

United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy, Climate, and Grid Security
July 24, 2024 Hearing: The Fiscal Year 2025 Federal Energy Regulatory Commission
Budget

Questions for the Record
Responses of the Honorable Mark C. Christie
Federal Energy Regulatory Commission
December 6, 2024

The Hon. Jeff Duncan:

1. Under the Natural Gas Act, Congress made it clear that there is a public interest in the interstate transportation of natural gas, and it gave FERC the role of reviewing and approving proposed interstate natural gas pipelines. In your opinion, does FERC have the expertise needed to review applications to construct such pipelines and process them in a timely fashion, including the review of potential environmental impacts?

Answer. FERC absolutely has the expertise necessary to review and process applications for new pipelines in a timely manner. The destructive delays that have characterized permits falling under Sections 3 and 7 of the Natural Gas Act in the past decade are not due primarily to any action or inaction by FERC, but by a campaign of legal warfare being waged against every pipeline by anti-gas interest groups using the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA) as its primary weapons, resulting in wrongly decided court decisions, especially in the D. C. Circuit. *See, e.g., New Jersey Conservation Found. v. FERC, 111 F.4th 42 (D.C. Cir. 2024); Healthy Gulf v. FERC, 107 F.4th 1033 (D.C. Cir. 2024); City of Port Isabel v. FERC, 111 F.4th 1198 (D.C. Cir. 2024).*

2. I have supported legislation to restore the balance of the Natural Gas Act by bringing water quality impact reviews under the FERC-led NEPA process. Communities that need reliable and affordable energy should no longer be denied the opportunity to build natural gas pipelines — or worse — forced to import foreign natural gas to meet their basic energy needs. Is it the opinion of FERC that the agency should prioritize pipeline projects that enable Americans ability to access affordable, clean, American natural gas instead of gas from countries like Russia, Trinidad and Tobago and others?

Answer: FERC’s opinion is subordinate to the policy of Congress as set forth in the Natural Gas Act (NGA), which favors the development of the nation’s natural gas resources. *See* Natural Gas Act § 1, 15 U.S.C. § 717a (“it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.”); *NAACP v. FPC*, 425 U.S. 662, 669-70 (1976) (noting that “the principal purpose” of the NGA is “to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”); *see also Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1188 (D.C. Cir. 2023) (“The NGA sets out a general presumption favoring authorization” of export and import facilities.) (cleaned up, citation omitted).

The Hon. Robert E. Latta:

1. **I recently introduced the Securing Community Upgrades for a Resilient Grid Act, otherwise known as the SECURE Grid Act with my friend, the gentlelady from California’s 7th District. This bipartisan legislation is in response to the increased cybersecurity threats, and in some instances, outright physical attacks on our grid infrastructure in recent years. It would amend the State Energy Program under the Department of Energy to ensure State Energy Security Plans consider additional factors such as threats to physical infrastructure, technologies that can mitigate these threats and meet rising load demand, and consider financing models that save taxpayers money. A specific aspect of the legislation is that it leverages the States and helps them to tailor their State Energy Security Plans to threats they are experiencing in their backyards. Because you were a Public Service Commissioner, I am curious what your experience was like with addressing threats in your respective areas, and if you see this legislation being useful for empowering more states?**

Answer: As a former state utility commissioner, I and my state colleagues were very concerned about the very threats you raise in your question. I am not familiar with the details of the proposed legislation you reference, but the purpose is worthwhile and I would be happy to review any draft and discuss further.

2. **How do the States and District of Columbia currently communicate the threats they are facing with NERC, and are there proactive pathways to assist the States in threat deterrence and mitigation?**

Answer: The states generally seek to communicate through the National Association of Regulatory Utility Commissioners (NARUC) to NERC and other

federal and national organizations, so the states can address common problems and threats with one voice.

The Hon. Greg Pence:

1. **The Commission’s issuance of Order 1920, in its Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection proceeding (FERC Docket No. RM21-17), shines a spotlight on a related FERC proceeding on Transmission Planning and Cost Management (FERC Docket No. AD22-8). The objectives of the latter proceeding — enhancing cost management measures and greater transparency and oversight to ensure just and reasonable transmission rates — take on greater importance in the context of the anticipated transmission build-out to support our changing generation mix and growing electricity needs. Order 1920 deferred to the Cost Management proceeding many issues crucial to minimizing the burden on consumers.**

Joint ownership of transmission is one of those issues. In Order 1920, the Commission declined to finalize its proposal to promote such arrangements through a conditional right of first refusal, but committed to continue to consider such reforms, noting the Cost Management proceeding. The joint Concurrence of Chairman Phillips and then-Commissioner Clements confirmed that “the Commission will continue to evaluate other potential actions to incentivize joint ownership, including considering in the Commission’s Cost Management proceeding whether to provide a right of first refusal or other mechanisms to encourage its use.” In particular, the Joint Concurrence focused on potential actions to incentivize transmission owner joint ownership with public power and cooperatives in their footprint, which “can provide many benefits and should be encouraged.” It describes how such arrangements “can reduce costs for customers in the footprint” and “leverage additional sources of capital, including those that do not typically invest in transmission facilities, which can itself have significant benefits for customers,” citing record evidence documenting substantial consumer savings. What priority should the Commission give to promoting arrangements, such as joint transmission ownership arrangements with public power and cooperatives, that reduce the cost burden imposed on consumers due to needed grid expansion?

