

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47 and I would urge all my colleagues to support them.

48 So, that concludes my opening statement.

49 At this time I would like to introduce and recognize the
50 gentleman from Chicago, Mr. Rush, and also wish you a happy new
51 year, Mr. Rush. He is recognized for five minutes.

52 Mr. Rush. Thank you, Mr. Chairman. I wish you a happy new
53 year, and I wish all those who are in this committee room a happy
54 new year also.

55 I want to thank you, Mr. Chairman, for holding today's
56 hearing on these eight energy infrastructure bills. Mr.
57 Chairman, while I support the majority of these bills before us
58 today, I do have some concerns that I would look forward to
59 addressing as we move forward through the legislative process.

60 In regards to the five bills extending the time period for
61 expired hydropower licenses, I support each of these pieces of
62 legislation. These bills would extend the construction time for
63 hydropower projects across the country up to eight years, and I
64 commend my colleagues for sponsoring these important bills.

65 Hydropower is a renewable source of energy that has received
66 widespread, bipartisan support from those on this subcommittee.
67 Allowing these projects to commence will help increase the
68 nation's portfolio of clean, home-grown energy resources.

69 Mr. Chairman, I also support very strongly my colleague Mr.

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70 Kennedy's bill, the Fair Rates Act, which would provide the public
71 with an opportunity to legally challenge rate changes approved
72 by FERC essentially by new vote.

73 Mr. Chairman, five times in the past 14 years rate changes
74 have been approved by default due to the Commission being
75 deadlocked during a vote. Even when these rate changes
76 negatively impact consumers, the public currently has no legal
77 recourse to challenge these cases, as a deadlocked vote is not
78 legally viewed as in order. The Fair Rates Act would rectify this
79 inequity by treating new rate changes, including those go into
80 effect by default, as a FERC order that can be challenged
81 administratively and, very important, by consumers.

82 Protecting consumers and average Americans should be a
83 primary objective of all the bills this committee considers.
84 While I support most of these legislations that we are considering
85 today, I am not sure that the remaining two bills meet that same
86 high threshold.

87 Mr. Chairman, I look forward to engaging today's witnesses
88 on both H.R. 3021, the AIR Survey Act of 2016, and the bill that
89 will amend Section 203 of the Federal Power Act. For both of these
90 pieces of legislation, I want to make sure that there aren't any
91 unintended consequences that we are overlooking before we move
92 forward in making these important policy changes.

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93 My biggest concern is with H.R. 3021, which will require FERC
94 to give the same equal weight to aerial survey data that it does
95 ground survey data in the pre-filing process and avoiding
96 completion of an application for construction of our natural gas
97 pipeline. Mr. Chairman, I look forward to hearing from our expert
98 panelists on the practical impact of this change in policy for
99 both landowners as well as the impact on the environment.

100 So, once again, Mr. Chairman, I applaud you for holding this
101 timely hearing today and I look forward to hearing from all of
102 our expert witnesses.

103 With that, I yield back the balance of my time.

104 Mr. Whitfield. Thank you, Mr. Rush.

105 At this time I would like to recognize the gentleman from
106 New Jersey, Mr. Pallone, for five minutes.

107 Mr. Pallone. Thank you, Mr. Chairman and our Ranking
108 Member, for this hearing today on a number of bills addressing
109 programs and projects administered by FERC.

110 I am particularly pleased that the subcommittee is
111 considering H.R. 2984, Representative Kennedy's Fair Rates Act,
112 which would greatly improve the process by which FERC votes are
113 reconsidered. This small but significant change to the Federal
114 Power Act would ensure that, if there is a deadlocked vote amongst
115 Commissioners, there will still be recourse for eligible parties

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116 to seek a review of the rates that result from a de facto decision
117 of the Commission.

118 The need for this change became evident in the wake of a New
119 England forward-capacity market auction in 2014. At that time,
120 FERC had only four Commissioners and they split over the question
121 of whether the auction results were just and reasonable. Since
122 FERC didn't disapprove the auction results, wholesale electricity
123 prices in New England increased dramatically. So, while rates
124 went up, none of the affected parties could challenge the decision
125 or resulting rate increase and, therefore, no rehearing or
126 judicial review was possible.

127 There is an old saying, Mr. Chairman, that if you choose not
128 to decide, you still have made a choice. And we should not deprive
129 stakeholders of any recourse when a non-decision by FERC has real
130 consequences for consumers, producers, and others.

131 Representative Kennedy's bill doesn't favor one side or another.
132 It merely provides those who want to challenge the outcome of an
133 action the same rights they would have if FERC made an affirmative
134 decision. It is thoughtful and meaningful legislation that
135 deserves to become law as soon as possible.

136 Unfortunately, I can't say the same about the AIR Survey Act
137 of 2015. It is a reckless and brazen effort to further strip
138 landowners and resource agencies of their ability to participate

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139 meaningfully in the gas pipeline siting process. The bill
140 directs FERC and agencies responsible for implementing federal
141 environmental laws not just to allow data collected by AIR to be
142 used in gas pipeline certification activities, but it goes so far
143 as to tell scientists and regulators to give it the same weight
144 in the decision process as data collected on the ground. We
145 should not categorically make a decision that photos taken
146 thousand of feet in the air are as accurate in cataloguing
147 endangered plants and animals as surveys on the ground, nor should
148 we second-guess scientists and other trained professionals in
149 state environmental offices or at the Army Corps as to how best
150 to collect data related to their implementation of the Clean Water
151 Act.

152 Furthermore, this legislation is not needed. FERC already
153 allows aerial data to be used in proceedings under Section 7 of
154 the Natural Gas Act. The only reason to move the legislation is
155 to shortcircuit meaningful environmental assessments and to get
156 around the concerns of private landowners and in some cases local
157 governments who have legitimately barred pipeline companies from
158 surveying after those companies were caught acting illegally
159 without proper authorization. It is a bad concept and a bad bill,
160 and it should not move any further.

161 Mr. Pompeo's other legislative proposal is, on the other

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162 hand, something worth exploring. The Committee Print before us
163 would add a \$10 million threshold to trigger FERC review of a
164 merger or consolidation, since under current law no such threshold
165 exists. I am particularly interested in hearing from Mr. Slocum
166 regarding the concerns he raised with this legislation because
167 this is not a change that we should undertake lightly. I look
168 forward to working with my colleagues to see if there is a way
169 forward on this issue.

170 Finally, I just want to say that I know of no major objection
171 with regard to any of the five hydroelectric construction license
172 extension bills before us. They have all bipartisan support, and
173 I hope we will move quickly on them.

174 I appreciate the Chair and the ranking member for holding
175 this hearing and the witnesses.

176 I would like to yield the remainder of my time to Mr. Kennedy.

177 Mr. Kennedy. Thank you very much, Mr. Pallone. I am
178 grateful.

179 And I want to thank the chairman and the ranking member for
180 holding the important hearing.

181 My constituents face the highest energy rates in the
182 continental United States. So, today's discussion about
183 skyrocketing energy cost is, unfortunately, nothing new to my home
184 State.

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185 But what happened to us two years ago after rates were filed
186 with FERC should never happen, no matter how expensive or cheap
187 your energy bill is. The Commission, which at that time was down
188 to four Commissioners, deadlocked. The rates become effective
189 by operation of law, precluding any avenue for administrative
190 redress.

191 As a result, any now protest of those rates were dismissed
192 because, according to FERC and the Federal Power Act, there is
193 no decision to rehear. That is unacceptable. But there is
194 nothing my constituents could do to protest because of the flaw
195 in the Federal Power Act.

196 My bill, H.R. 2984, the Fair Rates Act, is a simple technical
197 fix to ensure that scenario doesn't happen again. It ensures all
198 administrative and judicial avenues for redress are available
199 whenever new rates take effect, including in the advent of a
200 deadlocked Commission.

201 Today FERC once again is down only to four Commissioners,
202 without a fifth so much as nominated, setting the stage for that
203 event to play out again in the next weeks or in the month ahead.

204 I appreciate FERC's thoughts on the legislation and their
205 work with both me and my staff over the past several years.

206 I look forward to hearing from the witnesses, and
207 particularly Bill Bottiggi, who was willing to come down to

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208 Washington to share his expertise with us.

209 I yield back. Thank you.

210 Mr. Whitfield. The gentleman yields back, and that
211 concludes our opening statements today.

212 So, we have two panels of witnesses. On our first panel we
213 have two witnesses. I would like to welcome them first, Ann
214 Miles, who is the Director of the Office of Energy Projects at
215 the Federal Energy Regulatory Commission, and the other witness
216 is Max Minzner, who is General Counsel, Office of the General
217 Counsel, Federal Energy Regulatory Commission.

218 I thank both of you very much for taking time to be with us
219 today to give your thoughts and ideas about these pieces of
220 legislation.

221 Ms. Miles, I will recognize you first for five minutes for
222 your opening statement.

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223 STATEMENTS OF ANN F. MILES, DIRECTOR, OFFICE OF ENERGY PROJECTS,
224 FEDERAL ENERGY REGULATORY COMMISSION, AND MAX MINZNER, GENERAL
225 COUNSEL, OFFICE OF THE GENERAL COUNSEL, FEDERAL ENERGY REGULATORY
226 COMMISSION

227

228 STATEMENT OF ANN F. MILES

229 Ms. Miles. Thank you.

230 Mr. Whitfield. And be sure to turn the microphone on.

231 Ms. Miles. Good morning, Chairman Whitfield, Ranking
232 Member Rush, and Members of the Subcommittee.

233 My name is Ann Miles, and I am the Director of the Office
234 of Energy Projects at the Federal Energy Regulatory Commission.

235 The Commission is responsible for siting infrastructure,
236 including non-federal hydropower projects, interstate natural
237 gas pipelines and storage facilities, and liquefied natural gas
238 terminals.

239 I appreciate the opportunity to appear before you to comment
240 on the five hydropower bills to extend commencement of
241 construction deadlines and on the Aerial Infrastructure Route
242 Survey Act of 2015.

243 As a member of the Commission's staff, the views I express
244 in this testimony are my own and not those of the Chairman, other
245 than as specifically noted, or of any individual Commissioner.

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246 I will first comment on the hydropower extension bills, H.R.
247 2080, H.R. 2081, H.R. 3447, the bill regarding Jennings Randolph
248 Project No. 12715, and the bill regarding Cannonsville bill,
249 Project No. 13287. Each of the bills seeks to extend the
250 project's commencement of construction deadline to a total of no
251 more than 10 years from the date the project license was issued.
252 The last several Commission Chairmen, as well as the current
253 Chairman, have taken the position of not opposing legislation that
254 would extend the commencement of construction deadline no further
255 than 10 years from the date the licensing question was issued.
256 Because each of these bills provides for commencement of
257 construction deadlines that do not exceed 10 years from the dates
258 of the respective licenses being issued, I do not oppose these
259 bills.

260 I note that all bills, except for H.R. 2081, contain a
261 reinstatement provision, should the period required for
262 commencement of construction expire prior to enactment of the Act.
263 Congress may want to consider including a reinstatement provision
264 in H.R. 2081.

265 Second, I will comment on the Aerial Infrastructure Route
266 Survey Act, H.R. 3021. The bill would amend Section 7 of the
267 Natural Gas Act to provide that data collected by aerial survey
268 will be accepted in lieu of and given equal weight to ground survey

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269 data for the purpose of completing the Commission's natural gas
270 project prefilng process and for completing applications
271 associated with federal authorizations related to such projects.

272 The bill provides that an agency may require that aerial
273 survey data be verified through the use of on-the-ground survey
274 data before project construction. Aerial surveys can be a useful
275 tool for developing project routes and making initial
276 determinations of resources that may be affected by a proposed
277 project.

278 Currently, Commission staff accepts aerial survey data,
279 especially where ground access is not available during the
280 prefilng or application review process. However, most
281 projects' applications include ground survey data for a
282 significant portion of the right-of-way. I do have some concern
283 that waiting to verify large amounts of aerial data until late
284 in the project development process or after issuance of a
285 certificate could in some cases pose difficulties.

286 For example, if it was not discovered until the
287 preconstruction stage that a project might affect historic
288 properties or endangered species, matters that can be difficult
289 to determine with certainty in the absence of on-the-ground
290 surveys, a project proponent might be required at a late stage
291 to amend its approved route or to conduct additional mitigation,

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292 which could cause delay and additional expense.

293 This concludes my remarks, and I would be pleased to answer
294 any questions you may have.

295 [The prepared statement of Ms. Miles follows:]

296

297 ***** INSERT 1 *****

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298 Mr. Whitfield. Ms. Miles, thanks very much for your opening
299 statement.

300 Mr. Minzner, you are recognized for five minutes.

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301 STATEMENT OF MAX MINZNER

302 Mr. Minzner. Mr. Chairman, Ranking Member Rush, Members of
303 the Subcommittee, thank you for inviting me to testify here today.

304 My name is Max Minzner. I am the General Counsel at the
305 Federal Energy Regulatory Commission. Like Ms. Miles, I am also
306 a staff witness and my remarks today don't necessarily reflect
307 the views of the Chairman or any specific Commissioner.

308 I have been asked to testify today on two bills that would
309 amend the Federal Power Act. One is a bill that would modify
310 Section 203 of the Federal Power Act to set a minimum threshold
311 value of \$10 million on the merger or consolidation of facilities
312 belonging to public utilities that would be required for FERC
313 approval.

314 And two, H.R. 2984, a bill that would amend Section 205 of
315 the Federal Power Act, that would permit a party to seek rehearing
316 and subsequent appellate review of any rate change filed under
317 Section 205 that takes effect without Commission action.

318 The first proposed bill would amend a provision of the
319 Federal Power Act, Section 203, that requires public utilities
320 to seek Commission approval before engaging a wide range of
321 corporate transactions. In particular, this bill would change
322 the Act so that utilities would only need prior FERC approval to
323 merge or consolidate facilities, subject to the Commission's

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324 jurisdiction, if the facility's value was in excess of \$10
325 million. In other words, mergers or consolidations of facilities
326 with a value less than that amount would not need FERC approval.

327 This bill would align this provision of the FPA with the other
328 subsections of Section 203(a)(1) which regulate other
329 transactions by public utilities, each of which already contains
330 a \$10 million de minimis threshold. In my view, the proposal to
331 add the same de minimis threshold to Section 203(a)(1)(B) of the
332 FPA could ease the administrative burden on Commission staff and
333 the regulatory burden on industry without a significant negative
334 effect on the Commission's regulatory responsibilities.

335 Transactions below that threshold are unlikely to impose a
336 significant negative impact on competition or the rates of utility
337 customers.

338 Second, H.R. 2984 would permit rehearing and appellate
339 review of changes to rates made under Section 205 when those rates
340 take effect without Commission action. To change rates or other
341 tariff provisions under Section 205, a public utility typically
342 makes a filing with FERC and the Commission will take action on
343 the proposal during a 60-day statutory time period. In very rare
344 cases, the Commission has not acted on that filing within the time
345 period, and the filing takes effect when the period expires.

346 In my view, rehearing and appellate review are not currently

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347 available when a filing submitted pursuant to Section 205 of the
348 FPA takes effect by operation of law. Appellate review is an
349 important procedural avenue, though, for those who do not prevail
350 before an administrative agency. Where review in the court of
351 appeals may be challenging under this legislation because the
352 appellate court will not be able to rely on the Commission's
353 reasoning in the first instance, the possibility of a rehearing
354 order or a remand from the court of appeals should reduce this
355 difficulty and allow the court of appeals to effectively engage
356 in review of the rate change.

357 That concludes my prepared testimony. I look forward to
358 your questions.

359 [The prepared statement of Mr. Minzner follows:]

360

361 ***** INSERT 2 *****

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362 Mr. Whitfield. Mr. Minzner, thank you, and thank both of
363 you for your testimony.

364 At this time I recognize myself for five minutes of
365 questions, and I yield my time to the gentleman from Kansas, Mr.
366 Pompeo.

367 Mr. Pompeo. Thank you very much, Mr. Chairman. Thank you
368 for yielding to me as well.

369 Ms. Miles, thank you for being here this morning. I wanted
370 to ask you a couple of questions about H.R. 3021.

371 Can you describe for me some of the benefits of having access
372 to aerial route survey data for FERC?

373 Ms. Miles. Well, aerial survey can be very useful in making
374 general determinations or in some resource areas more specific
375 determinations. So, certainly, for getting the route and initial
376 determinations, yes, it can be useful.

377 Mr. Pompeo. I appreciate that.

378 Yes, I want to talk about a couple of concerns that you
379 expressed and try to understand them, so that we might be able
380 to make some changes to accommodate them, if we need to.

381 In regard to endangered species, considering all the time
382 and money spent to protect them, isn't it safe to assume that we
383 know where those habitats are?

384 Ms. Miles. Not necessarily on a specific project. The

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22

385 details would be required for us as well as other federal agencies
386 who have responsibility for dealing with the species, the Fish
387 and Wildlife Service, especially for pipeline projects.

388 Mr. Pompeo. But isn't it the case that the company that is
389 intending to do this survey is going to do their best to identify
390 that? That is, they don't want to have big amendments at the end,
391 either. They have an enormous financial incentive to get this
392 right.

