

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 Additional Questions for the Record.

Sincerely,

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

Commissioner Robert F. Powelson

U.S. House Committee on Energy and Commerce, Subcommittee on Energy
April 17, 2018 Hearing: *Oversight of the Federal Energy Regulatory Commission*
and the FY 2019 Budget

Questions for the Record Submitted to the Honorable Robert F. Powelson

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 Chairman McIntyre notes in his response to this question, the Commission has long regarded competitive markets as the appropriate mechanism for compensating resources for the services they provide to the electric grid and has aimed to do so independent of resource class. I agree with this statement. Furthermore, in Docket No. AD18-7-000, the Commission directed operators of the regional wholesale power markets to provide information about whether the Commission and the markets need to take additional action on the resilience of the bulk power system. The goals of this proceeding are to develop a common understanding among the Commission, industry and others of what the resilience of the bulk power system means and requires; to understand how each regional transmission organization and independent system operator assesses resilience in its geographic footprint; and to use this information to evaluate whether additional Commission action regarding resilience is appropriate. Should the Commission hear from an RTO or ISO that there is a reliability or resilience problem because the market is not providing certain necessary services, the Commission would certainly consider options for improving the market.

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 Commission is certainly aware of this proceeding and of the court’s request for the Commission’s position on the issue. As reflected in Chairman McIntyre’s response to this question, in light of the court’s invitation, Commission staff is working with the Department of Justice, which plans to field the requested brief. Chairman McIntyre also notes that matters currently pending before the Commission present the separate question of whether the Illinois

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program affects wholesale rates in Commission-jurisdictional markets in a manner that warrants Commission action. I agree that because the Commission is carefully considering that issue, expressing a view as to the appropriateness of zero emission credits could prejudice that pending matter and thus would be inappropriate at this time.

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 support the policies behind Order No. 1000. Removing barriers to development and injecting competition into transmission planning are important goals. However, I also agree that Order No. 1000 has not always worked to stimulate the needed investment in transmission envisioned when the order was written. I am certainly open to improving the transmission planning process and reviewing the requirements in Order No. 1000.

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: As Chairman McIntyre’s response to this question indicates, certain aspects of the market monitor’s role are pending before the Commission. Due to the pending matters I am limited in my ability to discuss my thoughts regarding the role and whether any changes are necessary. However, generally I believe that market monitors provide an important check on grid operators, market rules, and tariff provisions in organized markets. Additionally, given that markets differ from region to region and the Commission strives to respect regional differences, it makes sense that different markets have different structures for their market monitors. There is not a one-size-fits-all answer for how markets and market monitors should be organized. As

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issues arise, the Commission is always open to reviewing suggestions for how to improve the relationship or clarify the role of the market monitor.

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: I agree with Chairman McIntyre’s response to this question.

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: I agree with Chairman McIntyre’s answer to this question.

The Honorable Bill Johnson

Question 1: During the hearing, I asked about FERC’s security practices for protecting sensitive information such as Critical Energy Infrastructure Information (CEII) that the Commission collects from regulated energy companies and shares with third parties. In your response, you mentioned the work that FERC and NERC did on the recent supply chain standard for regulated energy companies. However, I’d like to know what FERC is doing to protect CEII. In light of events such as attacks on the U.S. government (including FERC) and several universities, the recent Energy Services Group attack, and the policy violation issues at Facebook, what is your thinking on the Commission’s current security practices for protecting sensitive information such as CEII. What is the FERC doing to strengthen these practices? What is the Commission doing to vet third party access to sensitive data?

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Answer: The Commission is committed to ensuring that its approach to handling sensitive information, including Critical Energy/Electric Infrastructure Information (CEII), reflects robust safeguards while also accounting for legitimate needs for access to such information.

This commitment builds on the Commission's long history of protecting sensitive information. For example, the Commission took proactive steps after September 11, 2001, to remove from public files and our online eLibrary database certain documents that were likely to contain detailed specifications about critical energy infrastructure. In 2003, the Commission issued regulations on treatment of CEII, establishing procedures by which an individual seeking such information from the Commission must demonstrate a need for that information and sign a non-disclosure agreement (NDA).

In 2015, Congress enacted the Fixing America's Surface Transportation Act (FAST Act), which among other actions, established an exemption for CEII from mandatory disclosure under the Freedom of Information Act. In accordance with a Congressional directive, the Commission in 2016 issued Order No. 833 to implement those and other FAST Act requirements with respect to CEII, enhancing the Commission's then-existing CEII regulations. Order No. 833 establishes criteria and procedures to designate information as CEII, prohibits the unauthorized disclosure of CEII, establishes sanctions for Commission employees and certain other individuals who knowingly and willfully make unauthorized disclosures, and facilitates voluntary sharing of CEII among certain entities. With respect to third party access to CEII, Order No. 833 requires that members of the public who request access to CEII must demonstrate a valid and legitimate need for the information, which the Commission evaluates on a case-by-case basis. There are also procedures to notify submitters of CEII of the prospective sharing of information, as well as a requirement that prospective CEII recipients execute NDAs.

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

Answer: As Chairman McIntyre notes in his response to this question, the Commission is currently considering existing policies related to virtual transactions in several pending

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proceedings and, therefore, I do not want to prejudge those issues. More generally, I believe that clearly defined market rules, strong market monitoring practices, and Commission guidance all help deter market manipulation through virtual trading. Ultimately, however, it is up market participants to engage in practices that respect market rules and the Commission's anti-manipulation rule. These rules exist for a reason, and in cases where evidence points to a violation, enforcement action is appropriate.

The Honorable Scott Peters

Question 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?**

Answer: As Chairman McIntyre notes in his response to this question, the costs 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. Additionally, it is also possible that a utility, either on its own or as directed by a regulatory agency, may incur additional costs or make new investments to better prepare its system or infrastructure to withstand future events.

- 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: I agree with Chairman McIntyre's response to this question, which highlights the transmission ratemaking mechanisms that are available to recover prudently incurred costs for restoration and repairs, less any recoveries already provided by insurance policies. As Chairman McIntyre notes, in 2014, San Diego Gas & Electric Company recovered \$23.3 million in wildfire costs through Commission-jurisdictional transmission rates.

As to the financial impact to utilities in the event such costs could not be recovered, I agree that it would vary on a case-by-case basis, but ultimately, if costs cannot be recovered from customers, it is the utility's shareholders that would bear the burden.

- 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**

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between the fiscal health of a utility and its ability to build a stronger, more resilient power grid?

Answer: As Chairman McIntyre notes, there are certain threshold requirements (e.g., relevant reliability standards) that apply to all entities registered with NERC regardless of fiscal health. However, it is possible that financial hardship could present an additional challenge to a utility or other registered entity as it seeks to comply with applicable requirements.

- 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: I agree with Chairman McIntyre's response to this question, which highlights the Commission's transmission ratemaking mechanisms and notes that even non-routine costs, such as those incurred in response to emergencies, can be accounted for in utility rates.

The Honorable Paul Tonko

Question 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?**

Answer: I agree with Chairman McIntyre's answer to this question.

- 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?**

Answer: I agree with Chairman McIntyre's answer to this question.

- 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: I agree with Chairman McIntyre's answer to this question.