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Committee on Energy and Commerce
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Chair Duncan, Ranking Member DeGette, Chair McMorris Rodgers, Ranking Member Pallone, and Members of the Subcommittee:

Good morning, it is a pleasure to be here today. I very much appreciate the opportunity to appear before the Subcommittee and welcome the opportunity to share my thoughts and answer your questions. The last time we appeared before the Subcommittee, I cautioned that FERC's RTOs and ISOs, our jurisdictional wholesale markets, must provide the correct price signals to incentivize the entry and retention of the correct quantity of generating resources that have the necessary attributes to ensure system stability and reliability. Failure to do so would lead to reliability crises like those seen in California in 2020. As I predicted, since our last hearing, FERC has overseen the ISO and RTOs so poorly that they now struggle to incentivize the retention and addition of needed generation resources and, as a result, much of the United States is heading for a reliability crisis.

The majority of Americans live in regions served by FERC's electric markets. Those markets, the ISOs and RTOs, are FERC-jurisdictional public utilities responsible for operating the transmission systems within their territories and overseeing the economic dispatch of generation to meet demand. They were originally conceived of as a means by which the ratepayer could reap the benefits of competition by ensuring that the least-cost generating unit would be selected to provide electricity. The markets were also designed to send price signals, typically through periodic auctions, which would provide the economic incentives to attract new, needed generation, retain existing, needed generation, and promote the orderly exit of generating

assets that had become economically unviable. That way, so the thinking went, there would always be sufficient generation available to meet peak demand, and the customers would pay the least cost for the most efficient generating units to obtain their electricity.

That, at least, was the theory. What has happened instead is that FERC has allowed the distortion of price signals and permitted market incentives to be warped, interfering with price formation and jeopardizing resource adequacy. Most of these market-distorting forces originate with subsidies—both state and federal—and from public policies designed to promote the deployment of non-dispatchable wind and solar generators or to drive fossil-fuel generators out of business as quickly as possible.

The subsidies available to renewable generators are so lucrative that, when participating in procurement auctions, they are able to offer at a price of zero instead of their actual cost. The market signal thereby created is that these new resources can be built for *free*, and thus the cost of power is also free. This, of course, is untrue, and the inevitable consequence is market-wide price suppression. The price suppression deprives other market participants of much needed revenue, leading to the premature retirement of the dispatchable generators which have to offer into the market at their true costs in order to remain economically viable.

FERC has seemingly done everything in its power to ensure that our markets will fail. FERC eliminated the markets' economic guardrail—the minimum offer price rule—which had been established in certain markets to ensure that all generators offered their actual costs to prohibit price suppression. FERC has also allowed one of our wholesale markets to change the rules of its procurement auction *after* the auction had run in order to lower the resulting prices. This undermines the rule-of-law and makes it impossible for capital to be rationally invested.

We know that there is a looming resource adequacy crisis. Our market operators have been explicitly telling us as much for years. Both MISO and ISO-NE have warned about

upcoming scarcity and PJM, the nation's largest wholesale market, and the one that serves Washington, D.C., has recently raised the alarm about impending shortfalls. Were any more proof required of our markets' failure, in the midst of PJM's dire warnings, somehow the prices in its procurement auction, at a time of impending scarcity, went *down*. This represents an abject and obvious market failure. With price signals such as these, it will be impossible for the markets to attract the investment needed to ensure resource adequacy.

I am not alone in my prediction that resource adequacy is under threat. Earlier this month, during a U.S. Senate Committee on Energy and Natural Resources hearing, Jim Robb, the head of the North American Electric Reliability Corporation, when asked if he agreed that the "United States is headed for a reliability crisis," replied, "I do." The CEO PJM, Manu Asthana, in the same hearing, when asked whether he agreed that the "United States is heading for a reliability crisis," stated that "I do think there is an increasing risk of that."