393 Ms. Miles. Very understandable. As we are seeing and as
394 I said in our projects so far, most companies, where they can have
395 project access early, are gathering that data. We all want to
396 do as much as we can during prefiling.

397 Mr. Pompeo. Yes. Yes. No, that makes perfect sense, and
398 when you have ground access, that is great. But in those
399 instances where I think this is most important is the places where
400 ground access is not available; it has been denied. And so, the
401 only other option would be being very disruptive to the landowner,
402 either eminent domain or something of that nature. This is a way
403 to mitigate the impact to those landowners and still get the
404 information that we all need to make sure that that certificate
405 is properly granted.

406 It seems to me we have struck the right balance here. Do
407 you agree with that?

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408 Ms. Miles. I think on a narrower course of that it would
409 be. I am not sure the bill is specific about the areas where there
410 isn't access, there isn't on-the-ground access.

411 Mr. Pompeo. That makes sense. And the same thing with
412 respect to historic sites, those are listed. Right? Most often,
413 we don't have to guess. I suppose there is a handful that are
414 unknown, but that has to be the rarest of creatures.

415 Ms. Miles. I am sorry, I missed what --

416 Mr. Pompeo. With respect to historic sites, you expressed
417 some concern that a narrow survey might not adequately identify
418 an historic site. There is a registry of historic sites. I mean,
419 that is not hard to figure out where they are.

420 Ms. Miles. I think that many of those, though, will require
421 on-the-ground work. Yes, there is a register of historic sites,
422 but sometimes there are sites along the way that haven't been
423 identified. We know they are archeological or cultural sites,
424 but they haven't been identified and they are not on the register
425 yet. And so, it could take on-the-ground survey to get at that
426 information.

427 Mr. Pompeo. Yes, I just think about these companies that
428 are trying to do this. They are going to try to get that right.
429 They have the most vested interest in making sure that they do
430 that right. And if they need a ground survey to do it, I am

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431 confident they will work through it. I just think it is important
432 that they and FERC have access to this tool, so that we can be
433 less disruptive to landowners as we are working our way through
434 the process.

435 Thanks for your testimony.

436 Mr. Minzner, a question for you on the amendment to the draft,
437 to Section 203. Tell me what the scale of the burden that this
438 would relieve on FERC. Can you give me manhours? If we adjust
439 these limits to the place that is proposed, tell me what benefits
440 accrue to FERC in terms of reduced burden.

441 Mr. Minzner. Congressman, thank you for that question.

442 Mr. Whitfield. Mr. Minzner, be sure and pull your
443 microphone closer. Interestingly enough, we have people
444 watching this on the internet, and they have complained that they
445 didn't hear everything you said.

446 Mr. Minzner. Thank you, Mr. Chairman.

447 And thank you for your question, Congressman.

448 I don't think I have an estimate of the number of manhours
449 that it would save the Commission. I do know that about 20 percent
450 of the Section 203 applications that FERC considered in fiscal
451 year 2015 would fall below the statutory threshold, and therefore,
452 would not have needed approval if this bill were in place last
453 year.

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454 I can tell you that every filing that comes into the
455 Commission under Section 203 otherwise looks at it closely and,
456 if Commission action is required, a draft order is prepared for
457 the Commission. And so, every filing is taken seriously and staff
458 works on it intensively.

459 Mr. Pompeo. Do you see any downside risk from creating
460 parity between acquisitions and dispositions? Right, they are
461 very similar? Do you see any burden or any downside to what we
462 are proposing in just making parity as between those two types
463 of transactions?

464 Mr. Minzner. Well, the value of the bill, of course, as you
465 said, would bring parity between this provision of Section 203
466 and otherwise. It is, of course, a policy choice of how much
467 oversight Congress wants these mergers to have at the Commission
468 level. In my view, transactions that are below the de minimis
469 threshold pose relatively limited risk to rates or competition.

470 Mr. Pompeo. Great. Thank you very much.

471 And thank you again for yielding, Mr. Chairman.

472 Mr. Whitfield. At this time I recognize the gentleman from
473 Illinois, Mr. Rush, for five minutes.

474 Mr. Rush. Thank you, Mr. Chairman.

475 Now, Ms. Miles, in your statement you note that, currently,
476 "most project applications include ground surveys for a

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477 significant portion of the right-of-way." You also state that
478 "waiting to verify large amounts of aerial data until late in the
479 project development process, or after issuance of a certificate,
480 could in some cases pose difficulties."

481 Are you concerned that policy change outlined in the AIR
482 Survey Act of 2016 may impact, actually, the need to raise an
483 additional cost for our pipeline projects rather than expediting
484 these same projects? And can you explain your concerns?

485 Ms. Miles. I think if it is carried out similarly to now,
486 where the companies are doing the on-the-ground surveys where they
487 have access, and in the majority of the cases companies do have
488 access to a good bit of survey route and are able to do the
489 on-the-ground surveys in the earlier stage of the certification
490 process, as long as that continues, I think that is fine. As I
491 said in my testimony, aerial survey data can be useful where there
492 is not on-the-ground access, as long as there is the opportunity
493 to verify that later in the process by actual on-the-ground
494 surveys for the resource areas where it would be necessary. It
495 is not necessary for all resource areas.

496 Mr. Rush. Thank you.

497 Mr. Minzner, in your statement you cited serial mergers as
498 a possible concern with the merger in Section 203 of the Federal
499 Power Act. You state that, "The Commission would no longer have

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500 the authority to review and approve mergers valued at less than
501 \$10 million even in situations where the merger took place as one
502 of a series of transactions that exceeded the limit in total."

503 However, you also state that you believe that FERC has other
504 tools available to protect consumers and the public interest if
505 circumstances such as what I describe would arise. Can you
506 explain what are these other tools that the FERC has at its
507 disposal that would help in the situation that I describe?

508 Mr. Minzner. Yes, Congressman. Thank you.

509 The Commission has a range of regulatory tools that it
510 exercises in its oversight of public utilities regulated under
511 the Federal Power Act. For instance, if a utility gains market
512 power and is in a situation where it has authority to charge
513 market-based rates, the Commission can modify or eliminate that
514 authority to charge market-based rates.

515 To the extent that a public utility is operated in one of
516 the Commission-approved organized wholesale electric markets,
517 there are a range of Commission-approved mitigation measures that
518 are designed to limit or eliminate the exercise of market power.
519 And, of course, the Commission retains its enforcement authority
520 to regulate misconduct that is a violation of Commission rule or
521 order or rises to a level of market manipulation.

522 Those are three examples of mechanisms that the Commission

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523 would have to regulate the exercise of market power or other
524 misconduct, even in the absence of the merger authority.

525 Mr. Rush. Thank you, Mr. Chairman. I yield back.

526 Mr. Whitfield. The gentleman yields back.

527 At this time I recognize the gentleman from Texas, Mr. Olson,
528 for five minutes.

529 Mr. Olson. I thank the Chair.

530 And welcome to our friends from FERC.

531 I am going to talk about natural gas and pipelines. The
532 questions will be mostly for Ms. Miles, but, Mr. Minzner, if the
533 spirit so moves you, please answer if you feel comfortable.

534 There has been big change in the last decade. Our electric
535 grid relies heavily on natural gas. If the President's Clean
536 Power Plan survives in court, that trend will continue and
537 accelerate.

538 Gas is critical as a base of power. It is immune to weather,
539 and it is critical for ramping up and down wind and solar on our
540 grids. Gas can't keep the lights on without a robust pipeline
541 system. And that is why this committee examines legislation
542 designed to make the permitting process more reasonable.

543 My first question is for you, Ms. Miles. It is a broad one
544 on the pipeline landscape. I have a few specifics about siting.

545 First, what trends do you see in pipeline construction and

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546 what does this tell you about the future of natural gas?

547 Ms. Miles. We have seen a tremendous increase in the
548 workload before us, both for natural gas pipelines as well as for
549 liquefied natural gas facilities, at least doubling in the number
550 of projects that are before us, in some cases tripling in the
551 capacity that would move through those pipelines, and similar
552 increases in interest in liquefied natural gas projects.

553 Mr. Olson. Mr. Minzner, care to comment, sir?

554 Mr. Minzner. Nothing to add to Ms. Miles.

555 Mr. Olson. That is okay. That is fine.

556 Again, Ms. Miles, as FERC is a new agency for siting natural
557 gas pipelines that cross across state lines, you all are
558 responsible for sending the schedule and coordinating all the
559 various environmental permits, is that correct?

560 Ms. Miles. Yes, that is correct.

561 Mr. Olson. Would you prefer to review those various
562 permits, like Clean Water Act permits and all the other boxes that
563 need to be checked, done concurrently on the order they are
564 submitted as opposed to successively? Do you prefer that,
565 concurrently as opposed to successively?

566 Ms. Miles. The more that we can work at the same time in
567 gathering information and reviewing that information, working
568 together on our environmental documents, yes, that is a good

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569 thing.

570 Mr. Olson. Concurrently versus successive, okay, great.

571 Are you aware of any situations where a state agency, acting
572 pursuant to a federal delegated authority, has failed to meet the
573 schedule established by FERC? Anytime this happened, a state
574 agency not meeting your schedules? Are you aware of that?

575 Ms. Miles. I am sorry, I am not prepared to answer that
576 today, but I would be happy to get back to you on it.

577 Mr. Olson. Thank you.

578 Mr. Minzner, I would ask you to swing at that one, sir.

579 Mr. Minzner. I also don't know the answer to that question,
580 but I would second Ms. Miles' comment, to the extent that we can
581 collaboratively with other agencies, that is an important and
582 valuable thing for us to do.

583 Mr. Olson. Final question about LNG. I have heard that
584 FERC has slipped past in some deadlines recently on some LNG export
585 terminals. As you all know, the first export of LNG to scheduled
586 to happen later this month, maybe early March, at Sabine Pass in
587 Louisiana, right next to Texas, my own state.

588 With a weak Commander-in-Chief, the best tool we have to hurt
589 OPEC, Iran, ISIS, and Russia is taking their money from our energy,
590 getting on the global market, selling our natural gas to our
591 allies.

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592 What is FERC doing to address the energy exports in a timely
593 manner, to make sure we get that energy on the market now and hurt
594 OPEC, hurt Russia, hurt ISIS, and hurt Iran?

595 Ms. Miles. As with all the projects before us, both LNG and
596 pipeline projects, we work to expedite them as best we can. Well,
597 for LNG projects, they are required to use our prefiling process.
598 We think that is a very good opportunity for all the agencies,
599 tribes, as well as the company, to look at what issues and what
600 information is needed. So that when the application is filed,
601 it is a complete application and we are able to go as quickly as
602 we can to our environmental analysis of the project.

603 Mr. Olson. Yes, please, please expedite because another
604 project right across the river from Sabine Pass is having some
605 problems moving forward with the permitting process. So, please,
606 please do that, because, then, that is the biggest tool we have
607 to battle the guys who don't like us, again, OPEC, ISIS, Iran,
608 and Russia.

609 I yield back. Thank you.

610 Mr. Whitfield. The gentleman yields back.

611 At this time the Chair recognizes the gentleman from
612 California, Mr. McNerney, for five minutes.

613 Mr. McNerney. I thank the chairman, and I thank the
614 witnesses this morning.

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615 Ms. Miles, what, if anything, would be missed by relying on
616 aerial surveying in lieu of ground surveys?

617 Ms. Miles. I think the issue that we have is we need to make
618 sure that we and the other agencies who have federal permits that
619 need to be carried out have the information they need in order
620 to do that. For some resource areas, as I have said, it may
621 require an on-the-ground survey. So, it can be done sequentially
622 with an aerial survey first, as long as the data is collected
623 before the certification or at least before construction occurs.

624 Mr. McNerney. Well, in your opinion, can ground surveying
625 be completely eliminated in any conditions?

626 Ms. Miles. I do not believe right now that ground surveys
627 in some instances could be eliminated.

628 Mr. McNerney. Although in your experience, though, there
629 are some common causes for delayed -- or what are some of the common
630 causes for delays in construction time, start times?

631 Ms. Miles. The certificates that are issued will include
632 requirements for the company to get any outstanding permits. I
633 don't have data across the board, but in some projects we are
634 needing to do water quality certification, have that
635 certification from the agencies or Endangered Species Act
636 consultation completed.

637 Mr. McNerney. Well, are there any areas in which FERC can

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638 help improve the permitting, licensing, and construction
639 processes?

640 Ms. Miles. I think what we are trying to do is to work during
641 the prefiling. In pipelines, also, it is not a requirement that
642 companies use the prefiling process, but we do encourage the large
643 pipelines to do so, and they have been doing it routinely. It
644 is during that prefiling process that both we and the companies
645 are working with not only us, but the other agencies that are
646 involved. Many, many agencies are cooperating agencies with us
647 in our environmental document, and that is a very valuable thing
648 to do.

649 Mr. McNerney. I mean, so you are saying that the value is
650 in the pre-application process, the work together cooperatively
651 to find some of the hotspots and fix those beforehand. But what
652 is the difference in terms of ultimate time between the initial
653 application and the licensing if you take into account the time,
654 the pre-licensing time?

655 Ms. Miles. As long as the application that is filed is
656 complete, then we are able to move quite quickly to the
657 environmental document. I am not quite sure --

658 Mr. McNerney. I mean, ultimately, if you want to get a
659 permit, how much time do you save by going through a pre-permitting
660 process as opposed to just going into it and wrestling with FERC

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661 during the permitting process?

662 Ms. Miles. Our experience is that most projects move more
663 quickly if they have used the prefiling process. There are some
664 that it is not necessary on, where there aren't a lot of issues.
665 But, where there are, it is a valuable thing to use.

666 Mr. McNerney. Okay. Thank you.

667 Mr. Minzner, you mentioned that FERC has tools to protect
668 consumers and the public interest if a serial merger is taking
669 place. How often does FERC use those tools and have they ever
670 been used when reviewing actions under Section 203?

671 Mr. Minzner. Well, our primary tool, when looking at
672 actions under 203, is, in fact, the merger authority. The broad
673 set of tools I referred to involves FERC's overall authority of
674 the rates, terms, and conditions of the services of public
675 utilities.

676 One of the goals of the Section 203 and the merger approval
677 is to ensure that a merger does not have an effect on competition
678 or rates. That is one mechanism that FERC carries out its
679 statutory mission to ensure that electric rates are just and
680 reasonable.

681 The other tools are other mechanisms. The Commission is
682 constantly looking at the rates that are filed by electric
683 utilities that operate in Commission markets. It has an active

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684 program of reviewing the market-based rates. It is also
685 continually looking at the mitigation efforts in the organized
686 wholesale markets. So, it is something the Commission does
687 routinely as it is looking at the behavior of public utilities.

688 Mr. McNerney. Can you answer briefly how many enforcement
689 actions did FERC take in 2015?

690 Mr. Minzner. I am not aware of the number of enforcement
691 actions the Commission has taken in 2015. We will have to get
692 back to you with that.

693 Mr. McNerney. Thank you, Mr. Chairman.

694 Mr. Whitfield. At this time the Chair recognizes the
695 gentleman from Illinois, Mr. Shimkus, for five minutes.

696 Mr. Shimkus. Thank you, Mr. Chairman.

697 I just have one issue. It is on, I think, the last bill
698 noticed. Hopefully, I will be here for the second panel for Mr.
699 Marsan's testimony.

700 But I want to weave the story about language of law,
701 congressional intent, and, then, obviously, agency
702 implementation, or lack thereof, which is a thing that we always
703 talk about here and that our public always harasses about, because
704 we have the language of law. We have Members who are present in
705 the Conference Committee. We have the record, but, then, somehow
706 through agency or Commission activities, things don't handle.

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707 And then, you fall into litigation and lawsuits and all this other
708 stuff.

709 So, let me go back to the 2005 energy bill. Again, Mr. Marsan
710 has it, I think, properly identified in his testimony. He is on
711 the second panel. And I was lucky to serve on the Conference
712 Committee for the passage of that bill, led by at that time
713 Chairman Barton.

714 The sole purpose of one of the revisions was to update the
715 pricing of the cost of doing a project from decades ago to a \$10
716 million threshold where, if it is under that, Commission
717 involvement was not needed. We upped that dollar amount to they
718 needed to be, based upon \$10 million. So, I think the original
719 threshold was \$50,000 40 years ago. That was the intent. That
720 is what we did. The law was passed.

721 Now it seems that on the equation line there is a debate about
722 purchases versus divestitures, and that our argument would be that
723 the intent of the legislation in the 2005 energy bill was to set
724 a new threshold for a dollar amount when the Commission should
725 be involved. We don't think you all are doing that. That is why
726 I think we have the last bill in this series of bills listed for
727 the hearing, to address that.

728 We sought to address this issue in H.R. 8 last year, and we
729 appreciate that we are staying committed, this committee, to make

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730 this simple fix once and for all on this piece of standalone
731 legislation. We are just trying to really, unfortunately, fix
732 something we don't think needs to be fixed, based upon Commission
733 reading into intent of the language of law that was never meant
734 to be intended by those who served on the Conference Committee.

735 Do you understand the weaving of the question and do you have
736 any comments to that?

737 Mr. Minzner. Yes, Congressman. I am not aware of any
738 published legislative history in 2005.

739 Mr. Shimkus. Well, I can tell you what it is.

740 [Laughter.]

