

FEDERAL ENERGY REGULATORY COMMISSION

Office of The Commissioner

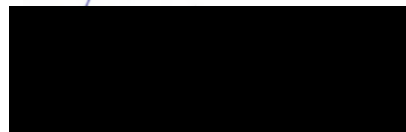
May 21, 2018

The Honorable Fred Upton, Chairman
Subcommittee on Energy
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for the opportunity to appear before the Subcommittee on Energy on Tuesday, April 17, 2018, and testify at the hearing entitled "Oversight of the Federal Energy Regulatory Commission and the FY 2019 Budget." Attached are my responses to the Supplemental Questions for the Record.

Sincerely,



Neil Chatterjee
Commissioner
Federal Energy Regulatory Commission

Attachment—Additional Questions for the Record

The Honorable Fred Upton

1. **FERC has long held that it “does not pick winners or losers” regarding the fuels for generating electricity -- rather FERC’s role is to promote competition through market mechanisms.**
 - a. **How does this philosophy square with the fact that some generators have characteristics or attributes (e.g., onsite fuel) that allow them to provide additional value in terms of reliability or resilience?**

The organized electricity markets FERC oversees provide tremendous benefits to consumers. The Commission’s commitment to ensuring that RTO and ISO market constructs are fuel neutral is not incompatible with valuing certain attributes. For instance, organized electricity markets provide compensation for certain essential ancillary services such as black start and frequency regulation, which some generators can provide but others cannot. The generators’ ability to provide these services is based on operational characteristics, not fuel type. On January 8, 2018, the Commission established a proceeding (Grid Resilience in Regional Transmission Organizations and Independent System Operators, Docket No. AD18-7) to examine bulk power system resilience and consider whether organized electricity markets should identify and compensate other attributes for their contributions to bulk power system resilience in light of the changing generation resource mix.

2. **FERC does not have the authority to mandate that a certain amount of power be generated by resources. In response to various legislative efforts to support nuclear generation, the industry is debating whether individual state actions are harming the efficient operation of the organized wholesale electricity markets. States including New York and Illinois have enacted or legislation that would protect “at-risk” nuclear generation units from closure due to their inability to compete economically in a competitive market.**
 - a. **Litigation is currently underway in the U.S. Court of Appeals (2nd & 7th Circuits regarding the lawfulness of these subsidies. Will FERC assist the Court in providing its views (as requested by the Court)?**

Commission Staff has been working with the U.S. Department of Justice in drafting a joint, *amici curiae* brief providing assistance requested by the U.S. Court of Appeals for the Seventh Circuit in the pending appellate litigation over the appropriateness of Illinois’s zero emission credit program.

To my knowledge, the U.S. Court of Appeals for the Second Circuit has not asked the Commission to render similar assistance in the pending appellate litigation over the appropriateness of New York State’s zero emission credit program.

- b. **Do you or FERC have a position the appropriateness of these credits?**

The zero emission credit programs in Illinois and New York are the subject of pending, contested proceedings (Docket Nos. EL16-49 and EL13-62) currently before the Commission. Therefore the Commission's rules limiting *ex parte* communications preclude me from opining on the appropriateness of those programs before the Commission has issued decisions in the relevant proceedings.

3. **In July 2011, FERC issued Order 1000 – a landmark rule designed to increase regional transmission development by non-incumbent utilities and foster competition for innovative and cost-effective projects. However, after more than 6 years, few new transmission projects can be directly attributed to Order No. 1000 and a recent FERC staff report admitted that “*it is difficult to assess whether the industry is investing in sufficient transmission infrastructure to meet the nation’s needs and whether the investments made are more efficient or cost-effective.*”**

- a. **What are the Commissions views on this rule? Should it be reexamined?**

Order No. 1000's encouragement of competitive transmission projects is a critical element in the Commission's efforts to promote cost-effective, innovative, transmission infrastructure development. The Commission expends significant effort toward ensuring its implementation of Order No. 1000 reflects the important role envisioned for competitive transmission development in building out a 21st-century grid. For example:

