

October 3, 2017

TO: Members, Subcommittee on Energy

FROM: Committee Majority and Minority Staff

RE: Hearing entitled “Powering America: Consumer-Oriented Perspectives on Improving the Nation’s Electricity Markets”

I. INTRODUCTION

The Subcommittee on Energy will hold a hearing on Thursday, October 5, 2017, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled “Powering America: Consumer-Oriented Perspectives on Improving the Nation’s Electricity Markets.” The hearing will examine various consumer issues, needs, and concerns relative to the nation’s electric power systems, its costs, and the ability of consumers to participate in the decision-making processes.

II. WITNESSES

- **Joe Bowring**, President, Monitoring Analytics, Independent Market Monitor for PJM
- **Rebecca Tepper**, Chairman, Consumer Liaison Group for the ISO-New England Region
- **Mark Vanderhelm**, Vice President of Energy, Walmart
- **John Hughes**, President and CEO, Electricity Consumers Resource Council
- **Stefanie Brand**, Director, New Jersey Division of Rate Counsel
- **Tyson Slocum**, Director, Public Citizen Energy Program

III. BACKGROUND

There are three generally recognized classes of electricity consumers – residential, commercial, and industrial – each with different needs and concerns regarding power markets. The extent of the average utility consumer’s interaction with electricity markets typically begins and ends with the receipt and payment of an electric utility bill. While consumers can participate in the regulatory process, most do not, citing a lack of time, resources, or expertise to navigate the complexities of rate cases or participating in technical matters ranging from market design to transmission planning. To help consumers participate in the regulatory process, particularly residential customers, there are a variety of entities that provide assistance and representation,

including consumer and ratepayer advocates, public-interest organizations, state utility commissions, state Attorneys General, and independent market monitors, among others. Notwithstanding these resources, direct consumer participation in electric utility proceedings remains limited.

The role of the modern-day utility consumer advocate developed in the late 1970s in the wake of the nation's energy crisis and high energy prices. During this period, the country experienced a movement towards deregulation in both the natural gas and electric sectors. In response to increasing energy costs, consumer and ratepayer advocates were focused on challenging rising electric and natural gas prices in rate cases before the state public utilities commissions. However, since that period, the role of the consumer advocate has evolved to match changes in the energy markets, particularly in the electricity markets. Although consumer advocates continue to evaluate utility rates, they now also represent consumer interests in other areas, including environmental issues and matters concerning the development of energy infrastructure, such as pipeline construction and the siting of high-voltage transmission lines.

As the electricity markets developed and became more complex, it became increasingly difficult for an individual consumer to participate directly in regulatory proceedings, either before a state regulator or the Federal Energy Regulatory Commission (FERC). The formation of regional transmission organizations (RTOs) and independent system operators (ISOs) to administer wholesale power markets added challenges for consumers and end-users seeking to navigate these complex bureaucracies in order to participate in the RTO/ISO stakeholder process. In some cases, the RTO/ISO charges a fee to participate. At the same time, electricity consumers of all types are now demanding more direct services and access to the grid that require two-way communication and greater interaction between suppliers and consumers. While large commercial and industrial customers often have the resources to represent their interests in regulatory proceedings, consumer advocates contend that residential consumers and those with limited resources are unable to match the expertise and influence exerted by other stakeholders, notably the utility interests. However, since consumers ultimately pay for the infrastructure and energy services made available through these markets, they seek greater input into infrastructure decisions. Because utilities and transmission companies earn a guaranteed return when new infrastructure is built, consumer advocates note this creates an incentive to build new electricity infrastructure.

Advocates have long pointed out that Congress previously recognized the challenges that consumers face in participating in FERC proceedings, noting that section 212 of the Public Utility Regulatory Policy Act (PURPA) amended section 319 of the Federal Power Act¹ to create a new office within FERC to allow for intervenor funding and support in key cases. Under the provision, individuals can receive technical assistance and financial compensation to help them substantially participate in proceedings. However, this envisioned "Office of Public Participation" has never been established by FERC or funded by Congress. In addition to section 212 of PURPA, there have been many other legislative attempts to create an office at FERC with a structure and purpose similar to the "Office of Public Participation", however, none of these attempts have been successful.