741 I was there. Some of us were there.

742 Mr. Minzner. Yes, you are correct that, prior to that
743 legislation, Section 203 contained a \$50,000 figure that the
744 Commission had interpreted through its regulations as applying
745 to all the provisions of Section 203. As a result of the change
746 in EPAC 2005, and the statute was broken into subsections, three
747 of which contained a \$10 million figure, and the one that we are
748 discussing today currently does not. You are correct, the
749 Commission has interpreted that as not imposing any de minimis
750 threshold for mergers and consolidations. Obviously, this would
751 add that provision into the statute and put us in a situation where
752 the same financial threshold applies to all provisions under

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753 Section 203, which was the case prior to EPAC 2005. Then, of
754 course, it was \$50,000 rather than \$10 million.

755 Mr. McNerney. Thank you. That is, actually, a great answer
756 because I think, in answering that, you identified the problem.
757 Three of the provisions were accepted under the \$10 million, and
758 the Commission by themselves decided that one did not. We would
759 argue that it was always the congressional intent for \$10 million
760 to be that. So, I would hope that our colleagues would ask
761 questions as we move this forward and get this fixed in an area
762 that we probably shouldn't have needed to fix.

763 With that, Mr. Chairman, thank you, and I yield back.

764 Mr. Whitfield. The gentleman yields back.

765 At this time the Chair recognizes the gentleman from New
766 York, Mr. Tonko, for five minutes.

767 Mr. Tonko. Thank you, Mr. Chair.

768 Ms. Miles and Mr. Minzner, thank you for being here today.

769 Ms. Miles, at what point during the natural gas pipeline
770 application process are data from surveying used?

771 Ms. Miles. The data that is gathered would be used in our
772 environmental document.

773 Mr. Tonko. So, your prefiling?

774 Ms. Miles. Once the application is filed, we would be
775 looking to make sure that we have all the data that we need to

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776 analyze the issues that have been raised. And then, that would
777 be analyzed in that document and made available to the public to
778 comment on it.

779 Mr. Tonko. Okay. Thank you. Today is FERC able to accept
780 aerial survey data?

781 Ms. Miles. Yes, we are.

782 Mr. Tonko. And what about the Army Corps of Engineers or
783 any of our state environmental agencies?

784 Ms. Miles. I am not able to speak for them. I understand
785 that they do accept it differently, but I have not experienced
786 that. So, I am not able to speak for them.

787 Mr. Tonko. Okay. I appreciate that. I understand that
788 FERC is the coordinating agency on these projects, but it seems
789 to me that this bill is really about the data that other agencies,
790 including non-federal agencies, are willing to accept as they work
791 on their studies as part of the application process. I think it
792 would be important to hear from those agencies also.

793 Ms. Miles, this bill allows aerial data to be verified by
794 ground surveys after the fact, is that correct?

795 Ms. Miles. Yes, after the certification would be issued,
796 then where there is a need to verify the data by ground survey,
797 that would be done then, before construction could begin.

798 Mr. Tonko. Okay.

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799 Ms. Miles. And the license would spell that out. I mean,
800 the certification would spell out exactly what is needed for which
801 resources.

802 Mr. Tonko. Okay. And do you foresee the potential for
803 problems or delays if an agency decides that it needs this data
804 to be verified much later in the process?

805 Ms. Miles. As I said in my testimony, there are some cases
806 where it has the potential to delay or add additional expense if
807 there is more analysis or perhaps even a rerouting of the pipeline
808 at a later date.

809 Mr. Tonko. Thank you. And when a natural gas pipeline
810 application is finalized and submitted, about how long does it
811 take for FERC to make a decision on any given project?

812 Ms. Miles. I am sorry, could you restate the question,
813 Congressman?

814 Mr. Tonko. Sure. When a natural gas pipeline application
815 is finalized and submitted, about how long does it take for FERC
816 to make its decision on a project?

817 Ms. Miles. That does vary from project to project, but our
818 record shows that we have issued about 92 percent of our projects
819 within one year from the filing of the application.

820 Mr. Tonko. So, pretty much an average of perhaps less than
821 a year?

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822 Ms. Miles. Yes.

823 Mr. Tonko. And since 2005, FERC has authorized a lot of
824 natural gas pipeline infrastructure, over 10,000 miles of
825 interstate transmission pipeline. Am I right in that assumption,
826 in that fact?

827 Ms. Miles. I would need to check that fact.

828 Mr. Tonko. Okay. This bill is a solution, I believe, in
829 search of a problem. FERC is able to process applications
830 currently at an appropriate speed while allowing for public
831 discussion and thorough environmental review. My fear is that
832 a transition to primarily aerial surveying would alter that
833 dynamic and it would promote expediency at the expense of property
834 owners' rights. So, with that, I think we should be somewhat
835 concerned with these proposed changes and err on the side of
836 property owners and their rights.

837 I thank you both again for your testimony today.

838 With that, Mr. Chair, I yield back the balance of my time.

839 Mr. Whitfield. The gentleman yields back.

840 At this time the Chair recognizes the gentleman from Ohio,
841 Mr. Latta, for five minutes.

842 Mr. Latta. Well, thank you, Mr. Chairman, for today's
843 hearing, and thank you very much to our witnesses for being with
844 us today. We appreciate your testimony today.

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845 I know some of the questions, it is kind of like it might
846 sound a little bit redundant, but we are just kind of asking, not
847 quite asking the same questions the same way, but just with a
848 little bit different twist.

849 Ms. Miles, I would ask you the first few questions. Do you
850 think that the changes in H.R. 3021 work to balance environmental
851 concerns while allowing FERC to more effectively fill its mission
852 as the lead agency under Section 7 of the Natural Gas Act?

853 Ms. Miles. I think the changes, as I have said, the changes,
854 we are accepting aerial survey data at present. However, the
855 companies are tending to do on-the-ground survey when they have
856 access, and that is the key.

857 Mr. Latta. So, when you are saying you are accepting it
858 right now, FERC doesn't have any objection right now for allowing
859 aerial surveys for that information to come before you then?

860 Ms. Miles. We do not.

861 Mr. Latta. Okay. Would FERC object to a state agency using
862 aerial survey data to issue a conditional Clean Water Permit when
863 it is required for a FERC certificate?

864 Ms. Miles. I am not able to speak for the other agency.

865 Mr. Latta. Okay. And does FERC have any reason to oppose
866 H.R. 3021?

867 Ms. Miles. I don't think there is a reason to oppose. We

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868 have mentioned what could possibly be a problem if we get a
869 majority of the survey data through arials late in the process.

870 Mr. Latta. Okay. Thank you.

871 Mr. Minzner, if I could turn to you, regarding the Fair Rates
872 Act, in those situations when filings have taken effect under
873 Section 205 without a Commission order, how does the Commission
874 handle the rehearing requests of those parties that have sought
875 rehearing?

876 Mr. Minzner. Under the current structure of the Federal
877 Power Act, my view and the stated view of the Commission is that
878 rehearing does not lie. So, the rehearing conditions are simply
879 dismissed. That has happened twice. So, rehearing is just not
880 acted on.

881 Mr. Latta. If the Commission dismisses these rehearing
882 requests, what recourse do the parties have? Can they appeal the
883 decision to the court of appeals?

884 Mr. Minzner. Our position is, under the current version of
885 the Federal Power Act, there is no opportunity for rehearing if
886 the rates take effect as a matter of law. And because rehearing
887 is a prerequisite to appellate review, there is no appellate
888 review, either.

889 Mr. Latta. Thank you.

890 And you note in your testimony that the Fair Rates Act would

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891 have significant benefits. Please explain on these benefits,
892 particularly with respect to the parties seeking rehearing before
893 the Commission and, also, parties seeking a redress in the court
894 of appeals.

895 Mr. Minzner. Rehearing and appellate review are important
896 ways where individuals and entities that have not succeeded at
897 the administrative stage could seek review of administrative
898 action. It is an important procedural protection, and the
899 primary benefit is that it would allow individuals who disagree
900 with the action of the agency to seek redress in the court of
901 appeals.

902 Mr. Latta. Thank you.

903 Mr. Chairman, I am going to yield back the balance of my time.

904 Mr. Whitfield. Okay. The gentleman yields back.

905 At this time the Chair recognizes the gentlelady from
906 California, Ms. Capps, for five minutes.

907 Mrs. Capps. Thank you, Mr. Chairman, for holding this hear
908 and, also, to today's witnesses for your testimonies.

909 We all agree that we need to ensure a regulatory landscape
910 that successfully addresses energy needs across this nation. But
911 decisions we make regarding our nation's energy infrastructure
912 could have both positive and negative impacts on our local
913 economies, on public health, and environmental safety.

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914 Some of these impacts have been seen, unfortunately,
915 negatively in my District. Some of you may know that in May of
916 last year an oil pipeline ruptured near the coast in my District,
917 resulting in a spill that both polluted the land and the adjoining
918 water. This oil fouled our beaches, and they are key for
919 recreation and tourism in the area, marred the pristine landscape,
920 threatening the health of local plants and animals as well as the
921 economy of the region. Questions about the safety of local seafood
922 forced fisheries to close, resulting in lost wages, uncertainty
923 in this industry, which is critical to the economy and culture
924 of California's central coast.

925 Now cleanup efforts have remediated much of the immediate
926 impact and fisheries have reopened, but we still have no idea what
927 the long-term impacts will be. While I know that the AIR Survey
928 Act that we are discussing today is focused on natural gas
929 pipelines, the fact is that extraction, storage, and
930 transportation of fossil fuels, whether oil or natural gas, this
931 is a dirty and dangerous business.

932 The ongoing Aliso Canyon natural gas leak just south of my
933 District is a clear example of this danger. Not only is the
934 methane from this leak significantly increasing the region's
935 greenhouse gas emissions, it is leading to adverse health impacts
936 and it is forcing the relocation of nearby residents.

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937 So, we must prioritize the health of our constituents, the
938 safety of the environment, make sure we are working to ensure these
939 priorities. One way to do that, of course, is to continue the
940 push toward adopting clean renewable energy. And while we do
941 that, we must also ensure that we are doing all we can to ensure
942 safest practices for the development and operations of our
943 nation's energy infrastructure until we can fully replace fossil
944 fuels.

945 Utilizing all the tools available to us when making decisions
946 regarding public health and environmental safety makes a great
947 deal of sense. However, I have several concerns regarding the
948 replacement of one method with another when they may be
949 fundamentally unable to produce the same results.

950 My question to you, Mrs. Miles, it touches on what many have
951 been asking about, but I want to zero-in on the detail. Are aerial
952 surveys able to identify all of the same details as ground surveys?
953 For example, would aerial surveys be able to unequivocally state
954 whether endangered or threatened species are present or if the
955 landscape is a seasonal wetland, something of this nature?

956 Ms. Miles. Thank you, Congresswoman.

957 As I said, aerial surveys are not able to identify some
958 particular resources in the detail that is needed to do an analysis
959 and make a finding. Some of those that we have found that is the

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960 case to be, endangered species, cultural resources, and it could
961 be wetlands also.

962 Mrs. Capps. Thank you.

963 You know, my fear is that the language in this bill requires
964 different survey methods to be given equal weight and allows for
965 one method to functionally replace the other, regardless of
966 equivalency. Furthermore, while I appreciate that this
967 discussion addresses one aspect of the energy infrastructure
968 development, it is only the beginning of a much larger
969 conversation we must have in this committee regarding not only
970 pipeline siting, but also pipeline safety and supporting
971 renewable energy technologies.

972 Mr. Chairman, I do look forward to continuing to work with
973 you and other efforts to improve our nation's energy
974 infrastructure.

975 Thank you very much, and I have no further questions. I will
976 yield back.

977 Mr. Whitfield. The gentlelady yields back.

978 At this time the Chair recognizes the gentleman from West
979 Virginia, Mr. McKinley, for five minutes.

980 Mr. McKinley. Thank you, Mr. Chairman.

981 Director Miles, if I could focus back on the five
982 hydroelectric projects, there doesn't seem to be any real issue

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983 with those. So, I just wanted to look a little bit more. Is this
984 common to seek an extension? How common is that to occur for an
985 extension under the Section 13?

986 Ms. Miles. I don't have any statistics on it, but we do get
987 some requests.

988 Mr. McKinley. So, I am curious whether this is becoming more
989 problematic. Do we need to do some things here to streamline the
990 process to do that? You don't have any opinion on that then?

991 Ms. Miles. No. The one thing that I do see that is
992 happening is we are issuing a lot more licenses for original
993 construction of hydropower at existing dams. Years ago, 10 years
994 ago, we were doing all relicensing.

995 Mr. McKinley. Right.

996 Ms. Miles. So, there is a lot of interest now in adding
997 hydropower at existing dams, so there are more projects out there
998 to go through the task of getting to construction.

999 Mr. McKinley. Director, if we didn't pass this, what would
1000 happen to the license? Would they have to start all over again?

1001 Ms. Miles. Well, we would be required to terminate that
1002 license. It would expire. They would have to begin again. If
1003 the data is available and current enough, we would try to use as
1004 much as we possibly could, but we would need to go through the
1005 process with another public comment period.

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1006 Mr. McKinley. So, essentially, it would delay the
1007 hydroelectric, it would delay the whole project, would it not?

1008 Ms. Miles. It would delay construction, yes, to go through
1009 that process.

1010 Mr. McKinley. And I can remember about three years ago we
1011 had a representative of FERC here talking about, if we didn't start
1012 replacing some of the coal-fired power plants, particularly in
1013 the Mid-Atlantic, that we were going to see some rolling brownouts
1014 by next summer, mid-2017. So, I think it is very imperative that
1015 we keep moving to try to make that replacement as long as it is
1016 available.

1017 I thank you for your testimony and I hope people will consider
1018 without any more question pushing these five projects.

1019 Thank you very much. I yield back the balance of my time.

1020 Mr. Whitfield. The gentleman yields back.

1021 At this time the Chair recognizes the gentleman from Texas,
1022 Mr. Green, for five minutes.

1023 Mr. Green. Thank you, Mr. Chairman and the Ranking Member,
1024 for holding the hearing.

1025 I want to thank our witnesses for being here.

1026 Ms. Miles, it is clear from today's hearing that FERC has
1027 a lot on its plate. Currently, natural gas exports, pipelines,
1028 the LNG, and hydropower liability all fall under FERC. In

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1029 addition, if the House passed H.R. 8, it would expand FERC's
1030 permitting authorities to most of these sectors.

1031 In your position as Director of the Office of Energy
1032 Projects, most of these issues fall in your office. Has the
1033 increased activity of the last few years affected your office?
1034 Have you required additional experts or have you been able to make
1035 do with the existing personnel?

1036 Ms. Miles. We regularly review our resources to make sure
1037 they match with our tasks before us, and we discuss with the
1038 Chairman any needs for additional. We also use our contracting
1039 availability to help us with the peaks and valleys that are an
1040 inevitability of applications for pipelines, LNG, and hydropower
1041 projects.

1042 Mr. Green. Okay. We are on the horizon of another
1043 appropriations season. Does the Office of Energy Projects possess
1044 the resources to handle additional responsibility and activities
1045 or do you anticipate additional needs?

1046 Ms. Miles. I think we are managing as we are able, and that
1047 is something that I talk about with our Chairman. It comes in
1048 as our budget requests.

1049 Mr. Green. Okay. FERC occupies such a unique role of
1050 coordinating with all the federal agencies and state. Can you
1051 identify for us the top challenges facing the projects your office

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1052 handles? What slows down the projects the most?

1053 Ms. Miles. As I have said before, I think one of the most
1054 important things for the gas projects, and, actually, for the
1055 hydro projects also, is using our prefiling process, that it can
1056 be extremely valuable if everyone is active during that time.

1057 The other thing that is very important is that the
1058 information that is needed for us to move forward and for other
1059 agencies also to do their permitting is collected during that
1060 prefiling stage. So that when the application is filed, it is
1061 complete and we are able to notice and go right to our
1062 environmental document.

1063 Mr. Green. Let me follow up on that. Is there a particular
1064 federal agency or state agency that doesn't respond as timely?
1065 Because I know prefiling helps a lot, but it still can be slowed
1066 down by agencies not getting back the information for you.

1067 Ms. Miles. Right. I think we work really well to bring all
1068 the agencies to the table during this prefiling time and have
1069 regular conversations with them. Things vary from project to
1070 project in different parts of the country. So, I can't speak to
1071 any one in particular.

1072 Mr. Green. Okay. I know from Texas, obviously, we always
1073 have a lot of natural gas pipelines and cross-border with Mexico
1074 because we are actually selling more gas to Mexico. I was just

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1075 wondering if it was a particular problem.

1076 As you know, this can be challenging and potentially when
1077 dealing with state and local officials that possess different
1078 points of view than the Commission or the applicants. What
1079 remedial steps can FERC take as the coordinating agency if state
1080 and local officials do not cooperate in a timely fashion?

1081 Ms. Miles. Well, we try to work with them. If someone is
1082 not able to come to the table, to bring them to the table, so they
1083 do participate. If not, we certainly make sure they understand
1084 how to participate in the process. And then, we keep the process
1085 moving along.

1086 Mr. Green. So, is there any problem with any individual
1087 state that they may not get back with you as quick as they can
1088 or participate?

