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, to 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,

[redacted]

Cheryl A. LaFleur
Commissioner

May 7, 2018

The Honorable Cheryl A. LaFleur
Commissioner
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Commissioner LaFleur:

Thank you for appearing before the Subcommittee on Energy on Thursday, April 17, 2018, to testify at the hearing entitled "Oversight of the Federal Energy Regulatory Commission and the FY2019 Budget."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, May 21, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Kelly.Collins@mail.house.gov.

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

Sincerely,

Fred Upton
Chairman
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachment

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 or reliability or resilience?

Response

I believe firmly that FERC's longstanding fuel-neutral, market-based approach is the correct one for ensuring reliability at least cost to customers. The 21st century has brought accelerated technological change in energy, resulting in a transformation of the nation's resource mix. This has been driven largely by the growth in the availability and affordability of domestic natural gas and its increased use for electric generation, and the rapid development and deployment of wind, solar, storage, and demand-side technologies. With these new technologies have come changes in the location and operation of energy resources, their cost patterns, and the way grid operators plan their systems and deploy resources to keep the lights on. As with all transitions, there have been market winners and losers as new technologies have brought competitive pressures to bear on existing resources. Resource turnover is a natural consequence of markets, and the reduced prices that result from greater competition are a benefit to customers, not a problem to solve, unless reliability is compromised.

As the recent Department of Energy grid study and numerous analyses by the North American Electric Reliability Corporation have noted, the transformation of the resource mix to date has been accomplished without compromising reliability. However, ensuring that this continues to be the case requires continued diligence, and the Commission's consideration of the record in our resilience proceeding is another step in that effort. If the Commission is presented with persuasive evidence that a threat to reliability exists, or that a reliability attribute is being undervalued in the wholesale competitive markets, I will carefully consider that evidence and evaluate appropriate remedies.

Where the Commission has seen evidence of the need for greater system resilience in a changing resource mix, it has acted to ensure that such resilience was provided. It has generally done so by overseeing changes to market design (defining needed resource performance, and using competition to obtain it), interconnection agreements or other tariffs (requiring that certain essential reliability services be provided), or mandatory reliability standards. In each case, the Commission has recognized a customer need, relied upon evidence to define it in a fuel-neutral way, and either allowed the market to transparently price it or established broad requirements to ensure that a needed service is provided. If

evidence demonstrates that reliability or resilience needs are going unmet, I believe that the Commission should take a comparable approach.

2. In the recent "resilience" filing, ISO-New England was the only RTO to identify an imminent threat to resilience within its footprint, with that threat being its overwhelming dependence on natural gas and constrained fuel supplies during extreme cold weather events.

    a. In your view, what are some viable solutions to ISO-New England's reliability and resiliency concerns – should we be considering ways to increase pipeline capacity?

Response

The Commission currently has before it a proposal from ISO New England to mitigate its fuel security concerns through mid-2024. I will be carefully considering the merits of that proposal.

In addition, ISO New England is currently in discussions with its regional stakeholders on potential market-based solutions to address its stated fuel security concerns. ISO New England stated in its comments in the Commission's resilience proceeding that, given the complexity of the fuel security issue, it believes the region needs sufficient time to develop a solution and test its robustness through the established regional stakeholder process. To the extent additional measures are required to ensure continued reliability and resilience in New England, my preference would be for a market-based mechanism that can meet the region's fuel security needs at least cost for customers. Additional natural gas infrastructure or other new resource additions could be part of any such solution.

3. Under section 205 of the Federal Power Act, FERC is prohibited from making modifications to tariff proposals that are substantial enough to transform them into entirely new proposals. Last summer, the DC Circuit issued a ruling in NRG v. FERC that FERC had contravened this limitation on its authority when proposing changes to PJM's filing to change its rate structure. This undermines FERC's longstanding practice of approving filings subject to certain changes being made, rather than rejecting filings with questionable aspects altogether.

    a. Can you describe if this ruling has adversely affected the way FERC reaches a determination?

    b. Is the public interest harmed by this ruling?

    c. Is a legislative fix necessary to clarify Section 205 of the FPA?

Response

I do have concerns regarding the impact of the D.C. Circuit's ruling on the Commission's processing of section 205 rate filings. Our longstanding practice has been to approve rate filings subject to conditions if the Commission finds that aspects of the filing must be changed to ensure that the approved rate is just and reasonable. The D.C. Circuit's ruling in *NRG* appears to significantly limit the Commission's ability to approve section 205 filings in this manner. As a result, the Commission may process cases differently after the NRG decision than it would have prior to that decision, resulting in more rejections and a loss of efficiency in Commission proceedings.

