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ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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July 10, 2023

The Honorable Willie L. Phillips
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Chairman Phillips:

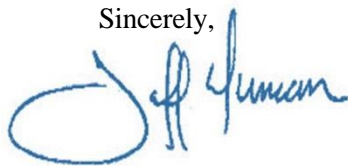
Thank you for appearing before the Subcommittee on Energy, Climate, and Grid Security on Tuesday, June 13, 2023, to testify at the hearing entitled "Oversight of FERC: Adhering to a Mission of Affordable and Reliable Energy for America."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Monday, July 24, 2023. Your responses should be mailed to Kaitlyn Peterson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to Kaitlyn.Peterson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Jeff Duncan
Chair
Subcommittee on Energy,
Climate, and Grid Security

cc: Rep. Diana DeGette, Ranking Member, Subcommittee on Energy, Climate, and Grid Security

Attachment

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 Willie L. Phillips, Chairman
Federal Energy Regulatory Commission
July 24, 2023

The Honorable Jeff Duncan

1. In 1999, FERC approved a bipartisan policy statement to evaluate natural gas pipeline proposals prior to granting a “certificate of public convenience and necessity.” The 1999 statement has withstood legal challenges and multiple reviews by FERC, including an ongoing review that began in 2017. While I appreciate your statements during the hearing regarding your support for the 1999 policy statement, I remain concerned by statements from the Biden Administration and prior FERC Chairman Glick about expanding FERC reviews and delaying final decisions.

- a. Do you believe the 1999 policy statement provides FERC and owners and operators of natural gas facilities with clear expectations, predictability, and transparency?

Answer: Yes. We are currently assessing natural gas pipeline projects using the existing Certificate Policy Statement, which we have applied since 1999. This year alone, we have issued numerous bipartisan certificate orders under the 1999 policy statement.

- b. Do you believe there is any reason to update or expand the 1999 policy statement?

Answer: Much has changed in the last 25 years, and we received substantial input from stakeholders on how we balance factors bearing on the public interest, so it makes sense to consider how we can update our reviews. In my view, I think changes to ensure we are adequately considering impacts to reliability, environmental justice communities, and climate impacts will provide clarity to stakeholders and ensure that needed infrastructure is not just approved, but built.

- c. If you do have plans to re-open the 1999 policy statement, will you commit to ensuring it has bipartisan support from FERC Commissioners?

Answer: Yes, as I’ve indicated, I support issuing a bipartisan agreement to ensure any statement is durable and commit to doing everything reasonably possible to secure that outcome here.

- d. If you do not have plans to re-open the 1999 policy statement, will you commit to ending the review and issuing a statement of support for the existing policy?

Answer: As noted above, I believe that the Commission may be able to provide stakeholders with

greater clarity regarding our approach to these important issues and I look forward to continuing to work with my colleagues in pursuit of that goal.

The Honorable 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 “commodit[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?

Answer: Under the Natural Gas Act (NGA), the Commission has authority to regulate interstate natural gas pipelines. In exercising that authority, the Commission regulates the transportation of blended hydrogen and natural gas over those pipelines. But the NGA does not give the Commission express authority to regulate interstate pipelines that transport only hydrogen. As for the Interstate Commerce Commission Termination Act, that statute gives certain authority to the Surface Transportation Board (STB) including, as you note, over commodities “other than water, gas, and oil.” Questions about how the STB has implemented that authority are best answered by that agency.

I leave it to Congress to decide whether clarification is needed, although, as I noted before the Committee, I believe the Commission could take on the responsibility for regulating interstate hydrogen pipelines. If Congress decides to give that responsibility to the Commission, I urge you to be clear and specific about how we should exercise any new authorities. That will help avoid uncertainty and litigation down the road.

- b. Additionally, what is FERC’s jurisdiction for *intrastate* hydrogen pipelines today?

Answer: The Commission has no jurisdiction over *intrastate* hydrogen pipelines.

