

ONE HUNDRED SEVENTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
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September 27, 2021

The Honorable Mark C. Christie  
Commissioner  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

Dear Commissioner Christie:

Thank you for appearing before the Subcommittee on Energy on Tuesday, July 27, at the hearing entitled “The Changing Energy Landscape: Oversight of FERC.” I appreciate the time and effort you gave as a witness before the Committee on Energy and Commerce.

Pursuant to Rule 3 of the Committee on Energy and Commerce, members are permitted to submit additional questions to the witnesses for their responses, which will be included in the hearing record. Attached are questions directed to you from certain members of the Committee. In preparing your answers to these questions, please address your responses to the member who has submitted the questions in the space provided.

To facilitate the printing of the hearing record, please submit your responses to these questions no later than the close of business on Tuesday, October, 12 2021. As previously noted, this transmittal letter and your responses, as well as the responses from the other witnesses appearing at the hearing, will all be included in the hearing record. Your written responses should be transmitted by e-mail in the Word document provided to Lino Peña-Martinez, Policy Analyst, at [Lino.Pena-Martinez@mail.house.gov](mailto:Lino.Pena-Martinez@mail.house.gov). To help in maintaining the proper format for hearing records, please use the document provided to complete your responses.

The Honorable Mark C. Christie

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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Lino Peña-Martinez with the Committee staff at (202) 225-2927.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." in a cursive style.

Frank Pallone, Jr.  
Chairman

Attachment

cc: The Honorable Cathy McMorris Rodgers  
Ranking Member  
Committee on Energy and Commerce

The Honorable Bobby L. Rush  
Chairman  
Subcommittee on Energy

The Honorable Fred Upton  
Ranking Member  
Subcommittee on Energy

**Attachment—Additional Questions for the Record**

**Subcommittee on Energy  
Hearing on  
“The Changing Energy Landscape: Oversight of FERC”  
Tuesday, July 27, 2021**

The Honorable Mark C. Christie, Commissioner, Federal Energy Regulatory Commission

**The Honorable Cathy McMorris Rodgers [R-WA]**

1. During the hearing I asked you and Commissioner Danly how you approach FERC’s mission and the interests of ratepayers and state regulators in your regulations of markets and transmission, but you did not have time to answer. Would you please respond?

**RESPONSE:**

*I have stated repeatedly that I believe FERC should have two overriding priorities in the electricity area: first, ensuring a reliable power supply, and second, working to ensure that the costs to consumers of that reliable power are as low as necessary, consistent with law. As a former state regulator, I deeply respect the role that state regulators play. I will always be respectful of the views of the states, subject, of course, to any pre-emption that may be required by federal law and with the understanding that with 50 states, the views and policies of individual states often differ, a particularly salient issue in multi-state RTOs/ISOs.*

2. I understand that state regulators take care to ensure that we have clean, safe, reliable, and affordable power. During a recent hearing on transmission, former FERC Commissioner Tony Clark discussed the value of a bottom up approach to siting regional transmission, which starts with state regulators and the needs and interests of communities.
  - a. What are your thoughts about a bottom up, versus top-down approach to siting transmission?

**RESPONSE:**

*I believe state officials are much better prepared than federal ones to make decisions on siting and permitting of power lines and generating facilities, each of which has some uniquely local characteristics and impacts. State officials understand far better than federal officials the specific challenges and needs of their own communities, including the effect of costs on consumers and the economic needs of communities. I would strongly advise against pre-empting the states’ siting authority and replacing it with federal siting authority. I do not think*

*such pre-emption would facilitate the construction of needed transmission lines; on the contrary, it would likely make it even more difficult.*

**The Honorable Robert Latta [R-OH]**

1. In your view, why is it important for FERC to examine grid resilience?

**RESPONSE:**

*Reliability of the power grid is among FERC's highest priorities. Americans expect their power to be on 24/7/365 and it is FERC's job to do what it can, consistent with its statutory authority, to work towards that ideal standard of reliability. Resilience is part of reliability.*

2. What are the greatest threats to grid resilience?

**RESPONSE:**

*Resource adequacy (generation) is essential to resilience. Transportation adequacy (transmission) is also essential. Insufficiency of either one threatens grid resilience. FERC also needs to be well aware of the threats that cyber-attacks pose to the grid.*

3. More generally, what criteria does the commission use to determine resilience?

**RESPONSE:**

*The Commission's role is largely twofold: first, regulate the RTOs/ISOs to ensure they are doing their jobs, one of which is the planning necessary to maintain reliability and resilience; second, ensure that the reliability standards promulgated by the North American Electric Reliability Corporation (NERC) are adequate and promote a reliable and resilient grid.*

4. What role can NERC (North American Electric Reliability Corporation) play in devising certain criteria or standards for utilities to rely on to help in efforts to harden the grid against external threats?

