

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

May 7, 2018

The Honorable Kevin J. McIntyre
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Chairman McIntyre:

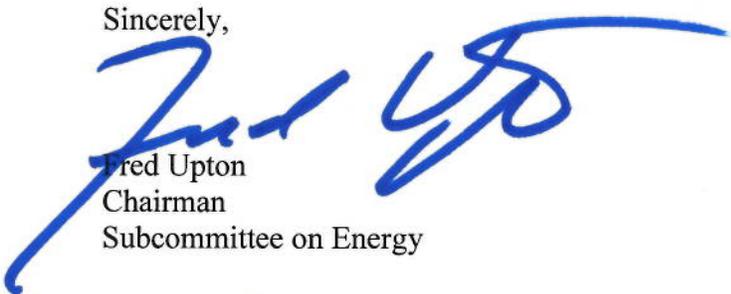
Thank you for appearing before the Subcommittee on Energy on Thursday, April 17, 2018, to testify at the hearing entitled "Oversight of the Federal Energy Regulatory Commission and the FY2019 Budget."

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. Also attached are Member requests made during the hearing.

To facilitate the printing of the hearing record, please respond to these questions and requests 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

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Fred Upton

1. Following his appearance before the Subcommittee on May 3, 2017, Mr. John Katz was asked to list and provide the status of all pending hydropower proceedings where the Commission is waiting on another Federal or State agency to act of a Federal authorization. Mr. Katz responded by providing a table that shows the cases where the Commission staff has completed its environmental review and is currently waiting for an action to be completed by another agency before the Commission can issue a decision on the project. Of those 26 cases listed, 23 were relicenses.
 - a. Please provide an updated list and describe the status the pending proceedings.
 - b. If there is no change in the status, please explain why and describe the steps taken by the Commission to resolve to the matter.
2. On August 15, 2017, President Trump signed Executive Order 13807, which established a One Federal Decision (OFD) policy for Federal review of major infrastructure projects, and set a goal for completing reviews and authorizations within two years. On April 9, 2018, Chairman McIntyre signed a memorandum of understanding (MOU) with 11 other agencies to implement the OFD policy.
 - a. Please describe how the OFD policy and the MOU will improve FERC's procedures for siting hydropower facilities, electric transmission, and pipelines.
3. Congress provided FERC with authority under the Natural Gas Act to authorize the siting and construction of onshore and near-shore LNG export facilities. Once FERC has completed the review required under the National Environmental Policy Act, the Department of Energy begins a public interest review for the proposed export of the commodity. Given the sequential nature of these reviews, it is imperative that FERC's review be conducted efficiently and expeditiously.
 - a. Please list and describe the status of all pending LNG export applications before the Commission.
 - b. Please list the number of full-time equivalent staff responsible for processing LNG export applications.
 - c. Please describe any steps already taken or planned to improve efficiency and expedite the processing of LNG export applications.