1089 Ms. Miles. I can't speak to any in particular agency that
1090 that is the case. On one project every now and then we will have
1091 to work a little harder at it.

1092 Mr. Green. And could the same be said about a federal
1093 agency, because you have to also coordinate all the federal
1094 agencies along with the state?

1095 Ms. Miles. Yes, many, many of the federal agencies and state
1096 agencies who are carrying out federal authorizations are
1097 cooperating agencies with us in our environmental document. That

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1098 is a very good way to have a simultaneous look at effects on all
1099 resources. So, we encourage that, and most agencies are very
1100 interested in doing that.

1101 Mr. Green. Okay. Thank you, Mr. Chairman. I yield back.

1102 Mr. Whitfield. The gentleman yields back 16 seconds.

1103 At this time I recognize the gentleman from Virginia, Mr.
1104 Griffith, for five minutes.

1105 Mr. Griffith. Thank you, Mr. Chairman.

1106 Ms. Miles, I have listened to your testimony in regard to
1107 H.R. 3029, the Pompeo bill. I think what you are saying makes
1108 a lot of sense. I like aerial surveying in the first place, but
1109 I do think that some of my friends on the other side aisle have
1110 raised some issues, and you have touched on it a little bit as
1111 well in regard to being able to identify everything on the ground.
1112 You have indicated that there ought to be something before
1113 construction, if we use an aerial survey, because you can't spot
1114 salamanders and certain small creatures or understory plants
1115 necessarily. You might spot areas that look like they might have
1116 that growth, but you can't do it.

1117 Is there anything in the bill that we need to change to make
1118 sure we get to where you want? I want to see the aerial surveying
1119 be equal, at least in the initial stages, as you have indicated
1120 you are fine with. But is there anything in the language that

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1121 is currently proposed that we ought to change or look at in order
1122 to assure that we are also making sure that we don't overlook some
1123 important ecological asset?

1124 Ms. Miles. I am not looking at the bill this moment.

1125 Mr. Griffith. Yes, ma'am.

1126 Ms. Miles. We would be happy, staff would be happy to work
1127 with the committee on that.

1128 I think the one thing that I have commented on is that, where
1129 ground access is available, currently, we are finding that the
1130 companies -- and they want to also -- are providing that data.
1131 So, that is an important point.

1132 Mr. Griffith. And I agree with that. It is also good if
1133 you are trying to figure out where you want to a line. I think
1134 it is quick. Particularly, you may see some problems if you are
1135 looking at siting a gas pipeline, that you can do that sometimes
1136 a lot faster in the air than you can on the ground. So, there
1137 are advantages and disadvantages, I suppose, to both.

1138 In regard to H.R. 2984, Ms. Miles, I am not going to ask you
1139 to comment, the Fair Rates Act. I would just have to say to Mr.
1140 Kennedy that I have a lot of constituents who are willing to dig
1141 coal, ship it to you by train or truck. We can lower your electric
1142 prices. We don't even need FERC action. What we may need is a
1143 little EPA action. But if we were allowed to, we could take care

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1144 of your high rates for you.

1145 Mr. Kennedy. You are a good man, my friend.

1146 [Laughter.]

1147 Mr. Griffith. With that, Mr. Chairman, I yield back.

1148 Mr. Whitfield. Thanks, Mr. Griffith.

1149 At this time I recognize the gentleman from Vermont, Mr.
1150 Welch, for five minutes.

1151 Mr. Welch. Thank you very much, Mr. Chairman, and thank you
1152 for being here and helping us.

1153 I want to just talk a little bit about the Kennedy bill. It
1154 seems like it is just our linguistic mistake that there can be
1155 no appeal when the statute essentially was designed to give the
1156 ratepayers an opportunity to appeal. Are there any policy
1157 reasons that would suggest that what the Kennedy bill is proposing
1158 would in any way interfere with the capacity of FERC to carry out
1159 its responsibilities? I guess I will ask you that, Mr. Minzner.

1160 Mr. Minzner. Well, the bill is aimed at a situation that,
1161 while it has occurred, is relatively unusual. It has not been
1162 a common occurrence that rates have changed without a Commission
1163 order.

1164 Mr. Welch. No, I get that, but it happens. So, the way it
1165 is working around here is that a lot of times we don't get the
1166 new person appointed, so we can have a two-two situation, not just

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1167 in FERC, but otherwise. The problems we have in trying to get
1168 a person confirmed, or the Senate has, shouldn't be the ratepayer
1169 problem, I think is the point of the bill.

1170 What I am asking you is that, if this bill were passed, and,
1171 then, it meant that if it were a two-two decision, ratepayers would
1172 be able to do what they are now entitled to do if it were a three-two
1173 decision or a five-zero decision. Would that in any way
1174 compromise the responsibilities of FERC?

1175 Mr. Minzner. I think the only difficulty I foresee with the
1176 bill is one of reviewability or administrative functionality at
1177 the court of appeals. Right now, when an action goes up to the
1178 D.C. Circuit, they review the Commission order and they review
1179 the action. The D.C. Circuit may have a more difficult challenge
1180 if there is nothing to review from the Commission, but --

1181 Mr. Welch. I don't understand it. If there is a two-two
1182 decision, there is a two-two decision, right?

1183 Mr. Minzner. That is not exactly right, Congressman.
1184 There is no Commission action because it is two-two. It is not
1185 a situation like you might see from the U.S. Supreme Court where
1186 there is an actual opinion with two votes on either side. Here
1187 it just takes effect and there isn't a decision, and that would
1188 be the difficulty in administrative review. The court of appeals
1189 wouldn't have anything to look at. I do think that is a difficulty

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1190 that could be overcome, if you were concerned about that.

1191 Mr. Welch. Right, by writing a decision or having the two
1192 write their decision and the two write theirs. So, there would,
1193 then, be something to review.

1194 Mr. Minzner. When it has happened in the past, there is
1195 simply no Commission order. There is nothing on either side.

1196 Mr. Welch. No, I get that, and I think the effort here is
1197 to try to provide that opportunity. Because it just seems kind
1198 of bizarre, whichever side of the case you are on, that you have
1199 got a statutory right to appeal unless it is deadlocked at
1200 two-to-two. So, all right.

1201 Let me just go on to the second thing. Anyway, Mr. Kennedy,
1202 thank you for that legislation, which I hope we can all support.

1203 The Supreme Court decision on demand response, from my point
1204 of view, is a tremendous tool that is going to help FERC try to
1205 help ratepayers keep their costs down. Can you talk, Ms. Miles,
1206 I guess, a little bit about that, or Mr. Minzner, and how you see
1207 that as being a useful tool for FERC in trying to address ratepayer
1208 concerns? And that is commercially and individual.

1209 Mr. Minzner. Sure, I can answer that question. The Supreme
1210 Court largely agreed with the Commission's argument that there
1211 is Commission jurisdiction to allow demand response to
1212 participate in the wholesale electric markets, and that is

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1213 something the Commission has done in the past. In my view, demand
1214 response can be an effective tool at helping keep rates down by
1215 allowing the opportunity to avoid paying high-priced energy at
1216 peak times.

1217 Mr. Welch. Right. Our largest utility, Mr. Chairman,
1218 Green Mountain Power, is a strong supporter of demand response,
1219 and our utility users seem to be very happy with it. That includes
1220 some of our major companies. So, keep up the good work on that.

1221 Mr. Minzner. Thank you.

1222 Mr. Welch. Thank you. And I yield back, Mr. Chairman.

1223 Mr. Whitfield. The gentleman yields back.

1224 At this time the Chair recognizes the gentleman from Ohio,
1225 Mr. Johnson, for five minutes.

1226 Mr. Johnson. Thank you, Mr. Chairman, and I want to thank
1227 the panel for being with us today as well.

1228 I represent a District in eastern/southeastern Ohio that
1229 borders the Ohio River, the Muskingum River. We have got a lot
1230 of hydropower potential there.

1231 I want to kind of take off on something that Representative
1232 McKinley said. Given that so many projects miss the two-year and
1233 four-year statutory deadlines, often due to issues that are beyond
1234 the project's control and the applicant's control, perhaps it
1235 makes sense to update the Federal Power Act to either provide FERC

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1236 with greater discretion on setting those deadlines, maybe more
1237 flexible deadlines, or to increase the number of years that an
1238 applicant can have to commence construction. Does FERC have an
1239 opinion on that?

1240 Ms. Miles. Speaking only for myself, given that however the
1241 Chairman and former Chairmen have said up to 10 years was all
1242 right, if FERC had that authority to just do it itself, then folks
1243 would not need to come to Congress.

1244 Mr. Johnson. Right, right. Okay. Well, that is good to
1245 know because we certainly need to work that because, with the
1246 plethora of federal regulations and environmental studies and all
1247 kinds of things that applicants have to go through, it has
1248 lengthened out these project timelines to get all of this stuff
1249 approved. So, I appreciate that.

1250 Ms. Miles, as you are aware, the committee is keenly
1251 interested in supporting new energy infrastructure projects.
1252 One of the opportunities we see is in the hydropower sector,
1253 specifically adding generation to existing non-powered dams. We
1254 have some of those in Ohio. That is what we are talking about
1255 as part of today's hearing.

1256 So, these low-impact, renewable, and clean energy resources
1257 -- that is what they are -- are important. Yet, we continue to
1258 hear of problems getting projects approved, financed, and built,

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1259 particularly in comparison to other energy projects.

1260 So, what is your view on these opportunities with hydropower
1261 adding power generation to existing dam structure and what is the
1262 reason we have not seen more of these type projects built?

1263 Ms. Miles. My view is that there is a lot of hydropower
1264 potential in the U.S. at existing dams. I think the Department
1265 of Energy has issued reports to that effect.

1266 Mr. Johnson. What is the holdup?

1267 Ms. Miles. I think that we have worked very hard with the
1268 other agencies who need to issue permits on those projects to be
1269 able to move them through the process expeditiously while being
1270 thorough and fair in addressing all resource areas.

1271 Mr. Johnson. Do you see it as a FERC issue? Is it a Corps
1272 issue? Is there anything that FERC can do and, more importantly,
1273 is there anything Congress can do that would help move these
1274 projects along more quickly?

1275 Ms. Miles. I think that the issue is really trying to work
1276 through these things simultaneously or everybody working at it
1277 together. That does vary, depending on agencies that we are
1278 working with at some of these projects.

1279 Mr. Johnson. Let me make sure I understand what you are
1280 saying. So, you are saying that -- and I am paraphrasing -- so,
1281 you are saying that sometimes these projects become serial agency

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1282 to agency to agency rather than parallel agencies --

1283 Ms. Miles. Correct.

1284 Mr. Johnson. -- moving things along collaboratively? How
1285 do we solve that problem?

1286 Ms. Miles. Well, we have been working with the other
1287 agencies where we --

1288 Mr. Johnson. So, you do think it needs to be solved?

1289 Ms. Miles. That is an issue. Frankly, I mean, we have
1290 worked with the Corps of Engineers quite a lot on this. We have
1291 a Memorandum of Understanding for how we will work together, and
1292 we are in the process right now of working further with them on
1293 how to have our processes work well together.

1294 Mr. Johnson. But it is clearly still a slow process.

1295 And my time is up. I am going to have to yield back.

1296 Is it safe to say you agree that we need to do better
1297 collaboration between the agencies to parallel these things where
1298 we can? Is that what I am hearing you say?

1299 Ms. Miles. Yes.

1300 Mr. Johnson. Okay.

1301 Ms. Miles. At projects where that is not happening now, yes.

1302 Mr. Johnson. All right. Thank you very much, and I yield
1303 back.

1304 Mr. Whitfield. The gentleman yields back.

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1305 At this time the Chair recognizes the gentleman from Texas,
1306 Mr. Flores, for five minutes.

1307 Mr. Flores. Well, thank you, Mr. Chairman.

1308 Ms. Miles, we talked a few minutes ago about the electricity
1309 rates of the Northeast being among the highest in the country.
1310 Can you tell me why that is? What is the reason for that?

1311 Ms. Miles. I can't speak to that. Do you want to speak to
1312 it?

1313 Mr. Minzner. I can speak to it only in the most general
1314 sense. The electric rates vary across the country for a wide
1315 range of reasons. I don't think there is a specific reason.

1316 Mr. Flores. What would the top two or three reasons be?

1317 Mr. Minzner. It is really a mix of the location, generation,
1318 and load across the country. So, it is, frankly, the intersection
1319 of supply and demand of energy.

1320 Mr. Flores. Okay. So, part of it could be the fuel sources
1321 that they are restricted to use, correct? I mean, Mr. Griffith
1322 sort of touched on this a few minutes ago. If there were more
1323 infrastructure to get natural gas pipelines in the Northeast, they
1324 could have natural-gas-fired electricity generation. Wouldn't
1325 they be better off? Wouldn't that solve a lot of the rate issues?

1326 Mr. Minzner. I am not sure I can speak specifically to that.

1327 Mr. Flores. Ms. Miles, can you speak to that?

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1328 Ms. Miles. I can't, either.

1329 Mr. Flores. Well, I was going to say I can answer it for
1330 you. The answer is yes. And so, I think that is the reason the
1331 aerial survey bill is very important to look at. I do agree you
1332 have got to have ground surveys as well, but I think the aerial
1333 surveys help with the initial siting, and so forth.

1334 This is something I think you need to take a look at. How
1335 can the Northeast, how can New England be helped with their
1336 electricity rates? And the best thing is for better
1337 infrastructure. So, I would ask you to think about that as you
1338 are going through your permitting planning process in the future.

1339 Thank you, Mr. Chairman. I yield back.

1340 Mr. Whitfield. The gentleman yields back.

1341 At this time the Chair recognizes the gentleman. Mr.
1342 Barton, did you want to ask questions?

1343 Mr. Barton. No.

1344 Mr. Whitfield. Okay. Mr. Hudson of North Carolina is
1345 recognized for five minutes.

1346 Mr. Hudson. Thank you, Mr. Chairman, and thank you for
1347 holding this important hearing.

1348 Thank you to our panel for participating.

1349 I am proud to be a cosponsor of Representative Pompeo's bill
1350 to amend Section 203 of the Federal Power Act, as well as

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1351 Representative Kennedy's Fair Rates Act. I am also glad to see
1352 Representative Fox's bill move forward regarding the Kerr Scott
1353 Hydropower Project in Wilkes County, North Carolina. These are
1354 common-sense bills, and, Mr. Chairman, I appreciate your bringing
1355 them before this subcommittee.

1356 To get to my questions, I would like to build on the line
1357 of questioning my colleague Mr. Johnson raised dealing with
1358 hydroelectric power. Ms. Miles, you note in your testimony that
1359 FERC has generally taken the position of not opposing legislation
1360 that would extend the commencement of construction deadlines no
1361 further than 10 years from the date that license in question was
1362 issued. So, because each of the hydro bills before us today
1363 provides for commencement of construction deadlines that do not
1364 exceed 10 years from the dates the respective licenses were
1365 issued, is it true that FERC does not oppose any of these bills?

1366 Ms. Miles. Yes, we do not; I do not.

1367 Mr. Hudson. Thank you.

1368 Historically, hydropower has played a primary energy storage
1369 role with hydro pump storage currently providing 97 percent of
1370 energy storage in the U.S. What is your view on the energy storage
1371 and pump storage in particular?

1372 Ms. Miles. Pump storage does provide considerable grid
1373 scale storage, and it can be very valuable. We have noticed an

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1374 increase in applications for pump storage projects, especially
1375 in areas where there is a lot of wind and solar projects.

1376 Mr. Hudson. Well, what are the market issues that need to
1377 be addressed to support development of new pump storage and what
1378 can FERC do, either by itself or working with state PUCs and the
1379 ISOs, RTOs?

1380 Ms. Miles. I am not really able to speak to market issues.
1381 Our primary responsibility is to analyze the projects that come
1382 before us in a very thorough, fair, and scientifically-sound way,
1383 and to have a process that allows us to do that.

1384 Mr. Hudson. I appreciate that.

1385 Have there been any issues working with state PUCs and others
1386 that could be addressed or better handled, either through your
1387 agency or things that we could do to support that?

1388 Ms. Miles. The state PUCs typically are not involved with
1389 us as we do the environmental review and licensing of those kinds
1390 of projects, action on those kinds of projects.

1391 Mr. Hudson. Okay. Would you agree that FERC has a
1392 significant level of expertise and experience in analyzing
1393 environmental effects of hydro projects under its jurisdiction?

1394 Ms. Miles. Yes.

1395 Mr. Hudson. Does FERC currently employ biologists and other
1396 scientific experts to provide guidance on analyzing the

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1397 environmental effects of hydro projects?

1398 Ms. Miles. Yes. Our resources, we have experts in each
1399 resource area that we analyze.

1400 Mr. Hudson. What is the number and experience of the staff
1401 administering the licensing and regulation of hydro projects, the
1402 number of PhDs, master's degrees, et cetera?

1403 Ms. Miles. I can't give you the specific number, but many
1404 of our staff have master's degrees; some have PhDs.

1405 Mr. Hudson. And if you could provide us that list?

1406 Ms. Miles. The list of which do? Certainly.

1407 Mr. Hudson. That would be great. And master's degrees,
1408 just what that expertise levels are.

1409 Ms. Miles. Certainly.

1410 Mr. Hudson. That would be great.

1411 Regarding the FERC hydropower licenses generally, do you
1412 agree that the licensing processes could be shortened if the
1413 Commission had the ability to set enforceable deadlines and
1414 coordinate the other federal and state approval involved?

