

**Testimony of
Kevin J. McIntyre, Chairman
Federal Energy Regulatory Commission
Before the Subcommittee on Energy
Committee on Energy and Commerce
United States House of Representatives
April 17, 2018**

Chairman Upton, Ranking Member Rush, and members of the Subcommittee:

Thank you for the opportunity to appear before you to discuss the work of the Federal Energy Regulatory Commission (FERC). My name is Kevin McIntyre, and I have the honor of serving as the Chairman of FERC, an independent agency that regulates important aspects of our Nation's electric, natural gas, hydropower, and oil pipeline industries. Those aspects include the wholesale sale of electricity and natural gas in interstate commerce, transmission of electricity in interstate commerce, and transportation by pipeline of natural gas and oil in interstate commerce. FERC also reviews proposals to build liquefied natural gas terminals and interstate natural gas pipelines, as well as to license hydropower projects. It is our mission to assist consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost through appropriate regulatory and market means.

On February 12, 2018, FERC submitted to Congress its 2019 fiscal year budget request. As authorized by the Federal Power Act and Omnibus Budget Reconciliation Act of 1986, FERC recovers its full cost of operations through annual charges and filing fees assessed on the industries it regulates. The revenue from these charges and fees is deposited into the U.S. Treasury as a direct offset to FERC's budget appropriation, resulting in a net appropriation of zero.

I joined FERC as Chairman in early December 2017. Prior to joining FERC, I had the privilege of serving as co-lead of the global energy practice at the Jones Day law firm. At the firm, I had an expansive FERC practice, where I counseled and represented

clients in nearly all energy industry sectors. Now, as Chairman of FERC, I am again surrounded by distinguished colleagues with wide-ranging experience and expertise, including a former industry executive, a former state regulator, and two former senior advisors from Capitol Hill. This diversity of background among our full complement of five Commissioners is a strength for FERC, one that allows us to analyze complex problems through different lenses and reach well-informed decisions.

I am also surrounded by excellent advisors and staff. FERC has approximately 1,500 employees, who serve in 12 offices that contribute in different ways to fulfilling our mission and responsibilities. I am impressed by FERC staff's dedication and commitment. In January, I was honored to accept an award recognizing FERC as the top mid-sized agency in a ranking of the Best Places to Work in the Federal Government. The Partnership for Public Service compiles those rankings based on data gathered from the Federal Employee Viewpoint Survey conducted each year by the Office of Personnel Management. This award reflects FERC's tradition of excellence. As Chairman, it is my goal to build on this tradition and continue to foster excellence at FERC.

As a fundamental philosophical matter that informs my approach to governance, I believe deeply in the importance of the rule of law. Any consideration of potential action by FERC, or by any governmental body, must begin with a firm understanding of the applicable legal requirements, and any action taken must satisfy those requirements in full. Because many situations permit a range of lawful decisions, including some with profound policy implications, it is critical for FERC to consider a diversity of views from stakeholders and the public. It is my goal to make FERC's actions as open and transparent as possible. I strive to bring an even-handed and judicious approach to each matter, with a focus on listening, which is indispensable to fairness and sound decision-making.

With those principles in mind, I would like to highlight a few of my priorities as Chairman.

Resilience of the Bulk Power System

First, during my tenure as Chairman, protecting and promoting the resilience of the bulk power system will remain a top priority. FERC previously has taken steps with regard to reliability and other matters that have helped to address the resilience of the bulk power system. We recognize that we must remain vigilant with respect to resilience challenges, because affordable and reliable electricity is vital to the Nation's economic and national security.

To place FERC's current actions on resilience in context, it is useful to note the evolution of the electric power industry. Historically, vertically integrated utilities generally built and owned the generation, transmission, and distribution facilities needed to serve load within their respective defined service territories. Utility rates were historically regulated by federal and state regulators on a cost-of-service basis: the utilities charged for electric generation at rates calculated to compensate them for their actual costs plus a fair rate of return. In other words, during this early period, there was no market structure as we understand it in today's electric power industry.

