

**Subcommittee on Energy**  
**Hearing on**  
**“Oversight of FERC: Ensuring Its Actions Benefit Consumers and the Environment”**  
**June 12, 2019**

**Responses of the Honorable Neil Chatterjee**  
**Chairman**  
**Federal Energy Regulatory Commission**

**The Honorable Paul D. Tonko (D-NY)**

1. Thank you for your response to my question on the ongoing distributed energy resource (DER) rulemaking. I appreciate your commitment to working towards finalizing this important rule. When I asked about the status of the DER rulemaking, you indicated that you have ample record and were working through complex legal questions.
  - a. Can you please clarify whether you need additional record to issue the final DER rule or is the current standing record sufficient?

**RESPONSE:** At the June hearing, I mentioned that the Commission is working its way through some complex questions regarding the DER rulemaking. As you correctly note, there is an extensive record in this proceeding that the Commission is currently considering in determining how best to address these issues. To the extent that the Commission determines, based on our review of the current record, that additional information is needed, we will take action to obtain the needed information so that we can move forward with this important rulemaking.

2. While distributed energy resources and storage are playing a growing role in our electricity system, transmission remains the backbone of our electricity infrastructure. As more utility-scale renewables are developed far from centers of demand, this infrastructure will become even more necessary. But we know these projects are incredibly difficult to plan, site, permit, and build.
  - a. What in your opinion can FERC do to provide greater incentives to increase the utilization of existing transmission infrastructure through the deployment of advanced technologies and/or adoption of practices to maximize capacity and efficiency?

**RESPONSE:** This is a topic that I am very interested in and that the Commission recently has taken several steps to address. On March 21, 2019, the Commission issued a Notice of Inquiry regarding the Commission’s electric transmission incentives policy (Docket No. PL19-3-000). The Notice of Inquiry included questions regarding both advanced technologies and how to enhance the capacity, efficiency, and operation of the transmission grid. The Commission received

comments regarding the Notice of Inquiry and is carefully evaluating how to proceed. In addition, the Commission recently announced that we will hold a staff-led technical conference to explore what transmission line rating and related practices might constitute best practices, and what, if any, Commission action in these areas might be appropriate (Docket No. AD19-15-000). I look forward to considering these issues with my colleagues.

- b. What are your recommendations for Congress to promote deployment of advanced transmission technologies on existing infrastructure?

**RESPONSE:** I do not have recommendations for Congress on this issue at this time.

3. We also know that the interregional planning process for new transmission infrastructure has not proven to be effective.

- a. What in your opinion can FERC do to improve the interregional transmission planning process?

**RESPONSE:** In the Notice of Inquiry on electric transmission incentives policy mentioned above, the Commission asked for comments on whether, and if so how, the Commission should use incentives to encourage the development of interregional transmission projects. The comments received in this proceeding will help inform our consideration of potential next steps on this issue.

- b. What are your recommendations for Congress to promote a more effective interregional planning process?

**RESPONSE:** I do not have recommendations for Congress on this issue at this time.

- c. What safeguards should be considered to ensure there is transparency, efficiency, and fairness in that process?

**RESPONSE:** The Commission has established transmission planning principles for both local transmission planning (Order No. 890) and regional transmission planning (Order No. 1000). These principles, which promote transparency, efficiency, and fairness, provide a foundation for the interregional transmission coordination processes pursuant to Order No. 1000. I will keep these interests in mind as we explore whether and how the Commission could do more to encourage the development of more efficient and cost-effective interregional transmission facilities.

4. There are many regions of the nation with high-potential for clean energy deployment and growing interconnection queues. It is my understanding that Texas has successfully

aligned incentives to encourage transmission construction to connect those areas with demand centers.

- a. What in your opinion can FERC do outside of ERCOT to ensure right-sized transmission capacity is developed to meet high-potential clean energy regions?