The Honorable Tim Walberg

1. The state of Michigan, and many other states in the Upper Midwest, have implemented what are known as Right of First Refusal (ROFR) laws. These laws govern which entities have the first option to own and operate high voltage transmission in our state and have allowed our in-state companies to move ahead with shovel-ready transmission projects without delay, which supports reliability and the delivery of low-cost power delivery to our businesses and residents. Can you comment on how Rights of First Refusal, at the state or federal level, can help to expedite the transmission development process and promote regional grid planning?

- a. What is the Commission doing to translate the successful experience we've had with ROFR in Michigan and the Upper Midwest to national policy?

Answer: Under the Commission's current policies, transmission providers generally are not permitted to include a federal right of first refusal for certain regional transmission facilities in their Commission-jurisdictional tariffs and agreements. Nevertheless, transmission providers may maintain federal rights of first refusal for local transmission projects and upgrades to existing transmission facilities, as well as regional transmission projects needed for reliability within three years or less.

In its April 2022 Notice of Proposed Rulemaking on transmission planning and cost allocation in Docket No. RM21-17-000, the Commission recognized that the prohibition against a federal right of first refusal for transmission facilities selected in a regional transmission plan for purposes of cost allocation may be, to some extent, discouraging investment in and development of regional transmission facilities in favor of local transmission projects. Due to this concern, the Commission has proposed to allow transmission providers to have a federal right of first refusal for regional transmission facilities that meet certain joint ownership requirements. We are reviewing the comments received in response to the Commission's proposal, and I look forward to continuing to work with my colleagues on this issue.

2. FERC plays a critical role in protecting the cybersecurity of our nation's energy systems. The Infrastructure bill directed the Commission to implement incentive-based rate treatments for utilities that make investments in advanced cybersecurity technology, and last month, the Commission issued a final rule on this matter. However, there is more to do in this area of continually evolving and expanding risk, and we need to ensure that we strengthen the cyber posture of all types of utilities.
 - a. The Commission's final rule provides for only two "pre-qualified" investments for eligibility and also provided for a "case-by-case" analysis of other cybersecurity investments. Does this go far enough to incentivize meaningful investments in cybersecurity? Should the Commission have included physical security?

Answer: Since the day I joined this Commission, I have maintained that reliability is job number one. Cybersecurity is an essential aspect of maintaining electric reliability. Our recent final rule implementing incentive-based rate treatments for advanced cybersecurity technologies and cybersecurity threat information sharing programs is a significant step forward on this issue. Pursuant to the options included in our final rule, utilities may seek incentives for participation in information sharing programs and for investments that materially improve the utility's cybersecurity posture. I believe that this approach balances predictability, through the pre-qualified list, and flexibility, through the case-by-case approach, which together have the potential to provide an effective incentive for meaningful cyber security investments.

Section 219A of the Federal Power Act (FPA), which required the Commission to engage in this rulemaking, was limited to incentive rate treatment for investments in advanced cybersecurity technology and cybersecurity threat information sharing programs. It did not address physical security. As such, in complying with FPA section 219A, the Commission

did not revise its regulations to provide incentives with respect to strengthening physical security. Nonetheless, I strongly agree with you regarding the importance of the physical security of the grid. To that end, the Commission and the North American Electric Reliability Corporation (NERC) are currently working together to hold a technical conference on physical security, which is scheduled for August 10, 2023. The technical conference will discuss the physical security of the bulk-power system, including the adequacy of existing physical security controls, challenges, and solutions.

- b. What is the most effective way to implement a holistic cybersecurity approach that will successfully protect us from adversaries? How do we ensure that entities that may not be well positioned to make these investments, such as rural electric cooperatives and small municipally-owned electric utilities, are able to adopt robust cybersecurity practices?