- The Commission in June 2016 held a technical conference on implementation of Order No. 1000 focused in large part on competitive transmission projects and regional transmission development;
- Beginning in 2016, the Commission has published an annual Transmission Metrics Staff Report providing metrics for use by stakeholders and policymakers in assessing post-Order No. 1000 transmission investment patterns within organized markets; and
- Commissioners and Commission staff meet frequently with diverse stakeholders (including competitive transmission project developers) who provide their perspectives on the Commission's implementation of Order No. 1000.

I am a strong believer in competition and its ability to unlock cost savings and other significant benefits for consumers and industry. I look forward to working closely with my fellow Commissioners to ensure that the implementation of Order No. 1000 effectively leverages competitive forces, thereby enabling cost-effective, innovative development of required electricity transmission infrastructure.

4. **Each of the RTOs/ISOs employ a market monitor to oversee the activities of the markets, but each of them has a different structure. Some RTOs contract with an independent entity to serve this role (e.g., PJM and MISO), while others rely on an internal monitor (e.g., Southwest Power Pool and CAISO) and others have both an internal monitor and an external independent monitor (e.g., ISO-New England and New York ISO).**

- a. **After 20 years of experience with market monitors in the organized markets, there remains a good deal of confusion regarding the role of the monitors, which type of monitoring structure works best, and who the market monitor is ultimately responsible to.**

- i. **What are your thoughts on the role of the market monitor? Are any changes necessary?**

After carefully analyzing a large number of comments from various stakeholders, the Commission issued Order No. 2000, which determined that it would be appropriate to allow RTOs to have different market monitoring structures to meet their individual needs. In Order No. 719, the Commission chose to maintain this flexibility while adopting a number of reforms to further strengthen the role of market monitor. These reforms included requiring market monitors to report directly to the RTO/ISO board of directors and establishing ethics standards for market monitors. Order No. 719 also ensured that market monitors were provided with the independence and authority to evaluate any needed changes to the markets and to bring them to the attention of concerned entities, to review and report on the performance of the markets, and to refer suspected wrongdoing to the Commission.

I believe that market monitors continue to play an important role in ensuring that customers pay just and reasonable rates for electricity. Since joining the Commission, I've been impressed by the thoughtful comments and analyses provided by all of the market monitors across each of the RTOs and ISOs. In my view, effective market monitoring remains an important element of RTO and ISO markets. Moreover, since the issuance of Order No. 2000, the Commission has issued further guidance on the role of market monitors in Order No. 719 and various other orders.¹ However, to the extent stakeholders believe there are opportunities to better clarify the role of the market monitors or make other improvements to the market monitoring construct, I would certainly consider such input.

The Honorable John Shimkus

Load Serving Entity Rights; FPA §217(b)(4):

1. **Section 217 (b) (4) of the Federal Power Act directs FERC to exercise its authority to facilitate the planning and expansion of the transmission grid to meet the reasonable needs of Load Serving Entities, and enable utilities with an obligation to serve to secure firm transmission rights for their long term power supply arrangements. In your opinion, what is the extent of FERC's obligation to ensure that Congress' directive with regard to firm transmission rights for long-term power supply arrangements is met?**

As you noted, section 217(b)(4) of the Federal Power Act provides that:

¹ See e.g., *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 (2005).

The Commission shall exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.

I became familiar with the needs of load-serving entities when I worked for the National Rural Electric Cooperative Association, and I take this statutory responsibility seriously. In 2006, FERC issued Order No. 681 to implement this statute by amending the Commission's regulations to provide guidelines which RTOs and ISOs must follow in order to make long-term firm transmission rights available to all transmission customers and to provide certainty to load-serving entities. I must note that the D.C. Circuit has held that the statute does not create a preference for load-serving entities in all contexts and that the section would be violated only if the FERC were to exercise its authority in a manner that is at odds with the needs of load-serving entities.