Beginning in the 1970s, statutory and regulatory developments at the federal and state level encouraged the development of competitive electricity markets, including encouraging the growth of non-utility generators. In 1996, FERC issued its landmark Order No. 888, which required public utility transmission providers to provide open access transmission service and developed principles for the concept of independent system operators (ISOs) and regional transmission organizations (RTOs). In 1999, FERC issued Order No. 2000, which expressly encouraged the development of such regional entities, with the intent of using them to foster competitive power markets. Meanwhile, starting in the 1990s, a number of states restructured their retail electricity markets to allow for more competition in the generation sector, which further contributed to development of bulk power markets and increased reliance on independent regional bodies for operation of the grid.

These developments significantly affected the traditional vertically integrated model, particularly in regions of the country where RTOs and ISOs manage the transmission grid. Notably, subject to FERC approval, RTOs and ISOs have developed organized markets for electric energy and ancillary services, and a number of them have also established centralized capacity markets. A result of this approach has been that, in regions with organized markets, FERC has largely adopted a pro-market regulatory model, wherein FERC relies on competition in approving market rules and procedures that, in turn, determine the prices for the energy, ancillary services, and capacity products (where applicable). Under this pro-competition, market-driven system, owners of generating facilities that are unable to remain economic in the market may take steps to retire or mothball their facilities. FERC's support of competitive wholesale electricity markets has been grounded in the substantial and well-documented economic benefits that these markets provide to consumers.

A continually evolving phenomenon that has affected the development and evolution of electric markets is innovation in the energy sector and the change in the energy resource mix. As part of its ongoing oversight of wholesale electric markets, FERC continues to evaluate its current rules and has issued several orders to ensure that rates in these markets remain just and reasonable and not unduly discriminatory or preferential. FERC has acted to remove barriers to the integration and participation of variable energy resources, demand response resources, and, in February of this year, electric storage resources. FERC also has issued orders revising or expanding compensation opportunities for various grid services, such as frequency regulation, so that compensation more accurately reflects the value of the service provided.

At the same time, however, FERC has continued to ensure that reliability is at the forefront of its responsibilities. FERC's endorsement of markets does not conflict with its oversight of reliability, and FERC has been able to focus on both without compromising its commitment to either.

FERC brought this approach to our recent consideration of a proposed rule on grid reliability and resilience pricing submitted by the Secretary of Energy. On January 8, we issued an order finding that the proposed rule did not satisfy the requirements of the Federal Power Act, and, therefore, we terminated that proceeding. In the same order, we noted our appreciation to the Secretary for reinforcing the resilience of the bulk power system as an important issue that warrants further attention, and we initiated a new proceeding to specifically evaluate the resilience of the bulk power system in the regions operated by RTOs and ISOs. The goals of the new proceeding are to: (1) develop a common understanding among FERC, industry, and others as to what resilience of the bulk power system means and requires; (2) understand how each RTO and ISO assesses resilience for its geographic footprint; and (3) use this information to evaluate whether additional FERC action regarding resilience is appropriate.

With these goals in mind, we directed each RTO and ISO to submit information to FERC within 60 days on certain resilience issues and concerns to enable us to examine holistically the resilience of the bulk power system. We also provided the opportunity for reply comments to be filed within 30 days after the RTO/ISO responses. On March 9, 2018, each RTO and ISO submitted information in response to our order. We subsequently extended the time for reply comments by 30 days, to May 9, 2018, to ensure that our next steps are based on the best available information.

It is my expectation that FERC will review the responses and decide whether additional FERC action is warranted to address grid resilience. As we approach this review, we are mindful that the Commission's markets, transmission planning rules, and reliability standards should evolve as needed to address the bulk power system's continued reliability and resilience.

We also recognize that there seems to be a general consensus that grid reliability and grid resilience are related but separate concepts, with the elements of grid reliability being better understood and defined. The Commission's oversight of electric reliability

involves ensuring that the bulk power system is planned and operated so that instability, uncontrolled separation, and cascading failures do not occur as a result of a disturbance, equipment failure or cybersecurity incident. Resilience could encompass a range of attributes, characteristics, and services that allow the grid to withstand, adapt to, and recover from both naturally occurring and manmade disruptive events.