1415 Ms. Miles. I didn't come prepared really to testify on --
1416 I think you are getting at H.R. 8. However, I have spoken in the
1417 past that enforceable deadlines can be a valuable, can be -- I
1418 am going to move back and say I didn't come prepared, but we would
1419 be happy to answer questions.

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1420 Mr. Hudson. Okay. I would appreciate that, if you can
1421 provide us with an answer.

1422 Ms. Miles. Sure.

1423 Mr. Hudson. All right. Mr. Chairman, that exhausts my line
1424 of questioning. I would yield back. Thank you.

1425 Mr. Whitfield. The gentleman yields back.

1426 At this time the Chair recognizes the gentleman from
1427 Mississippi, Mr. Harper, for five minutes.

1428 Mr. Harper. Thank you, Mr. Chairman.

1429 And thanks to you, witnesses, for being here.

1430 Just to comment, Ms. Miles, I believe you addressed it
1431 earlier with Mr. Johnson, but just as a side note, it is my
1432 understanding that four new hydro projects have been approved in
1433 Mississippi, and we appreciate FERC's diligence in those matters.

1434 Mr. Minzner, you state in your testimony that the legislation
1435 to amend Section 203 of the Federal Power Act could ease the
1436 administrative burden on the Commission staff and the regulatory
1437 burden on the industry without a significant negative impact on
1438 the Commission's regulatory responsibilities. Can you please
1439 elaborate or briefly expand on these potential benefits of the
1440 legislation?

1441 Mr. Minzner. Thank you, Congressman. On the burden side,
1442 certainly every 203 filing requires review by Commission staff

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1443 and action by the Commission through some sort of order. A de
1444 minimis threshold would mean that, for those falling below the
1445 \$10 million level the Commission would not need to take that
1446 action. And similarly, on the side of industry, they would not
1447 need to make the initial filing, which would ease their burden.

1448 In terms of the effect on the regulatory program, the filings
1449 that come in for mergers or consolidations of smaller facilities,
1450 those below the \$10 million, are ones that are less likely to
1451 impose potential consequences on rates or on competition.

1452 Mr. Harper. Great. Thank you.

1453 With the interest of time, Mr. Chairman, I will yield back.

1454 Mr. Whitfield. The gentleman yields back.

1455 At this time I want you all to know we are not trying to
1456 discriminate against Mr. Kennedy. He is a member of the Energy
1457 and Commerce Committee, but he is not a member of this
1458 subcommittee. Even though we are considering one of his bills
1459 today, he has patiently waited until everyone else has asked
1460 questions. So, at this time we will recognize Mr. Kennedy for
1461 five minutes.

1462 Mr. Kennedy. Mr. Chairman, thank you very, very much. I
1463 appreciate the opportunity to join you and squat in on the Energy
1464 and Power Subcommittee.

1465 I appreciate the kind words from my colleagues on the other

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1466 side of the aisle on the offer for both purchasing of coal, Mr.
1467 Griffith, very well noted. Thank you. And to the rest of my
1468 colleagues as well, thank you.

1469 Mr. Minzner, a couple of questions for you, sir, to begin
1470 with. You mentioned in your testimony that Section 205 of the
1471 Federal Power Act includes a 60-day clock for review in which FERC
1472 will take action. Can you discuss what requirements the
1473 Commission has within those 60 days and does FERC have an
1474 affirmative requirement to actually act?

1475 Mr. Minzner. The statute does not require the Commission
1476 to act. However, the Commission typically does take action on
1477 the filing by approving it, denying it, or requesting additional
1478 information from the utility. The consequences, though, if the
1479 Commission does not act in that time period, is the rates do take
1480 effect.

1481 Mr. Kennedy. And I know you are well aware, obviously, of
1482 what happened in New England in 2014 with that Capacity Auction
1483 No. 8 done by the Commission. You mentioned in your testimony
1484 and response to questions that that is an exceedingly rare
1485 occurrence. Does that only occur when there are four
1486 Commissioners present or has it happened when there is an even
1487 number -- or excuse me -- an odd number of Commissioners as well?

1488 Mr. Minzner. Rates have taken effect not solely as a result

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1489 of a two-two split of the Commission. In fact, under the Federal
1490 Power Act, the situation you mentioned, ISO New England, I believe
1491 is only the second time that I am aware of that it has happened
1492 as a result of a two-two split. It has happened under other
1493 occasions, though.

1494 Mr. Kennedy. Can you just shine some light on what those
1495 other occasions, if you can recall what those other occasions
1496 were?

1497 Mr. Minzner. We don't know the reason for all of them. On
1498 one occasion, the Commission stated that the rates took effect
1499 inadvertently because of Commission failure to act.

1500 Mr. Kennedy. Okay. Given that the Commission is currently
1501 down to four Commissioners, what tools does the Commission have
1502 to avoid a deadlock on any rate change filed across the country?
1503 I realize that most changes are non-controversial and unlikely
1504 to result in a deadlock anyway, but this outcome is certainly,
1505 obviously, not impossible. Before we can, hopefully, get this
1506 bill across the finish line, what options are available to FERC
1507 to provide proper access to administrative and judicial review
1508 for ratepayers? There is, as you are well aware, an auction set
1509 to take place in New England next week. Given the fact that there
1510 are four -- another Commission has noticed his intent to retire;
1511 no other nomination is currently in the pipeline -- what, if any,

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1512 tools does FERC have to make sure we don't end up in the same place?

1513 Mr. Minzner. I know the Commission staff and the
1514 Commissioners are very dedicated to working collaboratively to
1515 reaching outcomes that can have the support of the majority of
1516 the Commissioners. I think certainly the Commission has
1517 endeavored to do that in the past and has effectively managed to
1518 reach a majority vote on almost every occasion.

1519 Mr. Kennedy. But there is nothing -- and I appreciate that
1520 and I understand that -- but has there been any specific policy
1521 change internal to FERC where, with four Commissioners, in the
1522 advent of a hearing having to go through with four Commissioners,
1523 and that notice being put forth, that there would be some sort
1524 of review? Provided that this bill doesn't make it to the
1525 President's desk by the time that those Commission results are
1526 near, do the auction results need to be certified?

1527 Mr. Minzner. In my view, under the current version of the
1528 Federal Power Act, if the Commission does not act as a result of
1529 a two-two split or otherwise, there would not be rehearing or
1530 appellate review available under the current statutory framework.
1531 Other than working to reach consensus and a majority vote, I am
1532 not aware of other internal policy changes.

1533 Mr. Kennedy. Okay. Thank you. I yield back.

1534 Mr. Whitfield. The gentleman yields back, and that

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1535 concludes the questions for the first panel.

1536 Ms. Miles and Mr. Minzner, thank you for being with us. We
1537 look forward to working with you, as we continue our efforts on
1538 all of this legislation.

1539 At this time I would like to call up the witnesses on the
1540 second panel, if you all would come and have a seat.

1541 I know that Mr. Kennedy is going to be introducing one of
1542 our witnesses. So, I will call on him to make that introduction
1543 at this time.

1544 Mr. Kennedy. Thank you, Mr. Chairman.

1545 Mr. Chairman, I am pleased to introduce a fellow member of
1546 Massachusetts that has come down on relatively short notice to
1547 join us here today, Mr. Bottiggi, who runs the Braintree Power
1548 Plant, a municipal power plant, who has a deep knowledge in how
1549 our energy systems work in Massachusetts, how our capacity markets
1550 work, and the intricacies surrounding the increase of cost that
1551 we have seen in recent history in Massachusetts. He is one of
1552 the few people I have found, Mr. Chairman, on this planet that
1553 can actually explain this in language that people understand, for
1554 which I am eternally grateful.

1555 So, we are grateful to have you here. I look forward to your
1556 testimony and the light that you can shine on how things are
1557 working and how they are not working in Massachusetts and across

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1558 the country.

1559 Thank you.

1560 Mr. Whitfield. Well, thank you very much for that
1561 introduction.

1562 I will at this time introduce the other members of this panel.

1563 First, we have Mr. Timothy Powell, who is the Director of
1564 Land, GIS and Permits at the Williams Company.

1565 We have Mr. Edward Lloyd, who is the Evan Frankel Clinical
1566 Professor of Environmental Law at Columbia University School of
1567 Law. He is here today on behalf of the New Jersey Conservation
1568 Foundation and the Stonybrook Millstone Watershed Association.

1569 We also have Mr. Bill Marsan, who is the Executive Vice
1570 President and General Counsel and Corporate Secretary of the
1571 American Transmission Company.

1572 We have Mr. Tyson Slocum, who is the Energy Program Director
1573 of Public Citizen, Inc.

1574 And then, we have Mr. Jeffrey Leahey, who is the Deputy
1575 Executive Director for the National Hydropower Association.

1576 We thank all of you for taking time in your very busy
1577 schedules for being with us today. I am going to call on each
1578 one of you, and you will be given five minutes for your opening
1579 statements. Be sure and pull the microphone close and make sure
1580 the microphone is on.

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1581

Mr. Powell, we will recognize you first for your opening

1582

statement in five minutes.

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1583 STATEMENTS OF WILLIAM L. POWELL, CEP, DIRECTOR OF LAND, GIS AND
1584 PERMITS, WILLIAMS COMPANY, ALSO ON BEHALF OF THE INTERSTATE
1585 NATURAL GAS ASSOCIATION OF AMERICA; EDWARD LLOYD, EVAN M. FRANKEL
1586 CLINICAL PROFESSOR OF ENVIRONMENTAL LAW, COLUMBIA UNIVERSITY
1587 SCHOOL OF LAW, ON BEHALF OF THE NEW JERSEY CONSERVATION FOUNDATION
1588 AND STONYBROOK MILLSTONE WATERSHED ASSOCIATION; BILL BOTTIGGI,
1589 GENERAL MANAGER, BRAINTREE LIGHT AND ELECTRIC DEPARTMENT; BILL
1590 MARSAN, EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL AND CORPORATE
1591 SECRETARY, AMERICAN TRANSMISSION COMPANY; TYSON SLOCUM, ENERGY
1592 PROGRAM DIRECTOR, PUBLIC CITIZEN, INC., AND JEFFREY A. LEAHEY,
1593 ESQ., DEPUTY EXECUTIVE DIRECTOR, NATIONAL HYDROPOWER ASSOCIATION

1594

1595 STATEMENT OF TIMOTHY L. POWELL

1596 Mr. Powell. Thank you, sir.

1597 Mr. Chairman, Ranking Member, and Members of the
1598 Subcommittee, my name is Tim Powell and I am the Director of Land,
1599 GIS and Permits for the Williams Companies. I am also appearing
1600 today on behalf of the Interstate Natural Gas Association of
1601 America, the industry association representing the interstate
1602 natural gas pipeline industry.

1603 Mr. Chairman, I appear today to support House Resolution
1604 3021, introduced by Representative Pompeo and cosponsored by
1605 Representatives Mullin, Schrader, and Meeks, which endeavors to

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1606 address a permitting challenge facing jurisdictional pipelines,
1607 which I shall explain. We thank the committee for including a
1608 version of that language as part of H.R. 8.

1609 FERC has long served as the lead agency for considering
1610 pipeline applications, pursuant to the Natural Gas Act. In
1611 Section 313 of the Energy Policy Act, this committee and this
1612 Congress instructed federal and state agencies involved in the
1613 process to cooperate with the FERC and comply with the permitting
1614 schedule established by the Commission.

1615 However, the permit process followed by some Corps of
1616 Engineer Districts and corresponding state agencies, pursuant to
1617 their Clean Water Act responsibilities, can cause them to fail
1618 to meet the FERC schedule, resulting in permit delays. This is
1619 most notable in the agency's deeming they have insufficient field
1620 survey data to initiate their review. These processes are not
1621 required by the Clean Water Act and could be modified to better
1622 conform with the FERC schedule. That is the goal of this
1623 legislation.

1624 Often, the first time an affected landowner has face-to-face
1625 contact with the company is when an agent is knocking on their
1626 door and asking that landowner to sign a form giving the company
1627 permission to begin performing field surveys. These data are
1628 used to support the NEPA review, identify the least-damaging

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1629 alternative, determine constructability, and obtain other
1630 permits and approvals, such as those required by the Clean Water
1631 Act.

1632 Many landowners elect to participate in the process, but some
1633 elect to exercise their right to deny permission. In my
1634 experience, Williams receives approximately 70 to 80 percent
1635 survey permission prior to the certificate filing.

1636 For various reasons, the remaining landowners either delay
1637 survey approval or outright deny it. Williams and other INGAA
1638 member companies fully respect each landowner's right to decide
1639 if and how they participate in the project. The problem is that
1640 some Corps of Engineer Districts and state agencies with 401 water
1641 quality certification responsibility will require an applicant
1642 to conduct up to 100 percent full survey in order to deem a permit
1643 application complete. In other cases, the Corps and responsible
1644 state agency will begin processing applications, but will not make
1645 a decision without 100 percent field survey. This approach is
1646 not required and, indeed, in some cases the agencies will accept
1647 the best-available data and move forward with condition permit
1648 decisions.

1649 If any agency is to require a percentage of field survey
1650 beyond which the company can obtain in order to deem an application
1651 complete, the company is placed in a classic Catch-22 situation.

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1652 The FERC process anticipates that companies will submit
1653 applications for federal approvals prior to or concurrent with
1654 the application for a certificate. Typically, the time between
1655 a certificate filing and an order is around one year. This is
1656 the same timeline that an agency administering the 401 water
1657 quality certification has to act once they deem an application
1658 complete. These two timelines can only align if the 404
1659 application is deemed complete and runs in parallel to the
1660 certificate proceeding.

1661 The solution is to direct all other agencies involved in
1662 issuing federal authorizations to accept data gathered by means
1663 other than on-the-ground surveys. If the agency elects, any
1664 permits issued based on remote sensing could be conditioned upon
1665 ground survey verification once access has been obtained. This
1666 is an important point and bears emphasizing.

1667 If the agency deems it necessary, no ground disturbance would
1668 occur on remote-sense tracks prior to verifying that data by
1669 on-the-ground survey. Non-field-survey data-gather methods may
1670 include satellite photography, sensors attached to fixed-wing
1671 aircraft, helicopter aerial photography, previous mapping, or by
1672 studying the area from accessible locations.

1673 The proposal solution has a number of obvious benefits. It
1674 allows pipeline companies and regulators to assess likely impacts

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1675 and make informed decisions, aligns the certificate proceeding
1676 with other federal reviews, and allow FERC to effectively fulfill
1677 its lead agency mandate while minimizing the adversarial
1678 relationship between landowners and the pipeline company, when
1679 agencies require more ground survey than property owners want to
1680 provide.

1681 In summary, Mr. Chairman, we believe the legislation being
1682 discussed is a win/win for all involved in the permitting process
1683 and we urge its adoption.

1684 [The prepared statement of Mr. Powell follows:]

1685

1686 ***** INSERT 3 *****

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1687 Mr. Whitfield. Thank you very much.

1688 Mr. Lloyd, you are recognized for five minutes for your

1689 opening statement.

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1690 STATEMENT OF EDWARD LLOYD

1691 Mr. Lloyd. Thank you, Mr. Chairman and Ranking Member, and
1692 Members of the Committee.

1693 I take a different view than the last witness.

1694 Unfortunately, I don't think the aerial surveys are going to solve
1695 the problem that we all want to solve. Scientists for the New
1696 Jersey Conservation Foundation have looked at 1,000 plant and
1697 animal species in New Jersey that would have to be surveyed under
1698 the Endangered Species Act and other rare and specified species.
1699 We found that less than 1 percent of those species can be
1700 identified with aerial surveys.

1701 So, the problem is that, if we begin to rely on aerial
1702 surveys, especially in the prefiling process, we are going to have
1703 to go back and verify. To me, at the end of the day, it is going
1704 to delay the process, not expedite it.

1705 I think all of us want the best data we can have. The problem
1706 is that aerial surveys, by and large, are not going to get us the
1707 data that we need to do the proper analysis by the agency. Of
1708 the 1,000 species we looked at, there were only 1 percent that
1709 actually could be identified by aerial surveys. So, it means we
1710 are going to have to go on the ground and ground-truth it.

1711 If we don't do it upfront, it could lead to having to revisit
1712 it. If we go to verification, then we have to revisit those

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1713 surveys, and we may have to change the pipeline route. It is not
1714 efficient for any of us.

1715 So, we would suggest that the aerial surveys are really not
1716 solving a problem and, in fact, may create more delay and drain
1717 more resources from the agency.

1718 The other thing I wanted to mention is the impact on
1719 landowners. In New Jersey we have already experienced the use
1720 of aerial surveys. We have had a number of complaints from
1721 landowners that they have been disturbing, especially in rural
1722 areas, livestock and the peaceful privacy of homeowners. So,
1723 aerial surveys can have unintended negative consequences for
1724 homeowners, and I think we have to be very careful about how
1725 quickly we want to authorize those aerial surveys in place of the
1726 ground surveys, which give us much better data and, in fact, I
1727 think the data that is needed for the agency.