Ownership of Transmission Assets:

- 2. The Commission has, on several occasions, expressed strong support for Joint Ownership of transmission, noting that it has proven to be a model that gets transmission built quickly, efficiently and at low cost. In its November 15, 2012 Policy Statement on transmission incentives, the Commission "encourage[d] incentives applicants to participate in joint ownership arrangements and agrees ... that such arrangements can be beneficial by diversifying financial risk across multiple owners and minimizing siting risks included," but this statement has not spurred additional joint ownership arrangements. If it can be established that the joint ownership model of transmission ownership results in a more robust grid, should the Commission do more to actively promote joint ownership arrangements involving public power entities? Why or why not?**

I agree with the statement within the Commission's November 2012 Policy Statement (*Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129) that joint ownership arrangements can have meaningful risk-reduction benefits for transmission project developers. With that in mind, I am open to hearing the perspectives of stakeholders regarding the benefits of joint electricity transmission infrastructure ownership models, as well as whether and how the Commission should more actively promote the same.

The Honorable Markwayne Mullin

- 1. On December 9, 2016, the Federal Energy Regulatory Commission (FERC) denied the request for a rehearing of the Commission's March 11, 2016, decision to deny applications for the Jordan Cove Energy and Pacific Connector Gas Pipeline Project (Jordan Cove) in Docket Nos. CP13-483 and CP13-492. In its March 11th order,**

FERC stated that the project proponents had not demonstrated a need for the export terminal and pipeline, citing a lack of demonstrated market demand. Following the decision, Jordan Cove quickly procured contract agreements for 75 percent of the pipeline's capacity and 50 percent of the export terminal's LNG. Now that market demand has been demonstrated, will FERC now revisit the Jordan Cove application?

I appreciate your interest in these projects. FERC is currently considering the Jordan Cove Energy Project and Pacific Connector Gas Pipeline's applications. On February 10, 2017, FERC approved Jordan Cove and Pacific Connector's request to use our pre-filing process to recommence review of the projects. On June 9, 2017, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement for the project and subsequently held three public scoping sessions. On September 21, 2017, applications for the Jordan Cove Energy Project and Pacific Connector Gas Pipeline were submitted to FERC. Commission staff is now reviewing the applications and working on preparing an Environmental Impact Statement. Once that is completed, the Commission will be in a position to act on the application.

The Honorable Richard Hudson

- 1. As you know, FERC is litigating a number of enforcement cases in federal district court and several of these cases involve virtual trading in the electricity markets. While some suggest that virtual trading allows utilities to hedge against price volatility and congestion, others have argued that virtual transactions are not being used as intended, resulting in profits to traders without adding any commensurate benefit and a decline in the performance of the markets.**
 - a. Since there is a track-record of market manipulation involving virtual products, does FERC have any plans to review its existing policies regarding virtual trading in RTO markets?**

The Commission is not currently pursuing generic reforms to virtual trading practices; instead, it is evaluating proposals regarding virtual trading on a case-by-case basis. For example, on February 20, 2018, the Commission accepted a proposal from PJM to reduce the number of bidding points at which market participants can submit virtual transactions.²

- b. What further steps can FERC take to prevent market manipulation through virtual trading?**

FERC has a robust enforcement program which serves to deter misconduct across all our areas of jurisdiction, including manipulation of wholesale electricity markets. As noted in your question, the Commission has undertaken enforcement actions against a number of entities that have manipulated wholesale electricity markets, including several traders using "virtual" products in RTO/ISO markets. The Commission's Office of Enforcement works in close collaboration with RTOs/ISOs and their market monitors to oversee all trading activity. Fair enforcement is critical to ensuring that

² *PJM Interconnection, LLC*, 162 FERC ¶ 61,139 (2018).

consumers maintain confidence in wholesale electricity markets, and I will continue to support enforcement actions against entities that engage in market manipulation.

