

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

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, to testify at the hearing entitled "Oversight of the Federal Energy Regulatory Commission and the FY 2019 Budget." Enclosed are my responses to the Supplemental Questions for the Record.

Sincerely,

A solid black rectangular redaction box covering the signature of the Commissioner.

Commissioner Richard Glick

Enclosure:  
As Stated

**U.S. House Committee on Energy and Commerce, Subcommittee on Energy**  
**April 17, 2018 Hearing: Oversight of the Federal Energy Regulatory Commission and the**  
**FY2019 Budget**

**Questions for the Record Submitted to the Honorable Richard Glick**

**The Honorable Fred Upton**

**Question 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?**

**Answer:** As you note, the Commission does not favor specific electric generation technologies. Instead, the Commission generally relies upon markets to promote competition to ensure that jurisdictional electric rates and service meet the requirements of the Federal Power Act. One important aspect of promoting competition is removing barriers to entry so that all resources can compete in the wholesale markets to provide a defined service. As a result, although different resource types can have different attributes, they can compete to provide a comparable service to the grid. I have yet to see any evidence to suggest that grid reliability or resilience is endangered because resources are not being compensated for certain characteristics or attributes.

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

**Answer:** The U.S. Court of Appeals for the Seventh Circuit has invited the United States to file a brief in litigation with respect to the Constitutionality of the Illinois Zero Emissions Credits (ZECs) program. As Chairman McIntyre notes, “In light of the court’s invitation, FERC staff is working with the Department of Justice, which plans to field the requested brief.” In my opinion, the Federal Power Act reserves for the states the responsibility to oversee a utility’s generation resource mix and FERC should respect state decisions. It is not for FERC to second-guess whether a particular state resource decision is “appropriate” as long as the state action is not preempted by the Federal Power Act.

**Question 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 “[i]t 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?**

**Answer:** I believe that the Commission should continue to examine whether Order No. 1000 is achieving its stated goals. That review should include whether the existing transmission planning processes are working adequately to develop large, regional, and interregional transmission facilities. In addition, the Commission should examine whether those processes are inadvertently providing incentives for incumbent transmission owners to build smaller, localized projects in order to avoid developing facilities that may be subject to competition.

I also believe that it is time to review the Commission’s transmission incentives policy. In 2005, Congress enacted section 219 of the Federal Power Act, which, among other things, requires the Commission to develop an incentives-based policy for promoting transmission investment. In my opinion, the Commission should revisit its incentives policies adopted pursuant to section 219 to ensure that the Commission is actually incentivizing needed investment.

**Question 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?**

**Answer:** The market monitors, both internal and external, serve a critical role in organized markets. As Chairman McIntyre notes in his response to this question, in Order No. 719 the Commission determined that a market monitor has three core functions: (1) evaluating the effectiveness of existing and proposed market rules, tariff provisions, and market design elements and recommending proposed changes “not only to the RTO or ISO, but also to the FERC’s Office of Energy Market Regulation staff and to other interested entities such as state commissions and market participants”; (2) reviewing and reporting on market performance; and (3) referring the suspected wrongdoing of market participants and RTOs/ISOs to the Commission’s Office of Enforcement. I believe that to effectively carry out these core functions, any market monitor must be able to provide independent oversight.

**The Honorable John Shimkus**

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

**Question 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?**

**Answer:** As Chairman McIntyre notes, the United States Court of Appeals for the District of Columbia Circuit has held that section 217(b)(4) does not create a general preference for load-serving entities in all contexts and that the section would be violated only if the Commission were to exercise its authority in a manner that is at odds with the needs of load-serving entities. The Commission will continue to exercise its authority under section 217(b)(4) consistent with that reading of the Federal Power Act.

Ownership of Transmission Assets:

**Question 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?**

**Answer:** As you indicated, transmission incentives are in place for joint ownership. I am open to better understanding why these incentives have not led to much jointly owned transmission as part of a comprehensive review of the Commission’s transmission incentive policies.