1728 Finally, I just want to mention what we have seen, as this
1729 committee has heard this morning, a proliferation of pipeline
1730 proposals. There are now 80 pending proposals before FERC. We
1731 would highly recommend that FERC begin to look at these, instead
1732 of as individual pipelines, look at these on a regional basis.

1733 I think a programmatic environmental impact statement is one
1734 way to address that, where, again, it would save agency resources
1735 if we look at these pipelines together on a programmatic basis.

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1736 Then, there may be additional individual pipeline analyses we need
1737 to do, but the programmatic EIS would enhance our decisionmaking
1738 process, would enhance FERC's ability to make these analyses, and
1739 it would save resources for the companies and for FERC.

1740 Thank you, Mr. Chairman.

1741 [The prepared statement of Mr. Lloyd follows:]

1742

1743 ***** INSERT 4 *****

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1744

Mr. Whitfield. Thank you.

1745

Mr. Bottiggi, you are recognized for five minutes.

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1746 STATEMENT OF BILL BOTTIGGI

1747 Mr. Bottiggi. Chairman Whitfield, Ranking Member Rush, and
1748 Members of the Committee, thank you for inviting me to speak at
1749 today's hearing. I also wish to extend a particular thanks to
1750 Congressman Kennedy for his work bringing attention to the
1751 problems with the forward-capacity market in New England and for
1752 inviting me to speak today.

1753 I am Bill Bottiggi, the General Manager of the Braintree
1754 Electric Light Department. Braintree Electric is a nonprofit
1755 municipal utility owned by the residents of Braintree,
1756 Massachusetts. Our service territory is limited to just the town
1757 of Braintree, and we have been providing highly-reliable electric
1758 service at the lowest reasonable rates since 1892 to the residents
1759 and businesses in Braintree.

1760 Braintree Electric belongs to the Northeast Public Power
1761 Association, NEPPA, which represents municipal utilities in six
1762 New England states. I am testifying on behalf of NEPPA, but my
1763 views today are my own.

1764 Braintree Electric also belongs to the American Public Power
1765 Association, which I am on the board of directors. These remarks
1766 are also a top priority of the American Public Power Association
1767 and the 48 million customers that they serve.

1768 My remarks today will be focused on the forward-capacity

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1769 market and the Fair Rates Act, H.R. 2984. Deregulation. In the
1770 1990s in New England, in Massachusetts, deregulation of electric
1771 utility markets occurred, transitioning the historically
1772 vertically-integrated utility markets, the utilities, to a
1773 centralized competitive market for wholesale power. The belief
1774 was that forcing investor-owned utilities to sell their
1775 generation assets would result in the private development of new
1776 high-efficient generation in a competitive market, driving down
1777 the cost of electricity.

1778 Thousands of megawatts of generation, all natural gas, was
1779 built in the early 2000s. Surprisingly, though, the existing
1780 generation which was purchased from the investor-owned utilities
1781 did not retire as expected, and that created a large surplus of
1782 generation in New England.

1783 The primary revenue stream at the time -- this was before
1784 the forward-capacity markets started -- was payments for the
1785 electricity that the generators produced. With a surplus of
1786 generating capacity, some plants were not running frequently
1787 enough to provide their owners with the revenue they needed to
1788 cover their fixed costs. As a result, there were several
1789 bankruptcies. A lot of the new plants declared bankruptcy
1790 because they had the high debt service to cover, and they weren't
1791 getting the revenue they needed to cover that.

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1792 So, ISO New England recognized the markets were not working
1793 and implemented the forward-capacity market, starting in 2007,
1794 with FERC approval. Unlike the energy market, where power plants
1795 bid their marginal cost into ISO New England, and the ISO called
1796 them the cheapest units to run first, these markets provided
1797 capacity payments to the generators in exchange for having a
1798 physical resource available to run, for just being there.

1799 Capacity prices were set, and are still set today, based on
1800 the need for new generation. With a surplus of generation
1801 capacity, prices stayed low, capacity prices stayed low from the
1802 first auction held in 2007 through the seventh auction held in
1803 2013. It is a forward auction, so that seventh auction is taking
1804 place starting in June of 2016 for one year.

1805 Meanwhile, municipal utilities -- Braintree Electric is one
1806 of them -- were carved out from deregulation in the 1990s, and
1807 we were allowed to self-supply our own generation. We were left
1808 vertically-integrated. We didn't have to sell our power plants.
1809 We were allowed to provide our own capacity to our own customers.

1810 Self-supply allowed municipal utilities to build
1811 generation. That way, we could cover our own capacity needs.
1812 Braintree Electric built 115 megawatts of quick-start, gas-fired
1813 oil backup generation in 2009 under this self-supply provision,
1814 giving us price certainty for our capacity for a long time in the

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1815 future.

1816 This provided us and other municipal utilities with our
1817 ability to cover our own capacity cost. So, we weren't dependent
1818 on the forward-capacity auction, which creates a lot of
1819 variability in capacity cost, as you have seen in my written
1820 testimony.

1821 Unfortunately, as our needs for capacity have grown, in the
1822 future, currently, we are unable to self-supply from capacity.
1823 In 2013, ISO New England petitioned the FERC, who removed the right
1824 for municipal utilities like Braintree Electric to provide their
1825 own capacity, their own self-supply. They thought we exerted too
1826 much buyer-side market power.

1827 So, where are we today? In 2014, the eighth
1828 forward-capacity auction was held, and that was the first auction
1829 where new generation was needed. That big surplus that was
1830 created at the start of deregulation was gone. Part of that was
1831 Vermont Yankee, Brayton Point, Norwalk Harbor, and many other
1832 older plants finally were retiring for reliability reasons and
1833 environmental reasons.

1834 These retirements in that one auction cycle totally 4300
1835 megawatts of electricity, and only 1500 megawatts of new
1836 generation cleared that auction. So, that created an imbalance,
1837 driving up the cost-to-capacity payments to an administrated cap

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1838 by ISO New England to \$15 a kilowatt month. As a reference,
1839 previous to that, it was \$3 a kilowatt month. So, prices jumped
1840 in one auction fivefold, from \$3 to \$15, which is what Congressman
1841 Kennedy referenced has happened in that auction, Forward-Capacity
1842 Auction No. 8.

1843 Some believe the closure of Brayton Point manipulated the
1844 market, causing the shortage of capacity, driving up capacity
1845 payments for all generation, including the fleet of plants, in
1846 addition to Brayton Point, that was also owned by that same
1847 company.

1848 All told, capacity starting in 2018 will cost New England
1849 consumers \$4 billion a year, up from \$1 billion a year in 2016.
1850 So, from 2016 to 2018, prices are quadrupling. That translates
1851 into \$21 a month on the average residential electric bill, just
1852 for the capacity portion, not all the other components that have
1853 gone up as well.

1854 This dramatic increase demonstrates how dysfunctional the
1855 market is and should have presented an opportunity for the FERC
1856 to investigate the last-minute closure of Brayton Point. As we
1857 have been discussing earlier today, due to FERC's vacancy, the
1858 one Commissioner vacancy, they were unable to investigate because
1859 they had that two-two tie in the vote, and it was ordered a rule
1860 of law and the rate was enacted.

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1861 So, the Fair Rates Act is an important piece of legislation
1862 because it would make the same administrative review procedures
1863 currently approved by the Commission applicable to rates that just
1864 take effect by law, by operation of law. Many of us would like
1865 to see an investigation into what happened in the eighth
1866 forward-capacity auction, and those in public power would like
1867 to see the capacity markets fundamentally reformed, including our
1868 right to self-supply, so we could provide our own generation to
1869 our own customers.

1870 However, this, while it is a narrow step, is a critical first
1871 step. This bill will ensure that, if the FERC is deadlocked again
1872 in the future over questionable rates, the problem does not
1873 reoccur in New England or other regions. With this Act,
1874 ratepayers will now have an avenue to challenge unfair rates.

1875 In conclusion, I want to thank Congressman Kennedy for
1876 introducing the bill and the committee for holding this hearing
1877 on what can be a confusing topic, a confusing subject, on behalf
1878 of Braintree Electric, NEPPA, and APPA, and myself. I hope the
1879 committee will continue to examine mandatory capacity markets
1880 throughout New England and the rest of the country.

1881 Thank you, sir.

1882 [The prepared statement of Mr. Bottiggi follows:]

1883

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1884

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1885

Mr. Whitfield. Thank you.

1886

Mr. Marsan, you are recognized for five minutes.

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1887 STATEMENT OF BILL MARSAN

1888 Mr. Marsan. Thank you. Mr. Chairman, Ranking Member Rush,
1889 and Members of the Subcommittee, thank you for the opportunity
1890 to testify today in support of legislation to amend Section 203
1891 of the Federal Power Act and make the law work as intended.

1892 I am Executive Vice President/General Counsel to American
1893 Transmission Company. We construct, own, and operate electric
1894 transmission property in Wisconsin and the upper peninsula of
1895 Michigan, as well as hold ownership interest in transmission
1896 property in California.

1897 ATC is a transmission-only utility which was formed in 2001,
1898 when other utility companies transferred their transmission
1899 assets to create the new company. This formative transaction was
1900 subject to Section 203 of the Power Act. Subsequent to our
1901 formation, ATC has continued to acquire utility properties,
1902 subject to FERC's Section 203 regulation.

1903 The Energy Policy Act of 2005 amended Section 203 to increase
1904 the dollar threshold from \$50,000 to \$10 million on FERC's
1905 authority to preapprove dispositions by public utility of
1906 jurisdictional utility facilities. FERC's regulations and
1907 orders implementing this change have failed to account for
1908 congressional intent.

1909 Specifically, FERC has relied on apparent oversight in the

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1910 text of the statute to reverse its own decades-old application
1911 of the minimum monetary threshold. Finally, the new Section 203
1912 eliminated the monetary threshold entirely for acquisitions or
1913 mergers of jurisdictional facilities.

1914 This has led to some absurd results. For example, FERC has
1915 required preapproval, pursuant to Section 203, for the \$1 purchase
1916 of 10 miles of depreciated transmission line, as well as the
1917 purchase of an electrical disconnect switch and associated wiring
1918 for \$10. Conversely, the sellers of the same equipment I just
1919 described were not required to make any filings with FERC at all.

1920 FERC's interpretation requires prior approval for the
1921 acquisition of utility property that has any monetary value
1922 attached to it or no monetary value at all. FERC's interpretation
1923 frustrates the intent of the amendment to Section 203 and EPAC
1924 2005. Congress intended to reduce the regulatory burden on
1925 utilities by raising the threshold of FERC preapproval, and
1926 Congress did this with good reason.

1927 Public utilities regularly buy and sell utility assets that
1928 have minimal impact on the bulk electric system and do not affect
1929 FERC's ability to regulate. The prior threshold of \$50,000 made
1930 no sense in 2005 and let alone today's economy.

1931 Congress sensibly raised the threshold to \$10 million in
1932 order to spare utilities the administrative cost of the

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1933 preapproval process for small transactions while maintaining
1934 FERC's oversight on transactions with a potential to impact
1935 utility operations and rates.

1936 FERC's current interpretation of Section 203 has imposed a
1937 new and unnecessary regulatory burden on public utilities. It
1938 has also increased the risk that public utilities will be targeted
1939 by the FERC Office of Enforcement for violations of Section 203.
1940 At least one such FERC enforcement action for failure to receive
1941 preapproval for relatively de minimis acquisitions has been
1942 resolved, and it is reasonable to expect more.

1943 FERC has refused requests to revise its regulations to
1944 conform with the intent of EPAC 2005 and has made it clear that
1945 only a statutory change to Section 203 will force a shift in FERC
1946 policy.

1947 On December 3rd, 2015, the House passed H.R. 8, the North
1948 American Energy Security and Infrastructure Act of 2015. Section
1949 3222 of H.R. 8 clarifies Section 203 to expressly include a
1950 monetary threshold of greater than \$10 million for FERC
1951 preapproval of mergers and acquisitions of jurisdictional utility
1952 property, just as Congress intended when it passed EPAC 2005.

1953 This change would serve at least three important purposes.
1954 It would make Section 203 internally consistent. It would give
1955 clear instruction to FERC about this preapproval authority. And

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1956 it would relieve an unnecessary regulatory burden on public
1957 utilities.

1958 The bill before the subcommittee today adopts the language
1959 of Section 3222 of H.R. 8 as a standalone measure. ATC strongly
1960 supports this legislation.

1961 On behalf of ATC, I want to thank the subcommittee for
1962 inviting me to testify, and I stand ready to answer any questions
1963 the members may have. Thank you.

1964 [The prepared statement of Mr. Marsan follows:]

1965

1966 ***** COMMITTEE INSERT *****

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1967

Mr. Whitfield. Thank you very much.

1968

Mr. Slocum, you are recognized for five minutes.

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1969 STATEMENT OF TYSON SLOCUM

1970 Mr. Slocum. Thank you very much, Chairman Whitfield,
1971 Ranking Member Rush, Members of the Committee.

1972 My name is Tyson Slocum, and I direct the energy program at
1973 Public Citizen. Public Citizen is a national nonprofit,
1974 nonpartisan consumer advocacy organization funded in part by the
1975 more than 400,000 members and supporters we have across the
1976 country.

1977 In my capacity as Energy Program Director, I serve on the
1978 United States Commodity Futures Trading Commission Energy and
1979 Environmental Markets Advisory Committee, and I also frequently
1980 intervene and comment in a number of FERC proceedings.

1981 So, I am here to talk about two pieces of legislation. One
1982 is the bill that would exempt from FERC review any merger or
1983 consolidation under \$10 million, and the second is the Fair Rates
1984 Act, H.R. 2984.

1985 On the legislation that would extend a \$10 million threshold
1986 to exempt mergers and consolidations, on the face of it, that might
1987 seem reasonable. But, when you understand the way that energy
1988 markets operate, you quickly understand that it is not necessarily
1989 the dollar value of a transaction, but what the impact of that
1990 facility has on the operation of an energy market. With power
1991 facilities, these are known as what is known as pivotal suppliers.

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1992 In two landmark market manipulation cases that I have brought
1993 before FERC that are still under review, it was either one power
1994 plant in the case of New England or a very small collection of
1995 power plants that, had it been a merger or consolidation, very
1996 likely would have been under that \$10 million threshold.

1997 And so, it is very important that Congress retain the
1998 language that was plainly included in the Energy Policy Act of
1999 2005 because, remember, the Energy Policy Act of 2005 repealed
2000 one of the landmark utility regulations in this country, the
2001 public utility holding company, after 1935. As part of that
2002 agreement to repeal that longstanding utility regulation,
2003 Congress was very aware of the need to ensure that FERC had full
2004 authority over all mergers and consolidations. That is why they
2005 explicitly did not include that threshold dollar figure in the
2006 plain language of the Energy Policy Act of 2005.

2007 On the second piece of legislation, the Fair Rates Act, H.R.
2008 2984, this is a great piece of legislation that directly addresses
2009 a market manipulation case that I brought before FERC in 2014 that
2010 has been much talked about at today's hearing, the 2014
2011 forward-capacity auction in ISO New England.

2012 We made an allegation in our FERC filing that a
2013 Cayman-Islands-based private equity firm named Energy Capital
2014 Partners had acquired a fleet of power plants in New England, and

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2015 six weeks after closing on that transaction, announced the
2016 retirement of one of them. That retirement moved the New England
2017 market from a surplus to a deficit, thereby triggering a
2018 significant price increase by about \$1 billion in that auction.

2019 We filed our market manipulation complaint saying that their
2020 actions were the subject of market manipulation and that the
2021 resulting rates were unjust and unreasonable. As has been
2022 explained, FERC deadlocked two-to-two on my complaint. And so,
2023 they did not set for hearing whether or not to consider if the
2024 rates were lawful. Instead, they issues this notice that the
2025 rates had become effective by operation of law.

2026 We asked for rehearing. FERC denied our rehearing. We,
2027 then, filed a petition to review in federal court. FERC made a
2028 motion to dismiss. The court did not grant FERC's motion to
2029 dismiss, and we have filed initial briefs and reply briefs, and
2030 the court is actively considering this reviewability question.

2031 It is clear that the Fair Rates Act of H.R. 2984 would help
2032 alleviate this problem if it were to occur in the future. That
2033 is why Public Citizen supports that legislation.

2034 Thank you.

2035 [The prepared statement of Mr. Slocum follows:]

2036

2037 ***** COMMITTEE INSERT *****

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2038

Mr. Whitfield. Thank you.

2039

Mr. Leahey, you are recognized for five minutes.

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2040 STATEMENT OF JEFFREY A. LEAHEY

2041 Mr. Leahey. Thank you, Chairman Whitfield, Ranking Member
2042 Rush, and Members of the Subcommittee.

2043 I am Jeffrey Leahey, Deputy Executive Director of the
2044 National Hydropower Association, and I am pleased to be here to
2045 discuss legislation to reinstate and extend the deadline for the
2046 commencement of construction for five licensed hydropower
2047 projects and how these projects demonstrate new growth potential
2048 we see in the hydropower industry.

2049 The U.S. hydropower fleet is made up of 2200 plants with a
2050 capacity of almost 80 gigawatts. These plants provide roughly
2051 7 percent of all electricity and close to half of all renewable
2052 electricity, making hydropower the largest provider of renewable
2053 power in the United States.

