ENERGY & COMMERCE
CHAIR RODGERS

MEMORANDUM June 9, 2023

TO: Members of the Subcommittee on Energy, Climate, and Grid Security

FROM: Committee Majority Staff

RE: Hearing entitled "Oversight of FERC: Adhering To A Mission Of Affordable And Reliable Energy For America"

I. INTRODUCTION

On Tuesday, June 13, 2023, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Energy, Climate, and Grid Security will hold a hearing entitled "Oversight of FERC: Adhering To A Mission Of Affordable And Reliable Energy For America." The hearing will examine the work of the Federal Energy Regulatory Commission (FERC) to ensure affordable, reliable electricity and natural gas service throughout the country, as well as its adherence to its core mission of ensuring just and reasonable rates for energy services.

II. WITNESSES

- **The Honorable Willie Phillips**, Chairman, FERC (Democrat)
- **The Honorable James Danly**, Commissioner, FERC (Republican)
- **The Honorable Mark Christie**, Commissioner, FERC (Republican)
- **The Honorable Allison Clements**, Commissioner, FERC (Democrat)

III. BACKGROUND

A. FERC History and Mission

FERC is an independent, five-member commission that regulates the interstate transmission of natural gas, oil, and electricity through the exercise of its authority under the Natural Gas Act and the Federal Power Act (FPA). FERC also regulates the sale of wholesale electricity and the siting of natural gas pipelines, liquefied natural gas facilities, and hydropower projects through a lengthy and complex certification process, among other responsibilities.

The Commission's orders determine the success or failure of crucial energy infrastructure projects. FERC's actions have wide-ranging impact and can shift markets in favor of or against specific energy resources. Its actions not only affect regulated entities; but they also touch entire energy industries and, through those industries, the entire U.S. economy. FERC's economic reach has been estimated at roughly between three percent and seven percent of the nation's GDP, but its actual impact is likely greater because energy is a fundamental input for economic activity.[1]

Chairman Willie Phillips, a Democrat, was appointed to the Commission by President Biden in September 2021 and selected as Chairman by President Biden in January 2023. President Trump appointed Commissioners James Danly and Mark Christie, Republicans, and Commissioner Allison Clements, a Democrat.

Applications for interstate natural gas pipeline certificates are becoming a point of contention among and between the commissioners. The impacts of these policies have yet to be fully recognized but have implications for the reliability and affordability of electric and natural gas service. Similarly, the Commission appears poised to promote a dramatic expansion of interstate high voltage electric transmission lines and related facilities that will be necessary to accommodate additional solar and wind energy facilities. This has also become a growing point of contention among the Commissioners, with some viewing such a massive expansion of transmission facilities as inconsistent with ensuring just and reasonable rates, as required by the FPA.

FERC's fiscal year (FY) FY24 budget request was $520M, an increase of $11.6M from the FY23 budget request. According to FERC, it "recovers the full cost of its operations through annual charges and filing fees assessed on the industries it regulates as authorized by the FPA." The Commission returns revenues into the Treasury to offset, directly, its appropriation, which results in a net appropriation of zero dollars.

B. Natural Gas Issues

Under section 7 of the Natural Gas Act, FERC reviews applications for the siting, construction, and operation of interstate natural gas pipelines. A pipeline company cannot construct or operate an interstate natural gas pipeline without a FERC-issued "certificate of public convenience and necessity." Under section 3 of the Natural Gas Act, FERC is also responsible for issuing permits for Liquified Natural Gas (LNG) export and import facilities.

In February 2022, the Commission issued two "policy statements" concerning its process for issuing certificates for natural gas projects. The first order, "Certification of New Interstate Natural Gas Facilities," "updated" the Commission's long-standing natural gas policy statement initially issued in 1999. The new policy statement would revise criterion that the Commission would consider in order to determine whether an application for new or upgraded natural gas infrastructure is in the public interest and, therefore, afforded approval.

The second order, "Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Projects," would implement a new onerous regulatory requirement on applicants to estimate and mitigate its greenhouse gas (GHG) emissions both upstream and downstream of the project. Both policy statements were converted to "draft" status shortly after being issued after receiving significant pushback from Congress and industry. The two policy statements remain as

1 CRS, FERC's Regulatory Authorities and Reach (Aug. 1, 2013), https://www.energy.senate.gov/services/files/b2efc31a-b5f1-4c92-9bbe-18eb431f2f44.

drafts to date. This still offers uncertainty to the natural gas industry, as FERC could reissue the policies at any time.