¹ 16 U.S.C. § 825q-1.

FERC officials contend that such an office is unnecessary as the Commission's mission is to "[a]ssist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and markets means."² FERC staff states that every case before the commission has "detailed notice and comment procedures to ensure it has an adequate record prior to making a decision" and that consumer advocates "provide valuable input in our decision making."³ Further, FERC staff testified that the creation of a new office could "undermine the current coordination among Commission Offices and impede the Commission's ability to fulfill its mission."⁴ Former FERC Chairman Norman Bay also implied that a new office would not be necessary as the Commission already balances competing concerns and its "regulations expressly provide that consumers may intervene in and become a party to cases involving rate filing by public utilities."⁵

Under Order No. 719, the Commission promulgated new regulations which aimed to increase the responsiveness of RTOs and ISOs to customers and stakeholders.⁶ Specifically, the order directed the RTOs/ISOs to establish criteria to improve responsiveness to their stakeholders, and ultimately to the consumers who benefit from and pay for electricity services. The criteria included: (1) customer inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness by the RTO/ISO.⁷

In response to Order No. 719, the RTOs/ISOs established a varying range of programs and functions in an effort to comply with these consumer-focused reforms. For example, PJM now has a Consumer Advocate liaison on staff and funds (through its tariff) the Consumer Advocates of PJM States, Inc. (CAPS), which is a collection of organizations in PJM that are mandated by law to represent the interests of their respective utility consumers before regulatory and judicial bodies. Similarly, the New York Independent System Operator (NYISO) funds a Consumer Liaison who is responsible for maintaining a dialogue and soliciting feedback from consumer interests, and NYISO's Board of Directors also selects and appoints a Consumer Advocate. The Midcontinent Independent System Operator (MISO) offers consumer advocates a vote in its stakeholder process and two seats on its Advisory Committee, which provides direct input to MISO's Board. The remaining RTOs and ISOs have also developed policies or positions to attempt to incorporate the perspectives of consumers in their decision-making processes. Despite these efforts, electricity consumers continue to express concerns about their ability to meaningfully participate in the decision-making processes of these markets.

² FERC Strategic Plan 2014-2018.

³ Written testimony of J. Arnold Quinn, Director of FERC's Office of Energy Policy and Innovation, before the House Committee on Energy and Commerce, Subcommittee on Energy and Power, June 3, 2015.

⁴ *Id.*

⁵ Letter of Chairman Norman Bay to Senator Richard Blumenthal in FERC Docket No. RM16-9-000, May 5, 2016.

⁶ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, III FERC Stats. & Regs., Regs. Preambles ¶ 31,281, at P 274 (2008), *as amended*, 126 FERC ¶ 61,261, *order on reh'g*, Order No. 719-A, III FERC Stats. & Regs., Regs. Preambles ¶ 31,292, *reh'g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

⁷ *Id.*, Order No. 719 at P 477-482.

IV. ISSUES

The following issues may be examined at the hearing:

- Whether consumers can effectively participate in federal regulatory proceedings and/or the stakeholder processes in the various electricity markets.
- Whether statutory or regulatory reforms are necessary to provide consumers and other end users with additional opportunities to participate in the stakeholder or regulatory process.
- Whether consumer needs and interests are adequately represented in today's electricity markets.
- Whether the organized electricity markets are delivering benefits to consumers.
- The reasons why electricity prices paid by consumers and end-users have remained flat in recent years despite the steady decline in the cost of generating power.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Jason Stanek, Annelise Rickert, or Wyatt Ellertson on the Majority Committee staff at (202) 225-2927, or Rick Kessler on the Minority Committee staff at (202) 225-4407.