Answer: The Commission uses a two-pronged approach to improve industry's security posture. The first prong involves mandatory reliability standards, including the Critical Infrastructure Protection (CIP) Reliability Standards, that establish foundational practices. The second prong involves working collaboratively with electric utilities, the states, and other federal agencies to identify and promote robust practices to effectively address increasing and rapidly evolving threats. In addition, I note the important steps that section 41024 of the Infrastructure Investment and Jobs Act of 2021 took to address this issue by directing the Secretary of Energy to award grants and provide technical assistance to rural electric cooperatives and small municipally-owned electric utilities to assist them in deploying and using advanced cybersecurity technologies.

The Honorable Randy Weber

1. The federal permitting process for energy infrastructure projects is complex, often triggering the jurisdiction and reviews of multiple federal agencies. This is especially true for large scale LNG export projects, where FERC holds the authority to authorize the construction of these projects while PHMSA provides the regulatory expertise on safety. How is FERC coordinating with other agencies, including PHMSA, to mitigate regulatory overlap?

Answer: The Commission works closely with the Pipeline and Hazardous Materials Safety Administration (PHMSA), Coast Guard, and other federal agencies. In February 2004, PHMSA, the Coast Guard, and the Commission entered into an Interagency Agreement to ensure greater coordination in addressing the full range of safety and security issues at LNG terminals and LNG marine vessel operations. On August 31, 2018, PHMSA and the Commission also signed a Memorandum of Understanding regarding methods to further improve coordination throughout the LNG permit application process for Commission-jurisdictional LNG facilities. We are in the process of updating those agreements pursuant to an August 2020 GAO report, *Natural Gas Exports: Updated Guidance and Regulations Could Improve Facility Permitting Processes* (GAO-20-619).

2. In my Congressional district, we have three LNG export terminals, one currently operating and the two others under construction – not to mention a facility right across from my district on the Louisiana side of Sabine Pass. In your testimony, you stated that Environmental Justice (EJ) was one of your top three priorities. The Natural Gas Act requires FERC to

examine whether proposed projects are in the broad “public interest,” so I presume FERC already looks at all the environmental and economic impacts. Under your Chairmanship, will FERC provide special considerations for so-called “Environmental Justice” communities, and if so, can you please explain how FERC’s policies will be consistent with the Natural Gas Act?

Answer: Environmental justice is a critical element of the Commission’s public interest analysis under section 3 of the Natural Gas Act (NGA). As such, I am proud of the progress we have already made this year to ensure that our orders adequately consider and address environmental justice concerns, including the Roundtable on Environmental Justice and Equity in Infrastructure Permitting and the issuance of a first-of-its-kind condition to protect environmental justice communities from certain cumulative air pollution impacts. In my view, not only are these measures consistent with the NGA, they will also help to ensure that needed infrastructure is actually developed by incorporating considerations relating to environmental justice communities at the front end, helping to reduce litigation and uncertainty on the back end.

3. Much of the discourse around environmental justice (EJ) focuses on burdens imposed on frontline communities by energy infrastructure. However, natural gas infrastructure has enabled access to affordable, reliable, and domestic energy for American homeowners, businesses, manufacturers, and power generation facilities nationwide. Furthermore, there are still regions and communities without adequate access to our domestic natural gas resources, creating scenarios of reliance on imports, or worse, limiting capacity during a period of rising energy costs.
 - a. Do you agree that improving access to natural gas can benefit all communities, including EJ communities?

Answer: Yes.

- b. How can FERC ensure that these vulnerable areas possess the same access to natural gas as other communities?

Answer: The Commission acts on applications filed with it by natural gas companies and does not have authority to propose projects itself. That said, I believe that the Commission can consider the benefits that a project can bring to environmental justice communities, as well as other communities, as part of its review of an application to develop new natural gas infrastructure.

- c. How will you weigh EJ in determining whether a pipeline is in the public convenience and necessity?

Answer: I take a case-by-case approach to evaluating whether new natural gas infrastructure is required by the public convenience and necessity. To the extent that environmental justice considerations are present, they are—and must be—an important factor in that balancing.

- d. Will you consider as part of that balancing test the benefits a proposed project brings to EJ communities?

Answer: Yes.