Previously, the Commission established a default policy, through its authority under the National Environmental Policy Act (NEPA), to require any project that would increase emissions to undergo a lengthy Environmental Impact Statement (EIS) instead of a less rigorous Environmental Assessment (EA). More recently, though, the Commission has switched three natural gas projects to an EA that were slated by former leadership to undergo an EIS. The Commission also recently approved an expansion for the Transcontinental Gas Pipeline and approved multiple liquified natural gas projects, including the Freeport LNG Export Terminal and the Texas Brownsville LNG project.

C. Electric Reliability and Transmission

Under the FPA, FERC has authority to regulate wholesale and interstate electricity and transmission rates. FERC regulates and oversees six Regional Transmission Organizations (RTOs): California Independent System Operator (CAISO), ISO New England (ISONE), Midcontinent ISO (MISO), PJM Interconnection (PJM), New York ISO (NYISO), and the Southwest Power Pool (SPP). The Electric Reliability Council of Texas (ERCOT) is an RTO that operates and manages the electric grid in Texas. ERCOT is regulated at the state level, not by FERC. FERC established these organized markets pursuant to Order 888/889 and Order 2000 to promote wholesale competition and to ensure transmission access to the regional electricity markets.

Electric reliability has received increased attention over the past few years, particularly in light of regular blackouts in CAISO, and the blackout in ERCOT during the February 2021 winter storm. Reliability is especially at the forefront in the wake of the Environmental Protection Agency’s new suite of proposed regulations on coal and natural gas-fired generation, which makes up nearly 60 percent of the nation’s electric generation portfolio. The premature retirement of dispatchable generation, which can quickly supply energy to the grid as demand rises, has been noted as a reliability concern by the North American Electric Reliability Corporation (NERC), as well as multiple RTOs.

The Commission has published multiple proposed rules attempting to address how electric transmission is planned, paid for, and sited across the country. Some of the major issues within these proposed rules are how transmission planning regions define benefits within their regions and how those costs are socialized across its service territory.

Regarding electric transmission, cost allocation is the process of assigning the costs of service of a transmission facility within the different transmission planning regions. This process is a voluntary, bottom-up process, meaning individual utilities, transmission planning regions, or state Public Utility Commission’s (PUC) agree to and apply their own cost allocation methodologies for specific projects. A key principle of cost allocation for electric transmission facilities is “the cost causer pays.” This means that the project being interconnected to the grid must bear most or all of the costs required to update the bulk power system to accommodate the project. The costs of a project are allocated only to those that benefit from the project; however, each transmission planning region defines “benefits” differently. Benefits typically include reliability, efficiency, or public policies (i.e., renewable portfolio standards).

The siting and permitting of high-voltage electric transmission facilities requires input and approvals from numerous entities, including state PUCs, private landowners, federal agencies with obligations under NEPA, and tribal governments. FERC has a limited role in siting and permitting high-voltage electric transmission facilities. The Energy Policy Act of 2005 (EPACT 2005) amended the FPA to add Section 216. This new provision created limited authority for FERC (and the Department of Energy) to site and permit high-voltage electric transmission facilities within National Interest Electric Transmission Corridors (NIETC). Under this authority, the Department of Energy (DOE) could designate a corridor and FERC could then site and permit an electric transmission line within that corridor. Several adverse federal court decisions prohibited the Commission from using this original authority. The Infrastructure Investment and Jobs Act (IIJA) amended Section 216, providing that FERC may override a state’s decision to deny a transmission permit. The Commission has an open proposed rule that would implement the changes adopted by Congress in the IIJA.

IV. ISSUES

The following issues may be examined at the hearing:

- FERC’s mission of ensuring abundant and affordable supplies of energy at just and reasonable rates
- FERC natural gas policy statements
- Improving electric reliability
- FERC’s budget proposal for FY 2024
- Wholesale electricity markets
- Interregional transmission

If you have any questions regarding this hearing, please contact Jacob McCurdy or Mary Martin of the Committee staff at (202) 225-3641.