4. Is Congressional intent undermined when a state can exercise its section 401 water quality certification authority to block construction of new pipeline capacity, regardless of any inconsistency with state water quality standards?
5. Do you have any advice or recommendation to Congress as to what can be done to reinforce and strengthen the FERC's role in administering a comprehensive Federal scheme of regulation of interstate pipeline development?
6. 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?
7. As you know, a request has been made to DOE for an emergency order to aid certain nuclear and coal-fired plants in PJM.
 - a. From your perspective, what tools does FERC have to ensure that struggling nuclear and coal-fired plants can be compensated at a level where they can continue to operate?
8. 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?
9. 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?
- 10. In 2014 FERC began to examine the issue of how non-market actions, events, and circumstances can influence wholesale electricity prices. Since then, FERC has initiated numerous “price formation” rulemakings on various topics. Several years have now passed and some have said that FERC is addressing “price formation” issues too slowly.
 - a. What is the status of these efforts and how do you see them relating to other market issues like grid resilience.
- 11. 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?
- 12. FERC has struggled (since 2011) to come up with a methodology to calculate a legally-sustainable Return on Equity (ROE) for existing electric transmission infrastructure. Transmission owners argue that ROEs are set too low, and end-users argue that ROEs are excessive. In 2014, FERC developed a methodology (in Opinion No. 531) that made nobody happy and FERC’s decision was appealed to the D.C. Circuit. As you know, that FERC policy was vacated by the Court in 2017, finding that FERC failed to engage in reasoned decision-making in crafting its ROE methodology.
 - a. Lacking a clear and stable ratemaking policy, transmission owners, developers, and financiers are concerned with the outlook of new transmission infrastructure projects. What is FERC doing with respect to Transmission ROEs?
 - b. How much longer does FERC expect it will need to resolve this issue?
- 13. In light of the recent tax reform legislation, what is FERC doing to ensure that pipeline customers will realize the benefits associated with a lower corporate tax rate for the pipeline?
- 14. 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?
15. We've heard about benefits and drawbacks of financial trading in the RTO and ISO markets, including the use of "FTRs" and virtual bidding. The market monitors in PJM (Dr. Bowring) and CAISO (Dr. Hildebrandt) have raised some serious concerns regarding the auctioning of FTRs in their markets. For instance, in California, Dr. Hildebrandt alleged in a recent hearing that ratepayers are paying \$400 million for FTRs due to market design flaws.
 - a. Is FERC looking into whether there is sufficient revenue adequacy in the various RTOs to fund the FTRs?
 - b. How can we address the persistent shortfalls in FTR funding?
16. It's my understanding that DOE has offered an open invitation for FERC Commissioners to receive intelligence briefings on cyber-related threats.
 - a. How many of you have taken DOE up on this offer?
 - b. In this open setting, how much can you say regarding how prepared are the nation's utilities to fend off a cyber or physical attack?
 - c. Does FERC require additional statutory authority to ensure that the security of our nation's energy delivery infrastructure is protected?
17. As you know, recent wildfires in California and the Western U.S. have resulted in the loss of life and billions of dollars in damages to affected communities. Electric utilities in this region have also been impacted by both the wildfires and state law that may impede their ability to recover the costs associated with the repair and restoration of damaged transmission infrastructure. What is FERC doing to ensure that these utilities remain viable and resilient, and does FERC have policies to ensure that utilities with affected (FERC-jurisdictional) transmission assets can recover wildfire-related expenses?

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?

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?

The Honorable H. Morgan Griffith

As I mentioned in my oral questions, I have heard from multiple homeowners and small business owners – many of whom are members of the "Friends of Claytor Lake" – who have concerns with FERC's licensing process of non-federal hydropower projects. These Virginians are worried about the negative impact Shoreline Management Plans (SMPs) have on privately-owned structures and property values. Please submit answers to the following questions regarding SMPs impacts on local property owners.

1. If a county has zoned a specific project – in this case a lake – in the past, and the project is located solely within the one county, does FERC have objections to the county writing the zoning ordinance in partnership with the licensee and FERC? If so, please elaborate and cite authority for such objections.
 - a. Does FERC have a process in place to ensure that SMP regulations are not duplicative and/or burdensome for a locality that already has comprehensive zoning and building ordinances?
2. What is FERC's view of the role of state agencies – such as the Virginia Department of Game and Inland Fisheries, the Virginia Department of Conservation and Recreation, and

the Virginia Department of Environmental Quality – in overseeing management of environmental and recreational resources?

- a. Does FERC have an inter-governmental process to avoid duplication and conflict in areas where jurisdictions overlap?
3. Are project licensees allowed to require inspections and permits for new owners of shoreline structures upon sale of property when no changes are planned to existing structures?
4. Are project licensees allowed to require modification or removal of grandfathered structures that do not conform to new and current requirements?
5. Are project licensees allowed to impose standards that impact property outside the project boundary?

The Honorable Bill Johnson

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The Honorable Billy Long

1. On March 23rd, it was revealed that Iranian hackers attempted to breach FERC's computer systems. Although the extent of the breach has not been revealed publicly, I am deeply concerned that the sensitive details of our critical infrastructure could have fallen into the hands of malicious actors.
 - a. In this unclassified setting, what can you tell us about this breach?
 - b. What steps are being taken to prevent this from happening again?

2. Recently, City Utilities of Springfield, Missouri, has seen a substantial rise in its transmission costs in the Southwest Power Pool (SPP). Most of the costs are related to funding transmission projects outside of Missouri. Some of the projects allow utilities to access renewable energy located outside the state, however, the benefits are outweighed by the rise of transmission costs for projects located far away. SPP's own studies have shown that City Utilities' transmission costs and energy prices are substantially higher than any other customer in the SPP.
 - a. Will FERC address the concern that some customers like those in the City of Springfield, are paying for assets from which they receive no benefit?
 - b. How can RTO policies that result in transmission costs to consumers that are not commensurate with the benefits be deemed just and reasonable under the Federal Power Act?