The Honorable Scott Peters

- 1. Commissioner, I assume you're familiar with the plight of California customers and utilities given our State's recent devastating wildfires, including the application of "inverse condemnation" that may threaten the long-term fiscal health of our utilities.**
 - a. In your experience, what sort of utility-related costs come in the aftermath of wildfires or other natural disasters? Repair and restoration? Other damages and liabilities?**

My understanding is that most post-wildfire/natural disaster expenses consist of those costs not covered by insurance that are related to (1) repair/replacement of damaged transmission facilities and (2) liability for damage to the property of third parties.

- b. I understand that in most cases, assuming the affected utility has acted prudently, then the utility may recover many of these costs through rates. Is that correct? Given the exorbitant costs associated with natural disasters, what would be the financial impact on utilities if they were unable to recover such costs in full or at least partially?**

The Commission historically has permitted transmission utilities to recover through their transmission rates any prudently-incurred repair and restoration costs not covered by insurance. In the event that a transmission utility were unable to recover its post-wildfire or natural disaster costs through the transmission rates charged to its customers, that utility (or more precisely, its shareholders) would ordinarily bear such costs.

- c. Is there a correlation between the fiscal health of a utility and the reliable service it is able to provide its customers? Similarly, is there a correlation between the fiscal health of a utility and its ability to build a stronger, more resilient power grid?**

The Commission allows transmission utilities to recover their prudently-incurred costs in complying with relevant NERC reliability standards so that transmission utilities can avoid having to choose between system reliability and fiscal solvency.

- d. Specific to FERC-jurisdictional facilities, assets, and rates, what ratemaking mechanisms or tools does FERC have in place to allow for consideration of recovery of costs for damages prudently incurred from natural disasters?**

As I explained in my response to an earlier question, the Commission historically has permitted transmission utilities to recover through their transmission rates any prudently-incurred repair and restoration costs not covered by insurance.

The Honorable Paul Tonko

1. Natural Gas Exports and Public Benefit

The energy landscape has changed dramatically since FERC issued its 1999 policy for certifying natural gas pipeline projects. The U.S. Energy Information Administration's latest long-range projections anticipate liquefied natural gas (LNG) exports to grow significantly, so it seems reasonable to assume exports will play an increasing role in future gas infrastructure demand.

- a. **Will FERC's review of its 1999 policy statement consider the role of LNG exports when determining whether a proposed project is required by the public convenience and necessity?**

The Commission's April 19, 2018, Notice of Inquiry (NOI) regarding Certification of New Interstate Natural Gas Facilities seeks stakeholder comment to assist the Commission in evaluating whether, and if so how, it should revise its approach under its current Certificate Policy Statement. The NOI explains that increases in both domestic and international demand for natural gas produced in the United States have led to the Commission receiving and approving an increased number of pipeline and LNG export terminal applications in recent years. Accordingly, the NOI asks whether end uses of natural gas, such as LNG export, should be considered as part of the certificate evaluation process.

- b. **Should pipeline expansions that are intended to boost consumption overseas constitute a public benefit, particularly for those projects that require the use of federal eminent domain authority to take private property?**

The NOI seeks comments on potential modifications to the Commission's approach to determining whether a proposed project is required by the public convenience and necessity. The NOI requests comments in several general areas of examination, including the potential exercise of eminent domain and landowner interests. I look forward to reviewing the comments on this issue and to working with my colleagues to ensure the Commission's processes appropriately address the concerns of landowners affected by infrastructure projects.

- c. **Do you believe it is possible, and would it be appropriate, for FERC to differentiate between domestic needs versus foreign exports when determining if a project is required by the public convenience and necessity?**

As I noted above, the NOI requests comment regarding whether the Commission should consider the intended or expected end use of the natural gas and what challenges exist in determining the ultimate end use of new pipeline capacity. I look forward to reviewing the comments on this issue.