As an engineering matter, there is no substitute for reliable, dispatchable generation. Intermittent renewable resources like wind and solar are simply incapable, by themselves, of ensuring the stability of the bulk electric system. As the wholesale markets' prices are distorted by subsidies, the generation assets with the attributes required for system stability will retire and system stability will be imperiled. To make matters worse, these retirements are occurring at the same time that inflation and supply chain disruptions are delaying the arrival of intermittent renewable resources and the Environmental Protection Agency is advancing increasingly aggressive regulations that will place enormous pressure on the remaining coal fleet to retire.

Given the market failures that the Commission's actions have facilitated, there will be, in time, a catastrophic reliability event. None of us wants this to happen, and I fervently hope to be proven wrong, but if FERC continues to fail in its duty to ensure proper price formation, that will be the inevitable result.

The consequences of premature retirements and resource scarcity are even more acute when you consider the constraints on natural gas supply resulting from the underdevelopment of interstate natural gas infrastructure—again, driven by the FERC's maladministration of the Natural Gas Act. Although I am genuinely delighted that the Commission has recently increased the pace of natural gas pipeline reviews, the policies FERC recently sought to promulgate have had the very effects I predicted at last year's hearing: according to the Energy Information Administration, 2022 saw the lowest quantity of additional capacity added to the natural gas pipeline system since 1995, the obvious result of FERC's slow walking natural gas pipeline applications over the last two years and the chilling effect of the regulatory uncertainty created by the Commission's issuances. Interstate natural gas infrastructure is absolutely critical. As coal, nuclear, and hydroelectric generators retire due to subsidies and public policy choices, the need for natural gas to ensure system reliability continues to grow.

I should also take a moment to discuss transmission development, a subject that has gotten increasingly more attention recently. The effort to *mandate* the development of additional transmission or change the longstanding method by which transmission costs are allocated, are yet two more efforts that will further distort the Commission's markets. The Inflation Reduction Act provides hundreds of billions of dollars of subsidies for favored classes of resources. The barrier to harvesting these subsidies is the need to build the transmission to connect the (often) remotely located resources to the electric system. As you can imagine, the project sponsors developing these subsidized resources wish to shift the cost the transmission development that is necessary to connect to the electric system onto the backs of ratepayers rather than pay for the transmission upgrades themselves. This explains recent efforts to convince policymakers that mandates for transmission construction and a re-conception of cost allocation principles is needed. It also explains the Commission's own efforts in its pending notice of proposed

rulemaking on transmission planning to socialize the costs of transmission projects among the widest possible number of ratepayers by redefining what "benefits" are. I respectfully submit that all such initiatives should be approached with skepticism. The costs borne by generators seeking to connect to the electric system may be the last disciplining factor preventing subsidies from completely overwhelming the markets. I also wish to stress that transmission mandates and efforts to liberalize cost allocation are not properly understood as permitting reform—they are one more way for already subsidized renewable energy developers to foist the costs of the transmission necessary to harvest their subsidies onto the ratepayers.

Just to be clear—additional transmission, including inter-regional transmission, is, when developed for reliability or economic reasons, both needed and beneficial, and the cost of such transmission is properly paid for by the ratepayers who benefit from its development. But such transmission can be—and has been—built without mandates and without altering the fundamentals of cost allocation.

In conclusion, our markets are failing, and FERC is not acting to fix them. There is no statutory requirement to have these markets—they are inventions of FERC. Large regions of the country, like the Southeast and Intermountain West, operate along the traditional model of vertically integrated utilities overseen by state public utility commissions. There, the rates are, for the most part, substantially lower than in FERC's vaunted wholesale markets and some of the utilities in those regions have not had to resort to shedding firm load since the mid-1970s. I am a free marketeer who believes in the power of market forces, but these markets, hobbled as they are by subsidies and FERC's interference, have been undermined to the point that they cannot be relied upon to ensure just and reasonable rates or provide resource adequacy. Our markets are in dire need of repair; FERC must act before there is a truly catastrophic reliability failure.

Again, thank you for the opportunity to share my thoughts. I look forward to your questions.