The *NRG* decision has particularly significant impacts on our market work. As our market rules are becoming increasingly complex, this lack of flexibility regarding consideration of section 205 filings will create significant challenges for the Commission and for the regulated community. If the Commission is no longer able to approve section 205 rate filings subject to conditions, it will force the Commission to reject such filings with increasing frequency. This will make it more difficult for stakeholders to acquire Commission approval of complicated market rule changes, particularly in a timely manner.

Given these impacts, I do believe that the public interest is being harmed by this ruling, and that a legislative change could help to fully address it.

4. 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?

Response

Please refer to the answer submitted by Chairman McIntyre.

5. 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?

Response

As the Commission indicated in its 2017 staff report on transmission metrics, there are several reasons we encounter difficulty in quantifying the sufficiency of industry investment in transmission infrastructure and whether investment is more efficient or cost-effective. For example, stakeholders in a particular region may not have a unanimous opinion of what constitutes an appropriate amount of transmission investment. Some transmission issues can be address by alternatives to transmission, such as generation and demand-side resources, while others can only be addressed with transmission investment. Although challenging, the Commission has developed metrics to assess transmission investment patterns. What we've identified through our metrics and through discussions with stakeholders and RTO/ISO regions is that we have made progress, but challenges remain.

As the reconstituted Commission works its way through the outstanding policy issues left unaddressed during the no quorum period, I would encourage a review of the record developed during our technical conference on competitive transmission development in June 2016. I believe competition has delivered value for customers where it has been allowed to work. However, the introduction of competitive processes has been difficult. As I have previously stated, I am concerned that the threat of competition has led to changes to transmission planning processes as incumbents favor projects that do not require competitive bidding. I am open to considering ways to further improve competitive processes and ensure effective transmission planning.

6. 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?

Response

Please refer to the answer submitted by Chairman McIntyre.

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?

Response

Please refer to the answer submitted by Chairman McIntyre.

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?

Response

I believe that joint ownership of transmission facilities can provide real benefits for consumers, help ensure non-discriminatory access to the transmission system, facilitate siting of new transmission, and expand the scope of potential investment in the grid. Part of the motivation behind Order No. 1000 was to promote new forms of transmission development and ownership, including partnerships between or among incumbent transmission owners, public power entities, and new non-incumbent developers. In fact, a partnership among LS Power, Big Rivers Electric Corporation, Inc., and Hoosier Energy Rural Electric Cooperative, Inc. was selected by the Midcontinent Independent System Operator, Inc. (MISO) in late 2016 to develop a new high voltage transmission project in the MISO footprint, demonstrating the potential for these types of partnerships. I agree that the Commission should be alert for opportunities to support joint ownership arrangements.

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?

Response

Please refer to the answer submitted by Chairman McIntyre.

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

Response

Please refer to the answer submitted by Chairman McIntyre.

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?

Response

As stated by the Chairman in his response to this question, the cost of repair or replacement of transmission facilities and liability for property damage in excess of recoveries provided by insurance are two of the most common types of expenses. The costs of vegetation management and initial insurance expenses to cover a utility from at least some of the liability associated with natural disasters are also costs that must be borne by utilities. I would also note that an additional expense many utilities incur are costs related to hardening

of facilities to improve resilience, including resilience against the increasing impacts from climate change.

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?

Response

Please refer to the answer submitted by Chairman McIntyre.

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?

Response

Yes, on both counts.

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?

Response

Please refer to the answer submitted by Chairman McIntyre.

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?

Response

With respect to LNG exports, the export of the gas is subject to the jurisdiction of the Department of Energy (DOE), while the Commission approves the export facilities under section 3 of the Natural Gas Act (NGA) and frequently approves the pipeline to the LNG facility under section 7 of the NGA. As the Chairman states in his response to this question, on April 19, 2018 the FERC issued a Notice of Inquiry (NOI) initiating the FERC's review of its 1999 policy statement on the certification of new natural gas transportation facilities. The NOI seeks information and stakeholder perspectives to help the FERC explore whether, and if so how, it should revise its approach under its currently effective policy statement to determine whether a proposed natural gas project is or will be required by the present or future public convenience and necessity, as that standard is established in section 7 of the NGA. As the Chairman further stated, consideration of the role of LNG exports when determining whether a proposed project designed to bring natural gas to an export facility is required by the public convenience and necessity can be included in the scope of the NOI.

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?

Response

Please refer to the answer submitted by Chairman McIntyre.

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?

Response

I have previously expressed the view that the Commission should consider requiring more information in its pipeline dockets on end use of the natural gas, to help determine both the need for and the environmental impacts of a proposed pipeline project. In the case where FERC considers a pipeline to serve an LNG facility, considering end uses is more complicated because the DOE approves the export of that natural gas. As the Chairman states in his response to this question, in the NOI, the FERC requests comments on whether consideration of end uses would better inform the FERC's determination regarding whether there is a need for a proposed project. The FERC will review all input received in response to the NOI when considering any potential future FERC action.