The Honorable August Pfluger

1. Are you concerned that the EPA’s Good Neighbor Rule 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? Did EPA consult with the FERC on impacts to reliability from the Good Neighbor Rule?

Answer: For the purpose of compliance with the Good Neighbor Rule, I expect jurisdictional interstate pipelines to work with their customers and regional electric grid operators to schedule outages of applicable compressors to minimize impacts to customers and risk to reliable operations of the grid. EPA staff engaged with Commission staff to share the results of stakeholder outreach it performed as it finalized the Good Neighbor Rule.

The Honorable Kim Schrier

Non-RTO/ISOs (BPA):

1. **Supporting regional energy interests:** As you know, the Pacific Northwest does not have an RTO / ISO or an organized market, though most of our utilities do participate in the Western Energy Imbalance Market (EIM), which is managed by the California ISO for real-time spot transactions. We are increasingly playing an important role for reliability throughout the West – particularly in California. As California’s ISO noted in its analysis of the September 2022 heat wave, power that was imported from the Pacific Northwest plays a key role in maintaining reliability.
 - a. Given the growing significance that non-jurisdictional entities in the Pacific Northwest are playing, what is FERC doing to support regional energy regulators and interests?

Answer: I agree that non-public utilities play a vital role in maintaining reliability in the Pacific Northwest and the Western Interconnection. The Commission has invited both state regulators and non-public utilities to participate in our technical conferences to ensure that their voices are heard. For instance, the Commission’s 2021 Technical Conference to Discuss the Resource Adequacy Developments in the Western Interconnection included robust participation by such entities. Additionally, the Commission has accepted Participation Agreements between the California ISO and non-public utilities that include provisions to recognize their unique status when they join markets such as the Western EIM.

More recently, the Commission approved the tariff for the Western Power Pool’s Western Resource Adequacy Program. This region-wide reliability planning and compliance program currently has 22 participants, including public utilities and non-public utilities.

- b. How is FERC balancing your approach to ensure that utilities under FERC jurisdiction can meet the requirements to coordinate with neighboring transmission systems, which are not jurisdictional to FERC?

Answer: I believe that coordination can be highly beneficial and, as such, that it is important to take a flexible approach that recognizes the differences between public and non-public utilities. For instance, the Commission has accepted transmission planning regions that acknowledge the status of non-public utilities while creating a pathway for non-public utilities to participate in the regional transmission planning processes. The NorthernGrid transmission planning region in the Pacific Northwest is one such example that has both public utility and non-public utility participants.

2. **Cost-sharing/Transmission:** Regional transmission planning in the Pacific Northwest is conducted by the NorthernGrid organization, which is made up of both jurisdictional and non-jurisdictional entities. Planning for regional transmission projects works well in theory; however, the non-jurisdictional members of NorthernGrid are not required to share in the allocation of costs for regional projects that might be approved in this planning process, even though the jurisdictional and non-jurisdictional transmission systems in the Pacific Northwest region are intertwined.
 - a. How may FERC account for cost allocation in a way that is fair to all ratepayers, and does FERC have the tools to encourage greater planning and cost sharing by non-jurisdictional entities?

Answer: In approving regional transmission cost allocation methods, the Commission is cognizant of the jurisdictional boundaries that Congress established. The Commission may not require non-public utilities, including non-public utilities that participate in NorthernGrid, to bear the costs of regional transmission facilities. Nonetheless, non-public utilities may voluntarily agree to regional transmission cost allocation to receive the benefits of regional transmission development.

- b. What authorities does the Federal Power Act grant FERC to leverage existing transmission infrastructure and improve interregional operations in RTO jurisdictions? How about non-RTO jurisdictions?

Answer: Several provisions of the FPA are relevant to these issues in both RTO and non-RTO jurisdictions. For example, under sections 205 and 206 of the FPA, the Commission ensures that the rates and charges made, demanded, or received by any public utility for, or in connection with, the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting, or pertaining to, such rates or charges are just and reasonable and not unduly discriminatory or preferential. Under sections 210 and 211 of the FPA, the Commission has the authority to require, respectively, the physical interconnection of a third-party's facilities and the provision of transmission service to a third party if the Commission determines that doing so is in the public interest. Under section 215 of the FPA, the Commission oversees the development and enforcement of mandatory reliability and security standards for users, owners, and operators of the bulk power system.