**RESPONSE:** The Commission has taken significant steps, such as the reforms adopted in Order No. 1000, to promote the development of more efficient or cost-effective transmission facilities in order to meet the nation's energy needs. More recently, the Commission issued Order No. 845, which updated our regulations on electric interconnections. In addition, the Commission has acted on recent proposals from several public utilities to address concerns about their processing of interconnection requests. I appreciate the importance of this issue, and I will continue to look for opportunities to improve the Commission's transmission development and interconnection policies.

- b. What are your recommendations for Congress to promote efficient development of resources in these regions?

**RESPONSE:** I do not have recommendations for Congress on this issue at this time.

**The Honorable Joseph P. Kennedy III (D-MA) and Frank Pallone, Jr. (D-NJ)**

1. While the rules greatly differ within each Regional Transmission Organization (RTO), there are significant concerns that the current rules and structures of capacity markets are making it increasingly difficult for new participants to enter the market and instead favor incumbent generators and existing participants.

- a. Has the Commission considered why some RTOs open their membership up to more diverse consumer technology interests as opposed to others?

**RESPONSE:** Integrating new technologies can be complex, as they do not always fit easily into market constructs designed for traditional generation resources. However, the Commission has made strides in recent years to level the playing field for all resources to participate in markets administered by RTOs and Independent System Operators (ISOs). The Commission's recent final rule with regard to electric storage (Order No. 841) is an important example of the Commission taking steps to remove barriers to market participation by new technologies. As mentioned above, the Commission is also considering a notice of proposed rulemaking regarding the participation of DER aggregations in the wholesale electricity markets.

- b. What can the Commission do, and what is the Commission considering, to address the limitations hampering new entrants from entering and participating in capacity markets?

**RESPONSE:** Please see my response to the previous question.

2. Chairman Chatterjee, can you provide the Committee with information on the makeup of the boards of the ISOs and RTOs under your jurisdiction? More specifically, the board members' affiliation or relationships, sector by sector, including consumer, transmission owner, generation owner, marketer, public interest, environmental, academic, and others.

**RESPONSE:** Although the Commission does not select or approve individual RTO or ISO board members, the Commission has long stressed the importance of structuring RTO and ISO governance to ensure that decision-making is independent of the control of any market participant or class of market participants.

RTO/ISO boards reflect a broad range of backgrounds and interests, including transmission, generation, environmental, energy technology, public interest, financial, academia, and other interests. More information on the RTO and ISO boards is available on their public websites.<sup>1</sup>

In addition, the MISO and PJM boards have specific experience criteria to ensure that a certain number of directors have expertise in corporate leadership, the operation and planning of electric transmission systems, and experience in commercial markets and trading and associated risk management. Similarly, NYISO requires that its board members possess a cross-section of skills and experience (e.g., Commission electric regulatory affairs, electric utility management, corporate finance, bulk power systems, human resources administration, power pool operations, public policy, consumer advocacy, environmental affairs, business management, law, and information systems), and that at least three directors have prior relevant experience in the electric industry.

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<sup>1</sup> See ISO New England, Inc., *Board of Directors* (Aug. 2019), <https://www.iso-ne.com/about/corporate-governance/board/>; NYISO, *Board of Directors* (Aug. 2019), <https://www.nyiso.com/who-we-are>; CAISO, *Board of Governors* (Aug. 2019), <http://www.caiso.com/informed/Pages/BoardCommittees/Default.aspx>; PJM, *Board of Managers* (Aug. 2019), <https://www.pjm.com/about-pjm/who-we-are/pjm-board.aspx>; MISO, *Board of Directors* (Aug. 2019), <https://www.misoenergy.org/about/board-of-directors-and-leadership/operational-leadership/>; SPP, *Board of Directors* (Aug. 2019), <https://www.spp.org/organizational-groups/board-of-directorsmembers-committee/>.

**The Honorable Marc Veasey (D-TX)**

1. Standard license Article 5 of the conditions that the Commission includes in licenses for major hydroelectric projects affecting navigable waters of the United States requires licensees to acquire and retain sufficient land or rights to use lands needed to construct, maintain, and operate their projects. In the past, the Commission has taken the position that if project operations require the acquisition of additional lands or use rights, the project's boundaries may be amended to include lands previously outside of the project boundaries. E.g., *PacifiCorp*, 105 FERC ¶ 61,237, at P 114 (2003).