Answer: The Commission must address the rapidly rising costs of transmission. Order No. 1920 did not do so; rather it threatens to exacerbate those rising costs. Please see my dissent to Order No. 1920, issued last May 13, 2024. [*Building for the*](#)

[Future Through Electric Regional Transmission Planning and Cost Allocation, Order No. 1920, 187 FERC ¶ 61,068 \(2024\) \(Christie, Comm'r, dissenting\)](#). I would note that Order No. 1920-A, approved last month, made some major amendments specifically to the role of the states that are constructive in expanding the states' role and ability to protect their consumers. I welcome those provisions. On the issue of joint ownership arrangements, I have not seen convincing evidence that the ownership arrangement of a transmission line will reduce the construction costs of that line in any material way, but I am open to receiving more evidence demonstrating that a joint ownership structure would reduce the construction costs of a transmission line in a significant way. The best way to reduce the cost burden of transmission on consumers is to build only the transmission necessary to serve consumers, not to serve special interests and ideological agendas.

The Hon. Randy K. Weber:

- 1. The U.S. LNG export industry is regulated by multiple federal, state, and local agencies. I am concerned about FERC's overlapping, duplicative, and sometimes conflicting requirements with these entities. For example, Section 717b-1 of the Natural Gas Act requires LNG operators to prepare an Emergency Response Plan (ERP) in consultation with the U.S. Coast Guard and State and local agencies. However, in recent issuances, FERC appears to be conditioning LNG Authorizations on operators implementing ERPs along the waterway that go beyond what is required by the U.S. Coast Guard — the Federal agency responsible for, and has expertise over, waterway safety. FERC also appears to be requiring operators to put ERPs in place that would impinge upon the jurisdiction of State and local governments.**

The Coast Guard has rules and regulations in place that protect the safety of the waterway. These regulations have been enforced for over three decades. Has FERC issued LNG Authorizations that impose waterway safety conditions that exceed the requirements of the U.S. Coast Guard?

Answer: I am advised by the Commission's Office of Energy Projects (OEP) that the Commission has not imposed waterway safety conditions that exceed Coast Guard requirements. Section 717b-1 of the NGA requires the Commission to review and approve the ERP prepared by the terminal operator in consultation with the Coast Guard and state and local agencies. The NGA requires that the ERP address security and safety at the LNG terminal and in proximity to vessels that serve the terminal. Accordingly, the Commission relies on the Coast Guard to establish the measures needed to ensure the safety and security of the waterway. For example, each Commission authorization for an LNG project with new or increased capacity of LNG marine vessels typically includes a condition that prohibits commencement of service until determination is made by the Coast

Guard that appropriate measures on the waterway and at the facility have been put into place.

- 2. If so, please thoroughly explain why FERC's requirements are more stringent. If not, please thoroughly explain your reasoning citing to specific conditions in LNG Authorizations issued in 2023 and that are no longer subject to FERC's *ex parte* regulations.**

Answer: I am advised by OEP that the Commission has not issued requirements more stringent than the Coast Guard's for waterway safety and security. The Coast Guard has advised Commission staff that the Coast Guard does not have jurisdiction over onshore emergency response in proximity to LNG marine vessels and does not have the authority to implement onshore measures related to public notification, public evacuation, or public shelter-in-place. Those authorities rest with State and local agencies. Environmental Condition #21 from the Commission's order on Port Arthur Phase II is representative of the specific requirement the Commission uses to ensure that a terminal operator is consulting and coordinating with the Coast Guard; state, county, and local emergency planning groups; fire departments; and state and local law enforcement in the development of the ERP.¹

- 3. Does FERC consider conditions for an ERP on a case-by-case basis, or does FERC apply the same conditions for an ERP to all LNG projects? If it applies the same conditions to all projects, how does FERC account for local project-specific differences?**

Answer: I am advised by OEP that, while the exact wording can be different in each Commission order, in all LNG project authorizations the Commission requires the terminal operator to develop pre-incident response plans with the Coast Guard; state, county, and local emergency planning groups; fire departments; and state and local law enforcement agencies. This allows the terminal operator to develop the ERP along with agencies that have local knowledge and to tailor the plan's conditions around the needs of each terminal, the waterway, and the onshore areas along the waterway.

- 4. What happens if a State or local authority disagrees with FERC's ERP conditions? How should the LNG operator manage the competing desires of State/local authorities against FERC's ERP directives?**

¹ See Appendix A of *Port Arthur LNG Phase II, LLC & PALNG Common Facilities Company, LLC*, 184 FERC ¶ 61,184 (2023).