**RESPONSE:**

*As I indicated in my response to Q. 3 above, NERC's role is to promulgate standards that promote a reliable and resilient grid.*

5. Finally, on a different topic, I believe that nuclear energy is the best and most reliable source of clean baseload power, and that it cannot be left out of any discussions or strategies to address carbon emissions.

- a. What is FERC doing to ensure the viability of nuclear energy in the United States?

**RESPONSE:**

*Under the Federal Power Act, FERC is required to be non-discriminatory and non-preferential towards various power resources; in other words, FERC cannot favor one resource over another and must be fuel-source neutral. In general, FERC should regulate RTO/ISO markets to ensure just and reasonable rates, which may include maintaining access to the market for baseload nuclear energy.*

**The Honorable Michael Burgess [R-TX]**

**FERC Rulemaking – Uncertainty and Emissions**

1. During the last six months, FERC announced significant changes to its natural gas pipeline policies that could have significant impacts on our country's energy infrastructure and our energy security. Are you concerned that second-guessing the final decisions of FERC could increase uncertainty in energy markets?

**RESPONSE:**

*Yes, I am very concerned about the possibility of creating uncertainty in energy and capital markets. Infrastructure projects are very capital-intensive. Project developers should be able to rely on the finality of Commission orders. If they cannot, then they won't be able to raise capital and needed infrastructure won't be built.*

2. Does the Natural Gas Act give FERC explicit authority to regulate the emissions related to pipelines?

**RESPONSE:**

*There is no such explicit authority granted in the Natural Gas Act.*

**Landowner Protections/Eminent Domain**

3. Many Texans, especially those who reside in the district I represent, are very concerned about how the use of eminent domain will be used to build infrastructure projects. Will you commit to improving the transparency of the use of eminent domain for projects under FERC's jurisdiction for landowners?

**RESPONSE:**

*Private property rights are a cornerstone of American civic, legal, and economic life. I believe that eminent domain – which provides that property can be taken in exchange for just compensation, but only when needed for public use – should be exercised only when it meets applicable constitutional and statutory standards. I would also note that while FERC's certificates usually grant the applicant the authority to exercise eminent domain if necessary to*

*complete the project, the actual administration and implementation of eminent domain, including, for example, the determination of “just compensation” under the Fifth Amendment, is administered by the courts, not FERC.*

4. Do you plan to use the newly formed Office of Public Participation to promote transparency for these projects and bring in all stakeholders, including landowners, energy consumers, and energy producers?

**RESPONSE:**

*The purposes of the new Office of Public Participation (“OPP”) are outlined in the authorizing statute, Federal Power Act § 319, 16 U.S.C. § 825q-1. Its primary purpose is informational – to be a source of information for members of the public, groups and communities who wish to know more about how FERC proceedings take place. OPP’s job will be to inform persons, groups, and communities how they can make their views known to FERC, including ways to participate in formal and informal proceedings. OPP, by statute, is not an advocacy office. OPP’s activities and outreach should not be selective, but universal, including reaching out to all the groups you mention and the communities in which they live, and should include in its outreach persons, communities and groups who may be either supportive or opposed to a certificate for a proposed project. The statutory purpose of OPP is not to take sides, but to provide information to all who may be interested in a FERC proceeding.*

5. How can Congress facilitate these efforts to ensure landowners are best represented when considering the development of new infrastructure?

**RESPONSE:**

*Congress can pass legislation that governs cases brought under the Natural Gas Act and Congress can direct whatever changes in procedures it desires in NGA cases. Certificate cases brought under the NGA should be conducted with full regard to due process, which includes transparency of proceedings.*

**The Honorable David B. McKinley [R-WV]**

1. Where customers have signed up for capacity on a proposed pipeline, indicating that there is demand for that pipeline, do you believe that FERC should approve the project?

**RESPONSE:**

*Speaking generally, the central question in a certificate case under the Natural Gas Act is whether the project is needed. The Commission is charged with approving projects that are “in the public convenience and necessity,” which means approving proposed pipelines when they are proven to be needed. The willingness of future shippers to execute contracts for the capacity available on the facility is evidence of need.*

2. I'm concerned that FERC has recently been second-guessing the Commission's prior final decisions. For example, FERC ordered briefing on whether a facility operating in full compliance with a final certificate should "remain in service," calling 80 years of precedent regarding final certificate orders into question.
  - a. Going forward, can the public and regulated industry rely on FERC to make final decisions and then stick by them?