The Honorable Richard Hudson

1. As you know, my bill H.R. 2786, will expedite the approval process for small conduit hydropower projects. This bill passed the House by an overwhelming vote of 420-2, and there seems to be support for it in the Senate. You have also previously indicated that FERC would be supportive of streamlining the permitting process for these types of projects.
 - a. Will you commit to working with the Committee to see this bill signed into law?
2. 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?
 - b. What further steps can FERC take to prevent market manipulation through virtual trading?

The Honorable Tim Walberg

1. Chairman McIntyre, at the NARUC annual conference in February, press reports indicated that you expressed your desire to update the regulations implementing PURPA. One issue that has not gotten much attention but that I hope you will look at is the impact that FERC's

implementing regulations are having on natural gas powered, all-electric fuel cells. FERC's regulatory definition of a cogeneration facility requires that to qualify as a QF, a cogeneration facility must produce electric energy and thermal energy for an industrial purpose. The underlying statute only requires that a cogeneration facility produce electric energy and other forms of useful energy. This more stringent regulatory definition has had the effect of denying natural gas powered all electric fuel cells QF status and creating an uneven playing field in the market. The last time Congress opined on PURPA in the 2005 Energy Policy Act Congress specifically directed FERC to update PURPA regulations to ensure "continuing progress in the development of efficient electric energy generating technology." Natural gas powered fuel cells were not commercially available in 2005. However, the technology is now commercial, economical and can achieve efficiencies as high as 65%, exceeding the efficiency requirements under PURPA regulations. However, because of the overly restrictive regulatory definition of a cogeneration facility, FERC's regulations are having the opposite effect of what Congress intended under the Energy Policy Act of 2005.

So my question to you, Chairman McIntyre, is will you commit to looking at the treatment of natural gas powered, all electric fuel cells under PURPA regulations? Specifically, will you examine whether something short of a full-blown rule making can address this small but important issue?

2. In 1983, the Supreme Court stated that FERC had "prescribe[d] the maximum rate authorized by PURPA," in part because it was just getting familiar with the new statute, and noting that customers would not significantly benefit from lower rates because there was a need, at that time, to incentivize new small power production facilities. Now, renewable portfolio standards and customer preferences have driven high rates of renewable facilities, and according to the NRDC, since 2008, costs have fallen dramatically: residential solar PV has fallen by 55%; utility scale solar PV has declined by 71%; wind costs have fallen by 75%.
 - a. Given the changes in the renewable landscape, what can FERC do to ensure that energy customers are not paying a premium for FERC's 40 year old regulations implementing PURPA? Certain states in organized markets have sought to implement market pricing for QFs, but those programs were struck down by federal courts because they ran afoul of FERC's regulations on pricing. How does FERC intend to address that challenge? How can FERC implement market pricing for qualifying facilities to ensure that customers do not pay more for renewable energy under PURPA?
 - b. Ironically, FERC has stated that it will examine the 1999 Certificate Policy Statement because 1999 was a long time ago. How does FERC intend to review its PURPA regulations from 1980?

The Honorable Scott Peters

1. As a Californian and more importantly, a San Diegan, you might guess that I'm particularly concerned with the connection between wildfires and electric grids, through issues like vegetation management, power management, and inverse condemnation, to name a few.

Recently, Governor Brown announced a need to focus on modernizing vegetation management practices, ensuring utility and public infrastructure maximizes resilience to extreme weather events and natural disasters, and updating liability rules and regulations for utility services in light of changing climate and the increased severity and frequency of weather events.

Chairman McIntyre, do you agree with the governor and if so, how do you believe we should move forward?

2. 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?
 - 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?
 - 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?
 - 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?

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?
- 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?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable David B. McKinley

1. When FERC denied the 403, did anyone come up with what the cost to that consumer could have been if 403 had been imposed on, let's say, in Pleasants County power plant?

The Honorable Frank Pallone, Jr.

1. Pertaining to the JCP&L proposed reliability project in Monmouth County, New Jersey, echoed by New Jersey Administrative Law Judge Gail Cookson, how can you change this dynamic to ensure that utilities look at more than just new transmission lines that they look at non-transmission alternatives to ensure reliability? And how can we change incentives so that these non-transmission alternatives are still financially attractive to utilities?