3. **Independent Transmission Monitors:** FERC has had some discussion (<https://www.utilitydive.com/news/ferc-naruc-task-force-independent-monitor-itm/636677/>) in the past year about "independent transmission monitors" as a way to help ensure that transmission owners and developers are building out the grid that we need in a fair and

nondiscriminatory way. Requiring regional transmission planning to be subject to such a monitor could ensure that transmission owners aren't blocking important upgrades proposed by other entities, and make sure that there's sufficient transfer capacity between regions. Some state officials have recently supported this independent monitor idea. What is FERC's position on independent transmission monitors in a place like the West that needs more transmission?

Answer: In the Advanced Notice of Proposed Rulemaking *Building for the Future Through Electric Regional Transmission Planning & Cost Allocation & Generator Interconnection*, the Commission sought comment on its authority to require an independent transmission monitor and the role such a monitor would play in transmission-related processes. The Commission subsequently opened Docket No. AD22-8-000 to address enhanced oversight and cost management of transmission development costs and held a technical conference in that docket in October 2022, which addressed the independent transmission monitor concept in great depth. The Commission requested post-technical conference comments on the potential roles and responsibilities of an independent transmission monitor and is currently reviewing comments on this matter.

- 4. Addressing Summer 2023 Workload:** Under the 2021 infrastructure law, there are energy-related grant programs for which additional NEPA review may be needed prior to application for funding in order for a project to be eligible. This includes a program commonly known as the Sec. 247 Maintaining and Enhancing Hydroelectricity Incentive, which provides \$554 million to assist existing hydropower facilities with capital improvements related to grid resiliency, dam safety, and environmental improvements. How is FERC preparing to respond in a timely manner to the additional workload that may result this summer as applicants seek license amendments or other approvals in support of the funding applications due October 6?

Answer: I am aware of the section 247 program, which is run by the U.S. Department of Energy. I cannot predict the extent to which that program will result in additional applications before the Commission, but we have a capable, experienced staff in place to handle hydropower project applications. Should the section 247 program result in a large number of applications such that additional staff is needed, I will work with my team to do everything possible to ensure we meet that need.

- 5. NERC/FERC Duplicate Regulation:** How is FERC working to streamline duplicate security regulations for Hydroelectric Projects that are subject to both NERC and Division of Dam Safety and Inspection security requirements and audits?

Answer: To the extent that hydropower projects are subject to both NERC reliability standards and the Commission's Division of Dam Safety and Inspection safety requirements, the Commission works to minimize duplication of those requirements to lessen the burden on hydropower projects. For example, hydropower projects subject to NERC reliability standards can rely on their compliance with NERC reliability standards to meet requirements under the Commission's dam safety requirements. Where a hydroelectric project is subject to both a NERC reliability standard and a Commission dam safety requirement, and where the Commission's Dam Safety Security Branch has concluded that its dam safety requirement is more stringent than the NERC reliability standard, it will so inform the owner/operator and encourage—not

mandate—the owner/operator to comply with the Commission dam safety requirements to better secure their critical assets.

However, there may be times where there are differences in the scope of the NERC reliability standards and the Commission’s dam safety requirements. For example, the NERC reliability standards seek to address reliability of the Bulk Electric System, while the Commission’s dam safety requirements focus on public health, the environment, and property that could be impacted by an unintentional release of water from the dam. Additionally, some assets at hydropower facilities are not subject to the NERC reliability standards, even if the power generation portion of the facility is subject to them. To the extent that a hydroelectric project is not subject to the NERC reliability standards, or the NERC reliability standards do not cover an element of the Commission’s dam safety requirements, the hydropower project must comply with the Commission’s dam safety requirements.