**RESPONSE:**

*Without question, the public and regulated industries must be able to rely on the finality of FERC orders. I cannot answer your question with regard to future FERC actions.*

3. FERC's Order No. 871 significantly restricts what companies may do while requests for rehearing of FERC certificate orders are pending, which can delay surveys for environmental and cultural resource permits, land acquisition, and construction. FERC applied these new delays to projects that it has already determined to be in the public convenience and necessity.
  - a. What steps are you taking to expedite review of rehearing requests to ensure projects that the Commission has determined are needed can promptly proceed following certificate issuance?

**RESPONSE:**

*The Chairman controls the agenda, subject to certain statutory deadlines, so in general the other Commissioners are not able to decide when a formal voting matter is scheduled for a vote. As a general matter, I believe that rehearing requests in certificate cases should be decided as expeditiously as possible.*

4. The E&C majority's CLEAN Future Act would require a pipeline to secure all applicable federal and state permits before the pipeline can acquire access to the project route through eminent domain.
  - a. Is it correct that pipelines often need physical access to the route to collect survey data that is required *before* the company can obtain environmental and cultural resource permits?

**RESPONSE:**

*My understanding is that they do.*

- b. Would this CLEAN Future Act proposal then block projects from proceeding because they cannot gain access to the FERC-approved route to complete the permitting process?

**RESPONSE:**

*Based on your description of the draft provision, it sounds as though it could prevent such access.*

5. I'm concerned that FERC will attempt to act as a climate czar by using its pipeline review process to regulate greenhouse gas emissions from upstream natural gas producers and downstream natural gas end users.
  - a. Do you believe that FERC has the authority to deny a Natural Gas Act certificate based on FERC's analysis of GHG emissions from upstream and downstream sources?

**RESPONSE:**

*That question of law has never been squarely presented to FERC so I will withhold an opinion until it is presented in a case. I would note generally that FERC is an economic regulator, not an environmental regulator. FERC's chief job under the Natural Gas Act in considering whether to grant a certificate for a proposed facility is to decide whether the facility is needed. Our duties under the National Environmental Policy Act (NEPA) are essentially procedural, to gather information on environmental impacts that informs our decision-making and informs the public.*

- b. Do you think FERC has the authority to force pipelines to "offset" the GHG emissions from upstream and downstream sources?

**RESPONSE:**

*Please see my response to Q.5 above.*

- c. Wouldn't these actions be inconsistent with the NGA's fundamentally economic concerns and the fact that NEPA does not change an agency's underlying decision-making responsibilities or mandate particular results?

**RESPONSE:**

*Please see my response to Q. 5 above.*

6. Please describe FERC's role in ensuring transmission costs and projects are reasonable while also ensuring customer affordability. If not FERC's role, who's responsibility, is it?

**RESPONSE:**

*I have stated repeatedly that I believe FERC should have two overriding priorities in the electricity area: first, ensuring a reliable power supply, and second, working to ensure that the costs to consumers of that reliable power supply are as low as necessary, consistent with law. These priorities apply in our regulation of regional transmission planning processes which are required to plan transmission to ensure reliability and just and reasonable rates. I believe that FERC must make sure that transmission planning, which drives the construction of new lines that must be paid for by consumers, is done to serve the public interest, not special interests.*

7. Transmission rate base/investment has grown considerably over the past few years.
  - a. Given the fact that we keep hearing that more transmission is needed to connect all the new renewables that are being built, what process does FERC have in place to monitor and control transmission cost increases for our customers?

**RESPONSE:**

*Please see my response to Q. 6.*

8. As more renewables are being connected to the grid and more transmission is needed to connect them, what is FERC doing to ensure customer affordability while balancing reliability?

**RESPONSE:**

*Please see my response to Q. 6.*

9. Does FERC require transmission planners to study and consider alternatives to transmission investment as being part of the solution? If no, why not?

**RESPONSE:**

*Speaking generally, yes. Each region has somewhat different planning processes but should be required to recommend only those new transmission projects that represent the optimal solution, from a cost-benefit perspective, to a proven reliability or economic need. I would also note that, as a former state regulator who sat on many transmission line certificate cases, alternatives to construction are regularly considered and should be.*

10. According to the EPA, the carbon intensity of gas in the Marcellus Basin is nearly four times lower than the average of all other basins. Moreover, replacing older pipeline infrastructure with new helps to address potential failures and leaks in existing infrastructure, increasing efficiency, and improves environmental security.
  - a. How can the FERC help to ensure new and improved pipelines can be constructed in the near term to help ensure for the continued construction of reliable energy infrastructure while also ensuring sufficient oversight and consumer protections?

**RESPONSE:**

*The most important contribution FERC can make is to do its job quickly and well in certificate cases brought under the Natural Gas Act (NGA). Natural gas pipelines, which supply dispatchable generating resources, are essential to both of FERC's most important responsibilities: ensuring reliability of the power grid and ensuring just and reasonable rates.*