2054 Hydropower's contributions to the electric grid are many:
2055 baseload power, peaking power, load following, energy storage,
2056 reliability, and more. Because of the need for more of these
2057 services, the industry has grown in recent years. In fact, the
2058 U.S. experienced a net capacity increase of 1.4 gigawatts from
2059 2005 to 2013, and that is to power over half-a-million homes.

2060 A prime growth area is on existing infrastructure, such as
2061 non-power dams and conduits. The projects today showcase these
2062 opportunities. Two would add generation to Bureau of Reclamation

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2063 dams, two to Army Corps of Engineers dams, and another dam owned
2064 by New York City. They are all small projects, ranging from 4
2065 to 15 megawatts, and together, they will add 51.7 megawatts to
2066 the system, enough to power close to 21,000 homes.

2067 Of the 80,000 dams in the United States, only 3 percent have
2068 electric-generating facilities. The vast majority were built
2069 for other purposes, water supply, navigation, irrigation.

2070 The Department of Energy recognized this untapped potential
2071 of non-power dams and in 2012 released a report of these projects.
2072 The map you see on the screen depicts the size and locations of
2073 the top prospects.

2074 The study showed 12 gigawatts of total potential, with 8
2075 gigawatts available at the top 100 sites alone. Eighty-one of
2076 the top 100 sites were located on Corps of Engineers dams. These
2077 types of projects, including the five here today, are some of the
2078 lowest-impact developments in the energy sector. No new dams
2079 need to be built, and the projects aim to utilize existing flows.
2080 What better way to maximize the benefit of this infrastructure
2081 by also generating renewable carbon-free power?

2082 These projects can face a variety of obstacles that push back
2083 construction timelines, thus, requiring the action that the
2084 subcommittee is taking today. Speaking generally, these include
2085 delays in post-licensing construction approvals, refinements in

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2086 project design, negotiations on power purchase agreements, and
2087 others.

2088 To begin, hydropower has the most complex development
2089 timeline of any renewable resource. It can take 10 years or
2090 longer from the start of licensing through construction to being
2091 placed in service. It also requires considerable upfront
2092 financial commitment from the developer for the studies needed
2093 for federal and state approvals.

2094 Water is a public resource, and NHA recognizes the need for
2095 thorough review of new project applications. However, the
2096 overall process can also be a factor for delays in moving to start
2097 of construction. For example, when adding generating facilities
2098 to non-powered federal dams, FERC may issue a license; yet, that
2099 project cannot start construction until it receives additional
2100 approvals from the federal dam owner. If there are unanticipated
2101 delays for those approvals, no work can commence.

2102 NHA notes that the House passed H.R. 8 and the Senate is
2103 debating is S. 2012, energy bills that contain bipartisan
2104 provisions to address inefficiencies and improve coordination in
2105 the hydropower process. We note the Water Resources Reform and
2106 Development Act of 2014 provided direction to the Corps to
2107 prioritize hydro development and complete permitting in a timely
2108 and consistent manner.

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2109 Also, S. 2012 specifically aims to address the issue at hand
2110 today. It contains a provision allowing applicants to receive
2111 an extension of the commence construction deadline for up to eight
2112 additional years. NHA strongly supports all of these efforts.

2113 Further, design changes for projects at federal facilities
2114 can result from discussions with the federal owners as developers
2115 move to construction. Working cooperatively, developers must
2116 show the final construction plans will not interfere with the
2117 original purposes of the federal dam and, also, not harm its
2118 integrity.

2119 There have been instances where design changes were proposed
2120 post-licensing and pre-construction that differed from the design
2121 that was originally licensed. As such, more consultation was
2122 needed between the developer FERC and the federal owner to approve
2123 these changes.

2124 Lastly, industry members also report difficulty securing
2125 power purchase agreements. In testimony before the subcommittee
2126 last year, Cube Hydro, a developer, stated that regulatory
2127 uncertainty and risk of delays can negatively impact acquiring
2128 PPAs, and that failure to obtain one, in turn, inhibits the ability
2129 to obtain project financing. This can include post-licensing
2130 financing to cover construction costs, which can also impede the
2131 ability to meet the start construction deadline.

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2132 To conclude, hydropower projects have a critical role to play
2133 in meeting our nation's energy, climate, and economic development
2134 objectives. The five projects the subcommittee considers today
2135 are prime examples of the tremendous growth potential at existing
2136 water infrastructure across the country.

2137 It is NHA's hope that the time granted by these extensions
2138 allow the projects to complete the process and protect the
2139 significant investment of time and financial resources, both by
2140 the developers and also the federal government.

2141 I thank the subcommittee for inviting me to testify, and I
2142 look forward to answering your questions.

2143 [The prepared statement of Mr. Leahey follows:]

2144

2145 ***** COMMITTEE INSERT *****

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2146 Mr. Whitfield. Thank you, Mr. Leahey, and thank all of you
2147 for your opening statements.

2148 At this time I will recognize myself for five minutes of
2149 questions.

2150 Mr. Bottiggi and Mr. Slocum, let me ask you, the Cayman Group
2151 that purchased these power plants in the Northeast, how many did
2152 they purchase and what did they pay for it? What was the purchase
2153 price?

2154 Mr. Slocum. I can't remember the exact number of power
2155 plants. I believe it was a deal that included, I think, five or
2156 six total power plants in two different geographic markets in PJM
2157 and in ISO New England.

2158 I don't know if there was a public purchase price. Because
2159 Energy Capital Partners is a private equity firm, it doesn't have
2160 to submit Securities and Exchange Commission filings. But it was
2161 most likely in excess of \$10 million, and it also was not a merger;
2162 it was a disposition.

2163 Mr. Whitfield. So, FERC did approve the acquisition?

2164 Mr. Slocum. Yes, sir.

2165 Mr. Whitfield. And so, Brayton Point is the plant that was
2166 closed? Is that the one you refer to in your testimony?

2167 Mr. Bottiggi. Yes, sir. That was a 1500-megawatt,
2168 coal-fired power plant.

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2169 Mr. Whitfield. Now, Mr. Slocum, you said market
2170 manipulation. If it is coal, I would think environmental had
2171 something to do with it as well.

2172 Mr. Bottiggi. Well, the low price of natural gas has put
2173 pressure on coal-fired electricity.

2174 Mr. Whitfield. Right.

2175 Mr. Bottiggi. So, it was closed for economic reasons --

2176 Mr. Whitfield. Yes.

2177 Mr. Bottiggi. -- is what they claimed.

2178 Mr. Whitfield. But the EPA regulation on existing coal
2179 plants also makes a big difference.

2180 Mr. Bottiggi. Right.

2181 Mr. Whitfield. But, whatever the reason, they closed that
2182 down and that created a shortage of supply, is that correct?

2183 Mr. Slocum. Yes, sir.

2184 Mr. Bottiggi. Correct.

2185 Mr. Whitfield. And so, that contributed to these higher
2186 rates?

2187 Mr. Bottiggi. It did.

2188 Mr. Whitfield. Now, on the capacity markets, I am certainly
2189 not an expert on capacity markets, and I know it is pretty
2190 complicated, but it is my understanding there are two areas of
2191 the country that have mandatory capacity markets, is that correct?

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2192 Mr. Slocum. Yes.

2193 Mr. Whitfield. Okay. And one of them is ISO New England,
2194 and one, is it PJM?

2195 Mr. Slocum. Yes, sir.

2196 Mr. Whitfield. Okay. Now why do they feel like they are
2197 necessary, say, in New England, these mandatory capacity markets,
2198 but they are not necessary in other parts of the country?

2199 Mr. Bottiggi. In other parts of the country where there are
2200 no Regional Transmission Authorities, RTOs, which ISO New England
2201 is one of them, they still use a cost-of-service model to finance
2202 power plants. A utility will still be vertically-integrated and
2203 will still own their own capacity, their own power plants. So,
2204 they will develop and construct a power plant and go to the state
2205 regulators, and the state regulators will review the cost
2206 structure. As long as it is just and reasonable, they will pay
2207 the utility the full cost to construct and maintain that power
2208 plant.

2209 Mr. Whitfield. And did I understand that the ISO New York
2210 has not allowed you to self-supply anymore? Is that correct?

2211 Mr. Bottiggi. ISO New England, correct.

2212 Mr. Whitfield. I mean ISO New England.

2213 Mr. Bottiggi. Yes, correct. We are grandfathered for our
2214 existing power plants, municipal utilities are, but if we want

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2215 to build a new plant in the future now, we can't build it just
2216 on the backs of our own ratepayers to satisfy our own --

2217 Mr. Whitfield. So, when you were talking about reforming
2218 the capacity markets, were you primarily focusing on the ability
2219 to self-supply or is there other area of reform you were referring
2220 to?

2221 Mr. Bottiggi. Well, the forward-capacity market for all
2222 utilities, for all generation in New England, setting aside
2223 self-supply for the moment, what happens is, if an old power plant
2224 is still in existence, like many still are, when an auction clears
2225 like the 8 forward-capacity auction, new generation gets paid that
2226 very high price. It was \$15 a kilowatt month. But existing
2227 generation gets an average price. So, in this case, existing
2228 generation went from being paid \$3 a kilowatt month to \$7 a
2229 kilowatt month. Putting that in dollar terms -- we have an old
2230 power plant, so I am familiar with the numbers -- we currently
2231 get about \$2.5 million a year in capacity payments. It is really
2232 value because we self-supply.

2233 Mr. Whitfield. Right.

2234 Mr. Bottiggi. It is \$2.5 million a year, and it costs us
2235 about \$2.5 million a year to maintain that plant. So, just to
2236 have it sit there is a break-even proposition.

2237 After FCA 8 went through, if we were an independent

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2238 generator, that \$2.5 million for our old power plant jumps to \$6
2239 million a year. So, it is a windfall for the old plants that are
2240 just hanging around.

2241 The next auction in 2019, when FCA 9 cleared -- and this will
2242 happen -- that old power plant that we have would go from \$2.5
2243 million to \$6 million, now to \$9.5 million a year we are going
2244 to get just for sitting there, just for hanging around. So, that
2245 is why this \$1 billion in 2016 is jumping to \$4 billion in 2018.

2246 Mr. Whitfield. Yes. Okay. Well, I wish we could talk more
2247 about this. My time has expired.

2248 So, Mr. Rush, you are recognized for five minutes.

2249 Mr. Rush. Thank you, Mr. Chairman.

2250 Mr. Slocum, the bill amending Section 203 that would exempt
2251 mergers or consolidation of facilities with a value of less than
2252 \$10 million from FERC's merger review authority has been portrayed
2253 as a very innocuous bill that would simply correct a drafting error
2254 from EPAC 2005 language. However, in your testimony you take a
2255 decidedly different view on this legislation. You are stating
2256 that, even with mergers or consolidations under \$10 million, it
2257 is possible that -- and I am quoting you -- "a single facility
2258 or contract has the ability to be a pivotal supplier in a given
2259 market, providing the owner with an ability to unilaterally charge
2260 unjust and unreasonable rates." End of quote.

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2261 Can you give an example of how allowing this exemption from
2262 FERC review of mergers under \$10 million might result in unjust
2263 and unreasonable rates?

2264 Mr. Slocum. Yes, sir. Let's take this Brayton Point
2265 facility that has been the subject of parts of this hearing. As
2266 the chairman pointed out, that was not a merger and it also was
2267 in excess of \$10 million. But let's assume, theoretically, that
2268 the Brayton Point facility was a standalone company that Energy
2269 Capital Partners was going to merge with in order to combine the
2270 two companies into one. It is likely that, because of the age
2271 of the Brayton Point facility, that that transaction could have
2272 been valued at less than \$10 million. And therefore, FERC, under
2273 this proposed legislation, would not be able to review that
2274 transaction. And that would be a problem because, as we
2275 identified in our market manipulation complaint, that single
2276 facility was what economists term "a pivotal supplier" in that
2277 market, and therefore, not allowing FERC the discretion to look
2278 at that kind of transaction I think is problematic.

2279 It is important to note that it isn't like FERC is a difficult
2280 place to submit a merger application. I cannot find in the last
2281 20 years a single merger consolidation proposal that FERC has
2282 rejected outright. So, this is not necessarily a difficult
2283 process.

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2284 I understand that the \$10 million threshold sounds like it
2285 is a reasonable proposal, but there are a number of examples where
2286 instituting this threshold would deny FERC the opportunity to
2287 review pivotal supplier transactions.

2288 Mr. Rush. Well, Mr. Minzner from the first panel indicated
2289 that FERC has other tools at its disposal to protect consumers,
2290 even in a situation where a series of mergers take place, but not
2291 individually meet the \$10 million standard. What do you think
2292 about that statement?

2293 Mr. Slocum. Well, I think that in the case of the
2294 transaction of the Energy Capital Partners' acquisition of a
2295 portfolio of power plants, FERC approved that transaction. And
2296 yet, the result of that transaction was that one entity was able
2297 to utilize the capacity of one power plant to have a billion dollar
2298 swing in energy prices.

2299 And so, in this case, FERC reviewed the transaction, approved
2300 it, and then, did not have safeguards in place. Even after we
2301 brought our market manipulation complaint, FERC still did not rule
2302 on it because they deadlocked two-to-two.

2303 So, at its core, the Federal Power Act is all about reviewing
2304 transactions. We think it is very important that FERC retain the
2305 ability to be able to review any and all mergers and consolidations
2306 of facilities under its jurisdiction.

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2307 Mr. Rush. I want to thank you, Mr. Chairman.

2308 Mr. Whitfield. Mr. Marsan, you look like, did you want to
2309 say something?

2310 Mr. Marsan. Thank you, Mr. Chairman.

2311 I don't think anything that Mr. Slocum is saying frustrates
2312 the intent of Section 203. As he stated, he is bringing a
2313 complaint for market manipulation right now, and FERC still has,
2314 as the general counsel stated, market power authority over all
2315 rates. And folks like Mr. Slocum and other citizens who want to
2316 bring a contest to market suggesting market power can do so, and
2317 FERC has full authority to review that. So, I don't think any
2318 change to Section 203 frustrates FERC's ability to monitor these
2319 things.

2320 Mr. Whitfield. The gentleman's time has expired.

2321 At this time, Mr. Flores, you are recognized for five
2322 minutes.

2323 Mr. Flores. Thank you, Mr. Chairman.

2324 Mr. Powell, a couple of quick questions for you.

2325 Mr. Powell. Yes, sir.

2326 Mr. Flores. Would allowing an agency to utilize aerial data
2327 and to condition a permit on a followup ground survey interfere
2328 in any way with the integrity of the environmental review?

2329 Mr. Powell. No, sir, I don't believe that it would. It is

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2330 very common practice, even today. Landowners routinely deny
2331 survey permission. That is very common in every proceeding.
2332 FERC uses its conditional authority to require us to go back and
2333 close any gaps that those other agencies administering those
2334 federal reviews require.

2335 Mr. Flores. Okay. Well, let's go ahead and build on that.
2336 In Mr. Lloyd's testimony, the testimony appears to be driven by
2337 his dissatisfaction with the FERC public interest review rather
2338 than any substantive criticism of H.R. 3021, outside of the notion
2339 that, for some reason, that FERC wouldn't require air survey data
2340 to be verified by a ground survey.

2341 So, two parts to this. In your experience with these
2342 permitting decisions, do you have any reason to believe that an
2343 agency would ignore the authority provided in H.R. 3021, which
2344 states very clearly -- and I quote -- "An agency accepting aerial
2345 survey data may require, as a condition of approval, that such
2346 aerial survey data be verified through the use of ground survey
2347 data before the construction or extension of a facility that is
2348 subject of such application."? Unquote. Do you have any reason
2349 to believe that FERC or any other agency would ignore that
2350 authority that is provided in H.R. 3021?

2351 Mr. Powell. I would say, as a general rule, no. I think
2352 there might be some specific places where, I would say

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2353 particularly a state agency that is administering 401, might
2354 because they may want 100 percent before they would deem the
2355 application complete, which is why this legislation is that
2356 important.

2357 Mr. Flores. Okay. Good. Do you think that Mr. Lloyd's
2358 concerns are well-founded, given that it is verified by a ground
2359 survey?

2360 Mr. Powell. Not in my experience, sir.

2361 Mr. Flores. Okay.

2362 Mr. Powell. As a matter of practice, prior to prefiling,
2363 applicants approach the regulatory agencies, the Fish and
2364 Wildlife Service or the state agency administering their listed
2365 species program, the SHPO -- I'm sorry -- State Historic
2366 Preservation Office, and discuss which species should be
2367 considered in a particular project, what the survey protocol
2368 should be for those resources. As you might imagine, most species
2369 don't occur across all geographies.

2370 And so, it tends to be a very small subset of the overall
2371 list, and they tend to be unique to specific habitats, which you
2372 can identify by and large. You may not be able to determine
2373 specifically whether the individual is there today, but you can
2374 very much limit the area that requires resurvey, as a general rule.
2375 There are other species that are more broadly distributed and you

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2376 would need to do that.

2377 Mr. Flores. Okay. I have got a little bit of time left.

2378 Do you have any general comments on anything that has been said

2379 about FERC's environmental review process today?

2380 Mr. Powell. Well, I think FERC's environmental review

2381 process is very good.