- a. Do you believe that the Commission's hydroelectric licensing jurisdiction should be limited to a project's original boundary or should the Commission retain its current authority to require a licensee to acquire sufficient land or rights to use lands to operate the project, even if those lands lie outside a project's historic boundary?

**RESPONSE:** The Commission's experience has been that conditions in a project area can change significantly over the course of a 30-50 year license, so that the original project boundary may not account for all circumstances and may need to be revised. For example, communities in a project area may grow so that there is a need for new recreational amenities that were not contemplated when the license was issued, or the project may have unexpected environmental effects that extend beyond the original project boundary. Accordingly, while the Commission does not change project boundaries absent a public interest justification, Congress has given it the authority to do so when the public interest so requires.

- b. Do you believe this rule should be different for the Pensacola Hydroelectric Project, FERC No. 1494, than for other hydroelectric projects licensed by the Commission? If so, why?

**RESPONSE:** The Commission applies its rules in a consistent manner, but the facts of each case may result in a different outcome from case to case.

2. According to the Compliance Handbook published by the Commission's Division of Hydropower Administration and Compliance, many licenses "contain conditions that require specific reservoir water levels to be continuously maintained or maintained during specified periods of time . . . or target elevations within required reservoir operating bands. The purpose of these water-level requirements is to protect and enhance the recreational, scenic, and environmental resource values of a project. Non-compliance with the water-level requirements of a project reservoir could adversely affect the project's environmental integrity and quality."
  - a. Do you believe that the Commission needs the authority to prescribe reservoir water levels in its hydroelectric licenses in order to fulfill its statutory responsibilities under the Federal Power Act?

**RESPONSE:** As authorized by Congress and where required by the public interest, the Commission prescribes water levels and target elevations, where necessary. The Commission does not set these levels for all reservoirs subject to its jurisdiction. It determines whether such requirements are necessary on a case-by-case basis for environmental or safety reasons.

**The Honorable David B. McKinley (R-WV)**

1. The reliability and resilience of the bulk electric system requires support from generation and transmission assets. Consumers rely on these systems—as well as their local electric utility—for their safety, health, productivity, and comfort. Given the changing nature of generation supply, how important are transmission assets to future system reliability and resilience?

**RESPONSE:** Transmission assets are essential to the reliability and resilience of the bulk electric system. As we continue to address the challenges and opportunities of the evolving bulk electric system, transmission investment, planning, and operations will remain vital to ensuring system reliability and resilience.

- a. Is it fair to say investing in a robust transmission system is critical to support existing and new power generation regardless of fuel type?

**RESPONSE:** Yes.

2. I understand FERC is taking a look at incentives and returns provided to transmission owners. You noted that the decisions that FERC makes on this topic will have “impacts for decades to come.” This causes me concern as, if FERC’s decision is wrong, there could be negative impacts to the American public. Given the changing nature of generation projects and the critical role that transmission plays in the bulk power system, wouldn’t you agree that incentivizing transmission is critical to the economic health of our Nation?

**RESPONSE:** Yes, incentivizing needed transmission is critical to the economic health of our nation.

- a. If FERC sets the incentives and returns too low, investment in the transmission system will diminish. What assurances can you give me and the American public that incentives and returns will be substantial enough to prevent this occurring?

**RESPONSE:** As you note, the Commission has multiple open proceedings in which we are considering issues related to electric transmission rates and incentivizing transmission. The Commission is carefully considering these

important issues, recognizing the need to incentivize needed transmission in a way that ensures that electric transmission rates remain just and reasonable.

3. I've heard the U.S. transmission grid described as one of the most sophisticated machines on Earth. Collectively, utilities across the country have thousands of engineers working on it literally every hour to maintain the reliability we expect.
  - a. How do you and the RTOs set the standards for the transmission utility performance?