**The Honorable Richard Hudson**

**Question 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?**

**Answer:** We have a responsibility under the Federal Power Act to ensure that jurisdictional rates are just and reasonable. I believe that competitive markets can produce just and reasonable rates, but only if they are truly competitive, which means that they must not be subject to manipulation. We must do everything we can to prevent manipulation of any jurisdictional transaction, including virtual transactions. As Chairman McIntyre explains, the Commission continually monitors these markets through its market surveillance program. Additionally, there is a referral process for market monitors and other market participants to provide referrals to the Office of Enforcement if they believe that manipulation is occurring. Protecting against market manipulation is a critical function of the Commission and I will continue to work with my colleagues and Commission staff to protect against the manipulation of markets, including from virtual transactions.

**The Honorable Scott Peters**

**Question 1: 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?**

**Answer:** Wildfires, especially in the West can have a devastating impact on the electric grid. Unfortunately, as a result of climate change, the West is likely to experience wildfires that are more frequent and more extreme. In the aftermath of wildfires or other natural disasters, I would imagine that the utility-related costs would include the repair and replacement of damaged transmission facilities as well as damages associated with the loss of power to business and residential customers and potentially injury and loss of life.

- 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?**

**Answer:** Pursuant to the Federal Power Act, the Commission has jurisdiction only over interstate transmission facilities and wholesale electric transactions. A significant part of the damage associated with a wildfire involves the distribution grid and retail service, which are subject to the jurisdiction of state public utility commissions, not FERC. However, FERC has permitted transmission-owning utilities that incurred costs associated with jurisdictional facilities to recover those costs if they are prudently incurred. As Chairman McIntyre notes, in 2014, San Diego Gas & Electric Company recovered \$23.3 million in wildfire costs through FERC-jurisdictional transmission rates. If a utility is unable to pass costs to ratepayers, the financial responsibility would be borne by the utility's shareholders.

- 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?**

**Answer:** There is not necessarily a correlation between fiscal health and a utility making sufficient investments in its system to provide reliable and resilient service. All utilities are required to comply with relevant reliability standards, regardless of fiscal health. But, it may be more expensive for a utility experiencing fiscal difficulties to raise the capital necessary to make these investments and that might lead to higher rates for consumers.

**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?**

**Answer:** The Federal Power Act requires that the Commission allow electric utilities to recover just and reasonable rates. If a competitive market exists, such as for wholesale power in some circumstances, that rate can be established through a market mechanism. If the rate is for transmission, we generally permit a utility to recover its prudently incurred costs plus a reasonable rate of return on its investment in those transmission facilities.

**The Honorable Paul Tonko**

**Natural Gas Exports and Public Benefit**

**Question 1:** 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?**

**Answer:** The responsibility for authorizing the export of natural gas, including LNG, is within the Department of Energy's jurisdiction rather than FERC's. FERC's role with respect to LNG exports is limited to ensuring that the facilities used for export are in the public interest and, as such, will not harm the public safety or the environment. That said, I believe the Commission should consider the end use of the natural gas to be transported when determining whether a proposed pipeline facility designed to bring natural gas to an export facility is required by the public convenience and necessity and I understand this issue is included in the scope of the Commission's recent notice of inquiry regarding the 1999 policy statement.

- 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?**
- 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?**

**Answer:** We take a variety of factors into account in determining whether a proposed pipeline or pipeline expansion is in the public interest. I believe one of those factors should be the intended use of natural gas to be transported by the proposed pipeline.



**The Honorable Joseph P. Kennedy III**

**During the hearing, I committed to Congressman Kennedy that I would supplement the record with information detailing how often, pursuant to Section 205 of the Federal Power Act, a rate has taken effect by operation of law because the Commission failed to act on the proposal within the statutory time period – generally 60 days after a proposal for a new rate or tariff change is filed.**

Commission staff research indicates that, in the last fifteen years, a proposed rate has taken effect pursuant to the Federal Power Act's operation-of-law provisions five times. My understanding is that in two of those five instances, that outcome resulted from a 2-2 split within the Commission.