2382 Mr. Flores. Okay.

2383 Mr. Powell. They strongly encourage applicants to work with

2384 the landowners, and we do that. We do that throughout the

2385 process. We do that all the way to the very end of a process.

2386 We want to obtain survey permission, and we want to do the required

2387 surveys to complete the record. There is really no benefit to

2388 us to having an incomplete record that late in the project. So,

2389 we do very diligently try to get that, but what is needed is a

2390 solution.

2391 There are going to generally be some landowners that are

2392 going to say no, and we need a mechanism where a regulatory agency

2393 can't say, well, this one individual said no. Therefore, I don't

2394 have to review your permit, and I can wait until after the

2395 certificate and after the order and after imminent domain, until

2396 you can gain access. And, okay, now my regulatory review clock

2397 starts. And that happens.

2398 Mr. Flores. Okay. Thanks, Mr. Powell. I thank the rest

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2399 of the witnesses for their testimony.

2400 Mr. Chairman, I yield back the balance of my time.

2401 Mr. Whitfield. The gentleman yields back.

2402 Mr. McNerney is recognized for five minutes.

2403 Mr. McNerney. I thank the chairman, and I thank the
2404 witnesses this morning.

2405 Mr. Slocum, what would be the practical effects of the merger
2406 legislation?

2407 Mr. Slocum. The practical effects would be that any merger
2408 or consolidation under \$10 million would not be subject to FERC
2409 review.

2410 Mr. McNerney. So, you think there would be a rush of
2411 unquestioned mergers at that point?

2412 Mr. Slocum. I don't know if there would be a rush, but I
2413 think that, theoretically and practically, you could have a merger
2414 or consolidation structured in a way to ensure that you get under
2415 that threshold amount.

2416 Mr. McNerney. Okay.

2417 Mr. Slocum. And particularly as we see a lot of older
2418 generation, whether they are older nuclear power plants or older
2419 coal-fired units, that for a variety of reasons, by themselves
2420 are not worth very much, but as part of a larger portfolio could
2421 be extremely valuable. We just think that it is not prudent

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2422 policy to not allow FERC to review those transactions when they
2423 are first proposed.

2424 Mr. McNerney. Thank you.

2425 Mr. Leahey, in your testimony you mention that S. 2012
2426 contains provisions to extend construction timelines to eight
2427 years. What are some of the biggest obstacles that prevent
2428 construction post-licensing?

2429 Mr. Leahey. Sir, thank you. As I mentioned in my
2430 testimony, particularly on these pieces of infrastructure, these
2431 existing dams that are owned by the federal facilities, once FERC
2432 issues the license for the project, there still may be
2433 supplemental permits that are required to get either from the
2434 Bureau of Reclamation or from the Army Corps of Engineers. Delays
2435 in that permitting process can, then, cause those delays that
2436 require the applicants or the licensees to come back to Congress
2437 individually.

2438 The cases before you also have a variety of other issues that
2439 come up post-licensing. In one of the cases, I believe it was
2440 getting easements for purposes of the transmission line. In
2441 others, there were unexpected issues that resulted when work
2442 started at the dam. So, a variety of things can pop up
2443 post-licensing that could cause those delays.

2444 Mr. McNerney. Mr. Lloyd, would you please explain --

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2445 Mr. Whitfield. Your microphone.

2446 Mr. McNerney. Oh, thank you. We lost power or something.

2447 I will speak up.

2448 Can you please explain if an aerial surveying can effectively
2449 identify the full range of critical mass in the environment and
2450 cultural resources on the ground from such a distance?

2451 Mr. Lloyd. Unfortunately, I think the answer is no. The
2452 data that we have looked at shows that often endangered species
2453 are underground. Often, if you have to delineate a wetland, you
2454 have to do digging in the ground to find out the kind of soils
2455 that are there. I wish I could tell you the aerial surveying would
2456 solve the problem, but for a large number of species that we have
2457 looked at it will not solve the problem.

2458 If I may, our experience has been that FERC is not getting
2459 enough environmental data to adequately do its job. What we are
2460 finding is, when a state permitting agency has to come in and do
2461 permits, they have to look at those permits in a much more granular
2462 way, generate a lot more environmental data. It enables them to
2463 make a better decision. We think that that information ought to
2464 be in front of FERC when FERC makes its decision in the first place,
2465 and that that would help the process, not harm it.

2466 Mr. McNerney. Well, another one of the things you mentioned
2467 is that some folks might be offended by aerial activities. What

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2468 about drones, unmanned drones? How is that going to fit into
2469 this?

2470 Mr. Lloyd. I don't think we have experienced it yet. We
2471 have had concerns about helicopters and low-flying aircraft. To
2472 be honest with you, given where the technology is going in this
2473 country, I think drones may be the next step. We may all need
2474 to look at that to see whether that is not an invasion of the use
2475 of private property by using drones to go over private property.

2476 Mr. McNerney. I mean, in my career prior to coming to
2477 Congress, I did a survey of a competitor's equipment. I don't
2478 think they would have been too happy if they had known about it,
2479 but they didn't have any way to stop me.

2480 [Laughter.]

2481 Is that the kind of thing we are talking about?

2482 Mr. Lloyd. It is the kind of thing we are talking about.
2483 Landowners in New Jersey have already experienced adverse impacts
2484 from helicopters. As I have said, I expect that drones might be
2485 even more invasive, and I don't think we have addressed that issue
2486 at all as yet.

2487 Mr. McNerney. All right. Thank you, Mr. Chairman.

2488 Mr. Whitfield. Well, I think that concludes our questions,
2489 except for our friend Mr. Kennedy. So, we will recognize him for
2490 five minutes as well.

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2491 Mr. Kennedy. Thank you, Mr. Chairman. I appreciate the
2492 time, and I appreciate the witnesses being here and your
2493 testimony. And if you guys stick around for me, I will ask you
2494 a couple of questions as well.

2495 Mr. Bottiggi I heard also say that the market rules are vital
2496 to ensuring reliability. I was wondering if you could share your
2497 take on that? Are capacity markets the only way to make sure that
2498 new generation gets built?

2499 Mr. Bottiggi. Electric utilities have been around since the
2500 1800s, including Braintree Electric, and we think we have provided
2501 very reliable service in that 120 years. Capacity markets have
2502 been around since 2007. So, there was a way to do it before the
2503 capacity markets. I do not think they are vital. I think
2504 generators have to be paid enough revenue to cover their costs,
2505 but paying this windfall to old generation I don't believe is
2506 necessary.

2507 Mr. Kennedy. So, I was interested in analyses that showed
2508 that over 90 percent of new generating capacity has been
2509 constructed under bilateral contracts or utility ownership, but
2510 not solely for sale in the capacity markets run by RTOs. What
2511 do you think this finding says about the ability of capacity
2512 markets to achieve the needed generation mix to meet the
2513 reliability and policy goals?

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2514 Mr. Bottiggi. The forward-capacity market as we experience
2515 it, in my opinion, drives short-term decisionmaking. A long-term
2516 decision for a utility is 40 years, whether it is electrical
2517 infrastructure or generation assets. So, the RTOs drive
2518 utilities to make short-term or the owners of generation to make
2519 a fairly short-term decision. Seven years now is what you get paid
2520 for capacity if you clear the auction as a new resource. That
2521 is a short-term decision.

2522 Those same decisions, that same short-term window is only
2523 one year. Each year is a new market for existing generation. So,
2524 the nuclear power plants that are closing in New England, Vermont
2525 Yankee, Pilgrim Nuclear Power Plant, and, then, in New York,
2526 FitzPatrick, they are all basing that decision on a short-term
2527 window.

2528 When you get out of the RTO markets and you get down South
2529 and they are still building generation under the old
2530 cost-of-service model, that long-term view of the world that you
2531 need for these major expenses, that is why those assets are being
2532 built down there and they aren't being built in New England.

2533 Mr. Kennedy. You mentioned that Braintree has been able to
2534 self-supply its capacity, but that auction was taken away for
2535 further generation. What does that mean for your ratepayers
2536 going forward and how does the current ratemaking process for

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2537 Braintree work within the structure of capacity markets?

2538 Finally, with regard to that, in your opinion, how critical is
2539 a review by the federal regulator to ensure that rates are, in
2540 fact, just and reasonable?

2541 Mr. Bottiggi. Braintree Electric being a municipal
2542 utility, for the most part, is not regulated. We set our own
2543 rates. I report to a three-member light board. The rates that
2544 we control within town, like our distribution system, we are not
2545 regulated. The capacity markets are regulated at the state and
2546 regional level in New England by ISO New England.

2547 When deregulation occurred, since we were allowed to stay
2548 vertically-integrated and own our own generation, the next step
2549 was, when the capacity markets was started, the ISO New England
2550 agreed you can self-supply your own generation. You don't get
2551 paid for it as a generator and your load doesn't pay for it. You
2552 are revenue-neutral. So, off we went and I built the 115-megawatt
2553 new state-of-the-art gas turbines that way.

2554 The ISO was led to believe that we had market power, the
2555 little municipal utilities had market power over New England. We
2556 only have a few hundred megawatts of generation in this 33,000
2557 megawatts of generation, but they were convinced that that gave
2558 us market power to manipulate the system. So, they took that
2559 self-supply option away from us.

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2560 Flash forward to today. We have an old combined-cycle power
2561 plant, about 40 years old now, that we would like to replace with
2562 new modern generation. If we could self-supply, I could go to
2563 the town, borrow money, general obligation bonds at a very low
2564 rate, build a new power plant. Our ratepayers would pay off the
2565 debt service, and we would provide that capacity for our own needs.

2566 Since we can't self-supply, we need to bid against other
2567 private companies into the forward-capacity market in order to
2568 try to replace that old generation. It is much harder to do. We
2569 have been at it for three years. We would be well underway
2570 replacing that generation now if we knew we could with certainty
2571 get paid, will get credit for that capacity.

2572 Mr. Kennedy. Thank you.

2573 Chairman, I yield back.

2574 Mr. Whitfield. I think we need to spend more time on these
2575 capacity markets.

2576 [Laughter.]

2577 Mr. Bottiggi. I can come back.

2578 [Laughter.]

2579 Mr. Whitfield. Mr. Rush, do you have additional questions?

2580 Mr. Rush. Thank you, Mr. Chairman. I do have an additional
2581 question for Mr. Lloyd.

2582 Mr. Lloyd, recent studies have suggested that many of the

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2583 states in the Northeast region do not require new natural gas
2584 infrastructure to meet their energy needs. According to
2585 Post-2014 State-of-the-Market Report, the Northeast is a net
2586 exporter of natural gas, as in the summer of 2014 the attorney
2587 general of Massachusetts commissioned a study that determined the
2588 New England states do not need new infrastructure to meet their
2589 energy needs.

2590 Given the Northeast region is a net exporter of natural gas,
2591 is there a risk of overbuilding natural gas infrastructure in the
2592 Northeast? And how does FERC's policy of certification of new
2593 interstate natural gas pipeline facilities address the
2594 possibility of overbuilding?

2595 Mr. Lloyd. Thank you, Congressman.

2596 I think there is a risk of overcapacity, and this goes
2597 directly to the FERC process. As I said, it has got 80 pipelines
2598 pending in front of it right now. Many of them are in the
2599 Northeast. They are looking at those pipelines on an individual
2600 basis and they are assessing the need for those pipelines by
2601 looking at whether those pipelines have a contract for gas.

2602 Now we have some examples where the companies contracting
2603 for gas are related corporate entities to the companies that are
2604 building the pipelines. So, there is self-dealing going on
2605 there, and it doesn't appear that FERC is going beyond just looking

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2606 at the contract.

2607 So, what we are seeing, I don't think FERC is adequately
2608 examining all of the infrastructure at once. They are looking
2609 at it pipeline-by-pipeline. And then, we don't have an
2610 opportunity to look at what is the infrastructure that we actually
2611 need in the Northeast. Do we need 12 pipelines, for instance,
2612 crossing the Delaware River or could we meet our needs with far
2613 fewer pipelines?

2614 As you pointed out, because the Northeast, and New Jersey
2615 in particular, are net exporters of gas now, it is a real question
2616 about whether there is a need for gas. And if we build the new
2617 infrastructure, the danger is we are going to be taking gas from
2618 the existing infrastructure and we are going to end up with wasted
2619 assets.

2620 And we have experienced this. If I may, we experienced this
2621 in New Jersey with the nuclear industry where, in fact, we began
2622 to look at three nuclear power plants. We spent a billion dollars
2623 in looking at those plants and never built any of them.

2624 Now the good news is, because we didn't build them, there
2625 was no environmental impact. The bad news is, because we didn't
2626 have a mechanism in place, a regulatory mechanism in place to
2627 review those expenses before the utilities made them, the
2628 ratepayers ended up paying them.

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2629 I fear that we may face the same situation with natural gas
2630 infrastructure where we are building pipelines that ultimately
2631 we may not need. And then, we will have to pay for those
2632 investments in one way or the other.

2633 Mr. Rush. Thank you, Mr. Chairman.

2634 Mr. Whitfield. Let me just ask a question. We have had a
2635 lot of hearings on the supply of gas in the Northeast. I was not
2636 aware that the Northeast is considered a net exporter of natural
2637 gas. Is that the case or is that not the case?

2638 Mr. Lloyd. As the congressman said, the attorney general
2639 of Massachusetts did just an analysis and said that they were a
2640 net exporter. This was, as I understand it, in regard to
2641 pipelines that were proposed to serve Massachusetts.

2642 We have had the same experience in New Jersey where, in fact,
2643 we have no net need for gas right now. One of the bases that the
2644 companies are justifying the pipeline is redundancy, but this is
2645 a question I think that FERC needs to address: should we have
2646 a redundant supply in New Jersey, in the Northeast, or anywhere?
2647 And I don't think FERC has mechanisms in place to examine that.

2648 One way we have suggested that they might get at that is
2649 through a programmatic environmental impact statement which would
2650 look at a number of pipelines, not just one pipeline, and see what,
2651 in fact, the overall need is. And perhaps it would lead to a

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2652 decision that assures that we have adequate supply for the
2653 Northeast and for New Jersey, but also assure that we are not
2654 overbuilding, to leave ratepayers with a bill that they may not
2655 want to pay.

2656 Mr. Whitfield. Did you have a comment on that, Mr. Powell?

2657 Mr. Powell. No, sir.

2658 Mr. Whitfield. Okay.

2659 Mr. Powell. I am not expert on market.

2660 Mr. Whitfield. Okay.

2661 Mr. Rush. Mr. Chairman, if I might respectfully request
2662 that you ask the attorney general of Massachusetts --

2663 Mr. Whitfield. I am going to go up there and see him.

2664 [Laughter.]

2665 Mr. Rush. Well, take me with you.

2666 Mr. Whitfield. I will.

2667 [Laughter.]

2668 I have been wanting to go up there to Braintree anyway.

2669 [Laughter.]

2670 I do want to ask one additional last question for Mr. Marsan
2671 because in his written testimony he said that, since enactment
2672 of the Energy Policy Act of 2005, that FERC has been interpreting
2673 I think Section 203 to mean that any acquisition of any utility
2674 property, that they would have to get preapproval. I was just

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2675 curious if you might just give us a couple of examples of that
2676 which you consider particularly maybe egregious.

2677 Mr. Marsan. Correct. I can speak from my own experience
2678 on this. I will just give you three of our own company's
2679 transactions we have had to seek 203 approval for: a 12-kilovolt
2680 line and land rights for \$1513; a relay for \$2,802, and
2681 miscellaneous substation equipment, \$2,874.

2682 Mr. Whitfield. I'm sorry, would you just turn your
2683 microphone on, so that our transcriber can hear?

2684 Mr. Marsan. Okay. Can you hear me better now?

2685 Okay. I will just go through those again: \$1513 for a
2686 12-kilovolt line and land rights; \$2,802 for relays, and \$2,874
2687 for miscellaneous substation equipment. So, in each of those
2688 cases we had to take the expense of drafting a 203 application,
2689 the legal fees and such associated with it, file it with FERC.
2690 FERC had to do their due diligence, as the general counsel of FERC
2691 stated before, on transactions that would have no impact
2692 whatsoever on the grid.

2693 Mr. Whitfield. Well, thank you very much for that, and thank
2694 you all for your testimony. We look forward to additional contact
2695 with you, as we try to decide what we are doing with this
2696 legislation.

2697 I also would ask unanimous consent that we enter into the

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2698 record a letter of support from Advanced Hydrosolutions; a
2699 statement for the record from Clark Canyon Hydro; a statement from
2700 Congressman Zinke in support of H.R. 2080 and 2081, and a statement
2701 of record from the American Rivers. I think you all have seen
2702 this.

2703 Mr. Rush. No objection, Mr. Chairman.

2704 Mr. Whitfield. No objection?

2705 [The information follows:]

2706

2707 ***** COMMITTEE INSERT *****

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2708 Mr. Whitfield. So, that will conclude today's hearing, and
2709 the record will remain open for 10 days.

2710 We look forward to working with you all. Thank you very much
2711 for your time and your testimony.

2712 That concludes today's hearing.

2713 [The Bill to amend section 203 of the Federal Power Act
2714 follows:]

2715

2716 ***** INSERT 6 *****

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

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[Whereupon, at 12:43 p.m., the subcommittee was adjourned.]

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