**RESPONSE:** Under section 215 of the Federal Power Act, the North American Electric Reliability Corporation (NERC) develops Reliability Standards and submits them to the Commission for review. The Commission also may direct NERC to develop a Reliability Standard. An RTO may participate in the NERC process to develop a Reliability Standard and in the Commission proceeding to review the Reliability Standard.

- b. Are the utilities that own transmission the lone party on the hook if something goes wrong on their systems?

**RESPONSE:** The Reliability Standards apply to a number of functional entities, such as transmission owners and operators, generation owners and operators, and others that use, own or operate the bulk power system. If NERC or the Commission determines that a violation of a Reliability Standard occurred, then the entity that violated the Reliability Standard could be subject to penalty.

4. EPA last week issued guidance to clarify the requirements of Clean Water Act section 401, which has been used to thwart FERC-approved interstate natural gas pipelines.
  - a. Do you think that EPA's guidance will assist FERC and other federal agencies in thwarting attempts to abuse the authority granted by section 401?

**RESPONSE:** EPA's guidance can assist the Commission by improving the predictability and timeliness of the state certification process by clarifying timeframes for certification, the scope of certification review and conditions, and related certification requirements and procedures. EPA's determination that the statutory timeline for certification review starts upon the certifying authority's receipt of a certification request, rather than receipt of a complete application as determined by the certifying authority, is consistent with Commission regulations and precedent.

**The Honorable Billy Long (R-MO)**

1. The last time the FERC Commissioners testified before this subcommittee, I asked Chairman McIntyre why City Utilities, a public utility owned by the City of Springfield, Missouri, is paying the highest energy cost in the Southwest Power Pool. I also asked why City Utilities is paying for transmission upgrades where the costs greatly exceed the benefits received, as shown by Southwest Power Pool's own study. The study shows that City Utility's benefit ratio is around .5, lower than the threshold of .8 needed to meet the Federal Power Act's Just and Reasonable Standard. At the same time, Chairman McIntyre expressed surprise that one entity would be paying substantially more for transmission service than others and promised to look into it.

- a. Are you or any of the other commissioners aware whether a wide discrepancy in benefits to customers remains within SPP?

**RESPONSE:** On August 12, 2019, the Commission issued an order denying the City Utilities of Springfield, Missouri's complaint against SPP regarding how SPP is applying its Highway/Byway transmission cost allocation methodology. The time period for requesting rehearing of the Commission order is still open, and therefore I cannot discuss the merits of this proceeding.

2. On May 10<sup>th</sup> of last year at a hearing entitled "Examining the State of ELECTRIC Transmission Infrastructure: Investment, Planning, Construction, and Alternatives," John Twitty testified on behalf of the TAPS Group about the benefits of joint transmission ownership arrangements as an effective means of getting needed transmission facilities built. For more than a decade, FERC has reportedly expressed strong support for such arrangements, however your support has not spurred additional joint ownership arrangements. The Commission has recently initiated a notice of inquiry regarding its transmission incentives policies.

- a. Should the Commission do more to actively promote joint ownership arrangements involving public power entities?

**RESPONSE:** On March 21, 2019, the Commission issued a Notice of Inquiry regarding the Commission's electric transmission incentives policy (Docket No. PL19-3-000). As part of the Notice of Inquiry, the Commission asked commenters to respond to questions on joint ownership arrangements involving public power entities.

**The Honorable Jeff Duncan (R-SC)**

1. FERC held a technical conference on the Public Utilities Regulatory Policy Act, or PURPA, during the first quarter of 2016. Now I recognize FERC has faced many challenges during that time, including losing quorum for several months. The record



developed just over three years ago is robust—including evidence that PURPA results in consumers paying more for inefficient investments.

- a. Why is FERC continuing to delay action that will increase competition and benefit industrial, commercial, and residential U.S. electricity consumers?

**RESPONSE:** As I have made clear many times, including at the June hearing, I strongly believe it is time to bring PURPA into the 21st century. Although review of the Commission's PURPA regulations is a complex effort, it remains a high priority for me. I am committed to continue working with my colleagues to modernize the Commission's PURPA regulations.