Answer: I am advised by OEP that the NGA requires an LNG terminal operator to engage in pre-incident planning and coordination with the local first responder agencies. The Commission's implementation of this Congressional mandate ensures that the terminal operator works with the local emergency providers to identify resource needs based on the hazards that could be present due to the terminal and the ship transit along the waterway. This pre-incident planning allows the development of procedures, training, and capabilities that would be available to first responders. During an incident, decisions regarding response tactics, evacuation, sheltering in place, and public notification would be made by local emergency responders according to the conditions and needs as assessed by those responders at the time of the incident.

The Hon. Rick W. Allen:

1. **FERC recently finalized Order 1920 to reform the regional transmission planning process. We have heard today from our Democratic colleagues about a letter from 32 State Public Utility Commissioners supporting the rule. They assert that this letter shows support for FERC's actions. As Chair Duncan noted, there are 238 State Utility Commissioners across the country, yet just 32 signed this letter, and 31 of them are political appointees. Most are from locations that have carbon free electricity and net-zero economy goals. In my opinion, this letter just confirms the Republican argument that Order 1920 is designed to facilitate expensive electricity transmission projects while socializing the costs onto ratepayers from States without the same policy goal.**
 - a. **Would you agree with my takeaway that this document reinforces the fundamental issues with Order 1920?**

Answer: Yes. Order No. 1920, issued May 13, 2024 on a 2-1 vote, was exactly what I said it was at the time: a partisan, lobbyist-driven effort to promote certain special interests, primarily wind, solar and transmission developers, and partisan and ideological "net zero" agendas. Order 1920 was *not* about protecting consumers who just want reliable power at the least cost to them. To that end, it was clearly about forcing states that do not have mandatory renewable generation goals and related policies to pay a large part of the costs of those policies, as well as forcing consumers to pay for big corporations' preferential power policies. [*Building for the Future Through Electric Regional Transmission Planning and Cost Allocation, Order No. 1920, 187 FERC ¶ 61,068 \(2024\) \(Christie, Comm'r, dissenting\).*](#) I would note that Order No. 1920-A, approved last month, made some major amendments to the role of the states that are constructive in expanding the states' role and ability to protect their consumers. I welcome those changes. Now it is

essential that the implementation of Order 1920-A fully reflects and incorporates the new added powers given to the states.

The Hon. Marianne Miller-Meeks:

1. **We are currently in a time of unprecedented increases in energy demand after years of relatively stable load growth. Early retirements of generating units and regulatory headwinds to new project deployments are the result of an agenda-driven administration, but FERC's mission statement is unique in its focus on safety, reliability, and economic efficiency. Given FERC's focus on affordability, how do you respond to comments that FERC's Order 1920 on transmission and cost allocation was a "missed opportunity" to deliver additional savings to American consumers?**

Answer: Order No. 1920, issued May 13, 2024 on a 2-1 vote, was exactly what I said it was at the time: a partisan, lobbyist-driven effort to promote certain special interests, primarily wind, solar and transmission developers, and partisan and ideological "net zero" agendas. Order 1920 was not about protecting consumers who just want reliable power at the least cost to them. To that end, it was clearly about forcing states that do not have mandatory renewable generation goals and related policies to pay a large part of the costs of those policies, as well as forcing consumers to pay for big corporations' preferential power policies. Please see my dissent to Order 1920: [Building for the Future Through Electric Regional Transmission Planning and Cost Allocation, Order No. 1920, 187 FERC ¶ 61,068 \(2024\) \(Christie, Comm'r, dissenting\)](#). I would note that Order No. 1920-A, approved last month, made some major amendments to the role of the states that are constructive in expanding the states' role and ability to protect their consumers. I welcome those changes. Now it is essential that the implementation of Order 1920-A fully reflects and incorporates the new added powers given to the states.

2. **You mentioned in your testimony that Regional Transmission Organization's market structure may not necessarily be best suited to today's reliability challenges. In your opinion, how does market design in RTO markets contribute to disorderly retirements of dispatchable power resources?**

Answer: This is very complicated topic. Please see my recent article in *Energy Bar Journal* for a detailed explanation. [Mark C. Christie, It's Time to Reconsider Single-Clearing Price Mechanisms in U.S. Energy Markets, 44 ENERGY L. J. 1 \(2023\)](#).

3. **In May 2021, FERC issued Order 871 and produced accompanying regulations that prohibit an authorization to proceed with natural gas construction activities if a rehearing request of the certificate order is**

pending. Before Order 871, the commission issued authorizations to proceed with construction activities shortly after a certificate order was issued. Order 871 has delayed construction of projects as certain stakeholder groups file for rehearing to delay projects. What steps can FERC take to ensure project delivery and costs are not delayed by stakeholders motivated to stop the construction of any natural gas projects?

Answer: The most important thing Congress can do to expedite a more timely process for FERC's applications under Sections 3 and 7 of the Natural Gas Act is to reform both NEPA and the Administrative Procedures Act (APA). See also my answer to Rep. Duncan above, Q. 1.