In addition, the concept of resilience necessarily involves issues that extend beyond FERC's jurisdiction, such as distribution system reliability and modernization. For that reason, in our January 8 order, we also encourage RTOs and ISOs and other interested entities to engage with state regulators and other stakeholders to address resilience at the distribution level.

Review of the Commission's Certificate Policy Statement

A second priority of mine stems from my philosophy of governance. I believe that, as a matter of good government, we owe it to all concerned to take a look at our processes and policies from time to time and ask ourselves whether there is any way that we can improve them. After speaking with my fellow Commissioners, I decided that the first such review of my Chairmanship would involve taking a fresh look at FERC's 1999 policy statement on the certification of interstate natural gas pipeline facilities.

Under the Natural Gas Act, FERC has the responsibility to determine whether a proposed natural gas pipeline project is required by the public convenience and necessity. In the nearly two decades since FERC adopted its current approach to making that determination, the natural gas industry has witnessed significant changes. These changes include the emergence of new areas of natural gas production, flows on pipeline systems becoming bidirectional or reversing, a closer relationship between natural gas transportation and electric generation, a higher level of concern among landowners and communities affected by proposed projects, and an increasing interest in how FERC reviews natural gas pipeline certificate applications under the National Environmental Policy Act.

Amid such changes, I believe that it is prudent to review FERC's current approach to certification of natural gas pipelines. My colleagues and I continue to consider internally both the scope and format for this review. However, I note that last Thursday, we issued a notice for our April 19, 2018 open meeting, consistent with the Government in the Sunshine Act. That notice includes an item in Docket No. PL18-1-000, the proceeding we initiated to conduct the review. Today I intend neither to forecast a policy direction nor to prejudge the outcome of our review. Rather, I intend that our review will provide the opportunity for thoughtful input from interested stakeholders and the public, which I hope will help us to identify whether there are areas in which we can improve our policy or processes and, if so, what those improvements may be. I look forward to sharing additional details in the coming days.

Other Issues before FERC

Of course, these are not the only issues to which FERC is now devoting its attention. My fellow Commissioners are addressing in their written testimony examples of other important matters now before FERC. Commissioner LaFleur is discussing the wholesale electric markets and FERC's continuing commitment to facilitating the development of needed electric transmission facilities. Commissioner Chatterjee is discussing applicability of the Public Utility Regulatory Policies Act of 1978 in an environment notably different from the time of its enactment, as well as FERC's responsibilities with respect to the reliability of the bulk power system. Commissioner Powelson is discussing cybersecurity challenges related to infrastructure over which FERC has regulatory responsibilities, as well as changes and challenges to the electric grid. Finally, Commissioner Glick is discussing the potential of several emerging technologies, including electric storage and the aggregation of distributed energy resources.

I thank you again for inviting all of us to appear before you today. I look forward to answering your questions.

Summary of the Written Testimony of Kevin J. McIntyre Before the House Subcommittee on Energy

My name is Kevin McIntyre. Since December 2017, I have had the honor of serving as Chairman of the Federal Energy Regulatory Commission (FERC). FERC is an independent agency that regulates important aspects of our Nation's electric, natural gas, hydropower, and oil pipeline industries.

My goals as Chairman include continuing to foster excellence at FERC, which was recently recognized as the top mid-sized agency in a ranking of the Best Places to Work in the Federal Government, and making FERC's actions as open and transparent as possible.

A top substantive priority of mine is to protect and promote the resilience of the bulk power system. On January 8, 2018, we initiated a proceeding to evaluate the resilience of the bulk power system in the regions operated by Regional Transmission Operators and Independent System Operators. We are still receiving public comments in this proceeding, and as informed by those comments, we will decide promptly whether additional FERC action is warranted on this critical subject.

I also am pleased that FERC is beginning a review of our 1999 policy statement on the certification of interstate natural gas pipeline facilities. I believe that, as a matter of good government, it is prudent to review our processes and policies from time to time to explore whether any improvements can be made. Our review is timely in light of the many changes that the natural gas industry has witnessed in the past 20 years.

In addition to these goals and priorities during my tenure as Chairman, FERC is considering many other important issues. My fellow Commissioners are addressing several such matters in their prepared testimony.