

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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May 7, 2018

The Honorable Cheryl A. LaFleur  
Commissioner  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Dear Commissioner LaFleur:

Thank you for appearing before the Subcommittee on Energy on Thursday, April 17, 2018, to testify at the hearing entitled "Oversight of the Federal Energy Regulatory Commission and the FY2019 Budget."

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. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, May 21, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Kelly.Collins@mail.house.gov](mailto:Kelly.Collins@mail.house.gov).

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

Sincerely,



Fred Upton  
Chairman  
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachment

## Attachment—Additional Questions for the Record

### The Honorable Fred Upton

1. FERC has long held that it “does not pick winners or losers” regarding the fuels for generating electricity -- rather FERC’s role is to promote competition through market mechanisms.
  - a. How does this philosophy square with the fact that some generators have characteristics or attributes (e.g., onsite fuel) that allow them to provide additional value in terms of reliability or resilience?
2. In the recent “resilience” filing, ISO-New England was the only RTO to identify an imminent threat to resilience within its footprint, with that threat being its overwhelming dependence on natural gas and constrained fuel supplies during extreme cold weather events.
  - a. In your view, what are some viable solutions to ISO-New England’s reliability and resiliency concerns – should we be considering ways to increase pipeline capacity?
3. Under section 205 of the Federal Power Act, FERC is prohibited from making modifications to tariff proposals that are substantial enough to transform them into entirely new proposals. Last summer, the DC Circuit issued a ruling in NRG v. FERC that FERC had contravened this limitation on its authority when proposing changes to PJM’s filing to change its rate structure. This undermines FERC’s longstanding practice of approving filings subject to certain changes being made, rather than rejecting filings with questionable aspects altogether.
  - a. Can you describe if this ruling has adversely affected the way FERC reaches a determination?
  - b. Is the public interest harmed by this ruling?
  - c. Is a legislative fix necessary to clarify Section 205 of the FPA?
4. FERC does not have the authority to mandate that a certain amount of power be generated by resources. In response to various legislative efforts to support nuclear generation, the industry is debating whether individual state actions are harming the efficient operation of the organized wholesale electricity markets. States including New York and Illinois have enacted or legislation that would protect “at-risk” nuclear generation units from closure due to their inability to compete economically in a competitive market.

- a. Litigation is currently underway in the U.S. Court of Appeals (2nd & 7th Circuits regarding the lawfulness of these subsidies. Will FERC assist the Court in providing its views (as requested by the Court)?
  - b. Do you or FERC have a position the appropriateness of these credits?
5. In July 2011, FERC issued Order 1000 – a landmark rule designed to increase regional transmission development by non-incumbent utilities and foster competition for innovative and cost-effective projects. However, after more than 6 years, few new transmission projects can be directly attributed to Order No. 1000 and a recent FERC staff report admitted that “[i]t is difficult to assess whether the industry is investing in sufficient transmission infrastructure to meet the nation’s needs and whether the investments made are more efficient or cost-effective.”
  - a. What are the Commissions views on this rule? Should it be reexamined?
6. Each of the RTOs/ISOs employ a market monitor to oversee the activities of the markets, but each of them has a different structure. Some RTOs contract with an independent entity to serve this role (e.g., PJM and MISO), while others rely on an internal monitor (e.g., Southwest Power Pool and CAISO) and others have both an internal monitor and an external independent monitor (e.g., ISO-New England and New York ISO).
  - a. After 20 years of experience with market monitors in the organized markets, there remains a good deal of confusion regarding the role of the monitors, which type of monitoring structure works best, and who the market monitor is ultimately responsible to.
    - i. What are your thoughts on the role of the market monitor? Are any changes necessary?

**The Honorable John Shimkus**

Load Serving Entity Rights; FPA §217(b)(4):

1. Section 217 (b) (4) of the Federal Power Act directs FERC to exercise its authority to facilitate the planning and expansion of the transmission grid to meet the reasonable needs of Load Serving Entities, and enable utilities with an obligation to serve to secure firm transmission rights for their long term power supply arrangements. In your opinion, what is the extent of FERC’s obligation to ensure that Congress’ directive with regard to firm transmission rights for long-term power supply arrangements is met?

## Ownership of Transmission Assets:

2. The Commission has, on several occasions, expressed strong support for Joint Ownership of transmission, noting that it has proven to be a model that gets transmission built quickly, efficiently and at low cost. In its November 15, 2012 Policy Statement on transmission incentives, the Commission “encourage[d] incentives applicants to participate in joint ownership arrangements and agrees ... that such arrangements can be beneficial by diversifying financial risk across multiple owners and minimizing siting risks included,” but this statement has not spurred additional joint ownership arrangements. If it can be established that the joint ownership model of transmission ownership results in a more robust grid, should the Commission do more to actively promote joint ownership arrangements involving public power entities? Why or why not?

### **The Honorable Richard Hudson**

1. As you know, FERC is litigating a number of enforcement cases in federal district court and several of these cases involve virtual trading in the electricity markets. While some suggest that virtual trading allows utilities to hedge against price volatility and congestion, others have argued that virtual transactions are not being used as intended, resulting in profits to traders without adding any commensurate benefit and a decline in the performance of the markets.
  - a. Since there is a track-record of market manipulation involving virtual products, does FERC have any plans to review its existing policies regarding virtual trading in RTO markets?
  - b. What further steps can FERC take to prevent market manipulation through virtual trading?

### **The Honorable Scott Peters**

1. Commissioner, I assume you're familiar with the plight of California customers and utilities given our State's recent devastating wildfires, including the application of “inverse condemnation” that may threaten the long-term fiscal health of our utilities.
  - a. In your experience, what sort of utility-related costs come in the aftermath of wildfires or other natural disasters? Repair and restoration? Other damages and liabilities?
  - b. I understand that in most cases, assuming the affected utility has acted prudently, then the utility may recover many of these costs through rates. Is that correct? Given the exorbitant costs associated with natural disasters, what would be the financial

impact on utilities if they were unable to recover such costs in full or at least partially?

- c. Is there a correlation between the fiscal health of a utility and the reliable service it is able to provide its customers? Similarly, is there a correlation between the fiscal health of a utility and its ability to build a stronger, more resilient power grid?
- d. Specific to FERC-jurisdictional facilities, assets, and rates, what ratemaking mechanisms or tools does FERC have in place to allow for consideration of recovery of costs for damages prudently incurred from natural disasters?

### **The Honorable Paul Tonko**

#### **1. Natural Gas Exports and Public Benefit**

The energy landscape has changed dramatically since FERC issued its 1999 policy for certifying natural gas pipeline projects. The U.S. Energy Information Administration's latest long-range projections anticipate liquefied natural gas (LNG) exports to grow significantly, so it seems reasonable to assume exports will play an increasing role in future gas infrastructure demand.

- a. Will FERC's review of its 1999 policy statement consider the role of LNG exports when determining whether a proposed project is required by the public convenience and necessity?
- b. Should pipeline expansions that are intended to boost consumption overseas constitute a public benefit, particularly for those projects that require the use of federal eminent domain authority to take private property?
- c. Do you believe it is possible, and would it be appropriate, for FERC to differentiate between domestic needs versus foreign exports when determining if a project is required by the public convenience and necessity?