**United States House of Representatives**
**Committee on Energy and Commerce**
**Subcommittee on Energy, Climate, and Grid Security**
**June 13, 2023 Hearing: Oversight of the FERC: Adhering to a Mission of Affordable and Reliable Energy for America**

**Questions for the Record**
**Responses of the Honorable Mark C. Christie**
**Federal Energy Regulatory Commission**
**July 31, 2023**

**The Hon. Cathy McMorris Rodgers:**

1. **During the hearing, many of my colleagues on the other side of the aisle noted that electric transmission is necessary to achieve the Administration's net-zero goals by deploying renewable energy technologies. I have concerns with many of the proposals put forth over the past few months regarding electric transmission under the guise of "permitting reform."**

    a. **Can you please elaborate on the importance of state input in the siting process for electric transmission?**

    ***Answer***: As a former state utility regulator for 17 years and one who sat on more than 100 transmission permitting cases, I believe very strongly that state regulators are far more knowledgeable – and thus better prepared – than any federal official to balance the myriad of unique local concerns and challenges involved in vetting and siting transmission lines. These local issues range from the need for the project compared against other alternatives, the reasonableness of the costs to be charged consumers, and local siting and environmental considerations.

    b. **How important is state input in the cost allocation process?**

    ***Answer:*** For public policy-driven transmission lines, it is essential that state officials be in the lead role of deciding cost allocation and planning criteria applicable to regional transmission projects when costs could be charged to their states' consumers. This principle is a matter of simple fairness to consumers. I strongly believe that, for policy-driven transmission projects, the states must not only be allowed to give "input" or be "consulted," but more importantly, must have the authority to agree

or not agree to any regional cost allocation that will result in costs to their home state consumers.

c. **Should Congress consider laws that would lead to a significant build-out of the transmission system without ensuring that we also have sufficient generation resources?**

***Answer:*** Congress should not mandate any specific transmission build-out, but rather should let knowledgeable transmission planners and states fulfill their traditional roles as planners and regulators of both transmission and generation resources.

2. **How do you view the multiple warnings coming from grid operators and NERC about threats to the reliability of the electric grid?**

a. **Why is our electric grid experiencing reliability problems?**

***Answer:*** Our grid is facing potentially catastrophic reliability problems due to the rapid and premature retirement of dispatchable generating resources.

b. **What actions should be taken to address and resolve these problems?**

***Answer***: In RTOs, the problem is largely one of market design. The RTO markets are not sufficiently incentivizing dispatchable generation resources to continue operating, much less incentivizing sufficient new construction of dispatchable resources. In non-RTO states, state utility regulators have the responsibility to ensure their load-serving utilities obtain sufficient generating resources either through construction or purchase. Non-RTO states (and some RTO states) have the authority to prevent the premature retirement of dispatchable resources and order the construction of new resources.

**<u>The Hon. Michael Burgess, M.D.</u>:**

1. **Are you concerned that the EPA Good Neighbor Rule that requires retrofits of many compressor engines in 20 states all before May 1, 2026, with only limited ability to request additional time could jeopardize the reliability of the grid?**

***Answer:*** Yes. The rule is likely to exacerbate greatly the already dangerous pace of premature retirements of dispatchable generating units.

2. **Did EPA consult with the FERC on impacts to reliability from the Good Neighbor Rule?**

   ***Answer:*** I do not know whether EPA staff consulted with FERC staff or, if so, to what extent consultation took place. Speaking personally, I had a virtual meeting with Mr. Joe Goffman and one of his colleagues from EPA last year, not on this specific EPA rule but more generally on this topic. I expressed to Mr. Goffman the views I have expressed herein and in hearings this year before both the Senate Energy and Natural Resources Committee and House Energy and Commerce Committee.

**The Hon. Bill Johnson:**

1. **It appears that all interstate pipelines other than water pipelines are subject to one of three federal laws. The (1) Natural Gas Act provides FERC jurisdiction over the interstate transportation of "natural gas." 15 U.S.C. § 717, the (2) Interstate Commerce Act provides FERC jurisdiction over the interstate transportation of "oil," 49 U.S.C. app. §§ 1, et seq. (1988), and the (3) Interstate Commerce Commission Termination Act provides the Surface Transportation Board with jurisdiction over the interstate transportation of "commodity[ies] other than water, gas, or oil." 49 U.S.C. § 15301(a).**
   a. **There is a substantial amount of precedent interpreting each of these statutory terms, both from the agencies and the courts. Which of these statutes do you believe applies to interstate hydrogen pipelines, and why?**
   b. **Additionally, what is FERC's jurisdiction for *intrastate* hydrogen pipelines today?**

***Answer:*** It appears that the only one of those statutes that may be applicable to interstate hydrogen pipelines is the Interstate Commerce Commission Termination Act, because hydrogen is a commodity other than water, gas, or oil. The Natural Gas Act gives FERC the authority to certificate and regulate natural gas pipelines, but not hydrogen pipelines. Further, FERC has no jurisdiction over intrastate hydrogen pipelines.

**The Hon. Rick W. Allen:**

1. **You recently published an article highlighting the flaws with a single market clearing price in organized wholesale electricity markets. Are single market clearing prices bad for customers? Do the cost savings from "cheap" renewables get passed on to consumers? Do all markets use this construct? If not, is there a better mechanism to provide affordable and reliable energy to consumers?**

   ***Answer:*** Single-clearing price mechanisms are used in all RTO market constructs. In a nutshell, such mechanisms pay the highest clearing price to all offers to sell power or power services, so that means that all lower-priced offers will nevertheless receive the highest clearing price, even if the sellers offered power or a power service at zero, which many generation resources can do now because of the massive federal subsidies they are getting. Thus, consumers end up paying the highest price in all transactions and do not get the benefit of all the lower prices that were offered. As I pointed out in my law review article that you referenced (accessible at: https://www.eba-net.org/wp-content/uploads/2023/05/3-Commr-Christie1-30-1.pdf), while there is a defensible case for the use of the specific and granular mechanism of Locational Marginal Pricing (LMP) in the real-time energy markets, the use of single-clearing price mechanisms in capacity markets is especially problematic. These capacity market constructs are used to purchase power capacity in the RTOs in the eastern United States, specifically PJM (thirteen eastern states and DC), ISO New England, New York ISO, and MISO (Midwest and South). In these capacity markets the use of this pricing mechanism not only denies consumers the benefits of lower-priced offers of capacity, such as from wind and solar generators that are receiving massive subsidies, but it is undermining reliability because many dispatchable resources that are not subsidized cannot compete with subsidized resources, so they are retiring prematurely, causing a potentially catastrophic loss of dispatchable generating resources. One alternative to the use of capacity markets is the state-regulated Integrated Resource Plan (IRP) construct. Variations of the IRP construct have been used throughout the United States for most of the past century and, while it has its own flaws as any regulatory construct does, this integrated planning construct – regulated by the states – has generally given American consumers a remarkably reliable power supply at relatively low prices.

2. **Can you discuss the importance of state public utilities commission role in the integrated resource plan process, transmission planning, and maintaining reliability and protecting consumers from cost overruns?**

   ***Answer:*** As I noted in my response immediately above, in the integrated planning constructs, such as an IRP, it is the states who have the foremost

responsibility and authority to ensure their utilities are obtaining enough power supplies and capacity to serve reliably the consumers of their states. This is as it should be. I strongly believe that state regulators are in a far better position to balance the various challenges faced by their states to make sure their consumers – residential, commercial and industrial – have a reliable supply of power at affordable prices.