MEMORANDUM July 21, 2024

TO: Members of the Subcommittee on Energy, Climate, and Grid Security

FROM: Committee Majority Staff

RE: Hearing titled "The Fiscal Year 2025 Federal Energy Regulatory Commission Budget"

I. INTRODUCTION

On Wednesday, July 24, 2024, at 10:00 a.m. (ET) in 2123 Rayburn House Office Building, the Subcommittee on Energy, Climate, and Grid Security will hold a hearing. The title of the hearing is "The Fiscal Year 2025 Federal Energy Regulatory Commission Budget." The hearing will examine the work of the Federal Energy Regulatory Commission (FERC) to ensure affordable, reliable electricity and natural gas service throughout the country, as well as its adherence to its core mission of ensuring just and reasonable rates for energy services.

II. WITNESSES

- **The Honorable Willie L. Phillips**, Chairman
- **The Honorable Mark C. Christie**, Commissioner
- **The Honorable David Rosner**, Commissioner
- **The Honorable Lindsay S. See**, Commissioner
- **The Honorable Judy W. Chang**, Commissioner

III. BACKGROUND

A. FERC's History and Mission

FERC is an independent, five-member commission that regulates the interstate transmission of natural gas, oil, and electricity through the exercise of its authority under the *Natural Gas Act* (NGA),the *Federal Power Act* (FPA), and other statutes. FERC also regulates the sale of wholesale electricity and the siting of natural gas pipelines, liquefied natural gas facilities, and hydropower projects through a lengthy and complex certification process, among other responsibilities.

Commissioner Phillips has served as the Chairman of FERC since January 2023. Prior to his appointment as Chairman, he served as a Commissioner since December 2021. Commissioner Christie has served as a member of FERC since January 2021. Commissioner

Rosner, Commissioner See, and Commissioner Chang were confirmed by the Senate on June 13, 2024.

FERC's stated mission is to "[a]ssist consumers in obtaining reliable, safe, secure, and economically efficient energy services at a reasonable cost through appropriate regulatory and market means, and collaborative efforts."[1] FERC's fiscal year (FY) 2025 budget request is $532,000,000, an increase of $12 million relative to FERC's FY2024 appropriation.[2] According to FERC, it "receives an annual appropriation from Congress to defray its operating costs and recovers 100 percent of this appropriation through the collection of annual charges and filing fees. These annual charges and filing fees are assessed to recover costs incurred by the Commission in the performance of its regulatory responsibilities."[3]

Recent Supreme Court decisions in *Loper Bright Enterprises v. Raimondo* and *Securities and Exchange Commission v. Jarkesy* are likely to impact FERC. *Loper* overruled the 1984 Supreme Court case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, which held that if a court concluded a federal statute was silent or ambiguous, the court must defer to an agency's reasonable interpretation of the statute.[4] *Jarkesy* affirmed the Fifth Circuit's ruling that the Seventh Amendment right to a trial by jury "applies to suits at common law," which includes statutory claims that are "legal in nature."[5] The *Jarkesy* decision is likely to impact the ability of federal agencies to pursue administrative adjudication to enforce civil penalties.[6]

B. Natural Gas

There are over 2.6 million miles of natural gas pipelines in the United States, including over 300,000 miles of high-capacity transmission pipelines.[7] Under Section 7(c) of the NGA, FERC is authorized to issue "certificates of public convenience and necessity" for "the construction or extension of any facilities…for the transportation in interstate commerce of natural gas."[8] Companies seeking to build interstate natural gas pipelines must first obtain certificates of public convenience and necessity from FERC. FERC's regulatory process for certifying applicants involves prefiling, certificate application, application review (including environmental review), authorization, and post-certificate proceedings.

In February 2022, FERC issued two policy statements to guide the certification of natural gas pipelines. The first policy statement, "Certification of New Interstate Natural Gas Facilities," revised the Commission's long-standing natural gas policy statement initially issued in 1999. The new policy statement adds new criteria for FERC to consider when determining whether

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[1] About FERC | Federal Energy Regulatory Commission
[2] P.L. 118-42, 181.
[3] Annual Charges | Federal Energy Regulatory Commission (ferc.gov)
[4] Supreme Court Decides Loper Bright Enterprises v. Raimondo | Publications | Insights | Faegre Drinker Biddle & Reath LLP
[5] SEC v. Jarkesy: A Groundbreaking Supreme Court Decision with Significant Implications for Securities Enforcement | Insights | Greenberg Traurig LLP (gtlaw.com)
[6] Id.
[7] https://www.eia.gov/energyexplained/natural-gas/natural-gas-pipelines.php
[8] 15 U.S.C. § 717f(c)

new gas infrastructure is in the public interest, including consideration for landowners, environmental justice communities, and other factors. The second policy statement, "Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Projects," explains how FERC will assess the impacts of natural gas infrastructure projects on climate change. In March 2022, after further consideration, FERC voted to seek comments on the two policy statements and designated both documents as draft policy statements. To date, FERC has not issued any final guidance on these matters.

In addition to permitting natural gas pipeline infrastructure, under section 3 of the NGA, FERC is also responsible for issuing permits for Liquified Natural Gas (LNG) export and import facilities. Under section 3 of the NGA, FERC has "the exclusive authority to approve or deny application for the siting, construction, expansion or operation, of an LNG terminal."[9] FERC's review requires an extensive environmental review of the entire project. FERC is required to ensure the environmental review is conducted pursuant to the National Environmental Policy Act (NEPA).

FERC has no authority to approve or disapprove applications to import or export the commodity natural gas, as this authority rests with the Department of Energy (DOE). On January 26, 2024, the Biden administration announced that it would halt the consideration of applications to export natural gas to non-Free Trade Agreement (FTA) countries while it conducted a review to consider the climate impacts of natural gas. On July 1, 2024, a federal court stayed the Biden administration's ban on new permits for LNG exports.

C. Electricity

FERC is responsible for the regulation of interstate electricity transmission and wholesale power markets except for the Electric Reliability Council of Texas (ERCOT).[10] The Commission is also responsible for the regulation of interstate electricity transmission rates under Section 205 of the FPA which states, "all rates and charges… for or in connection with the transmission or sale of electric energy… and all rules and regulations affecting or pertaining to such rates and charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful."[11] Section 206 of the FPA directs FERC to correct any "rate, charge, or classification" related to the transmission or sale of electricity if the provision is determined to be "unjust, unreasonable, unduly discriminatory, or preferential."[12]

The *Energy Policy Act of 2005* (EPAct 2005) established section 215 of the FPA and directed FERC to certify an "Electric Reliability Organization (ERO)" to develop mandatory and enforceable reliability standards for electric power.[13] This directive from Congress culminated in

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[9] 15 U.S.C. § 717b(e)(1)
[10] R47521.pdf (crs.gov), 5.
[11] 16 U.S.C. § 824d(a)
[12] 16 U.S.C. § 824e(a)
[13] The Legal Framework of the Federal Power Act (crs.gov), 2.

FERC designating the North American Electric Reliability Corporation (NERC) as the ERO.[14] NERC enforces reliability standards, subject to FERC oversight.[15]

The EPAct of 2005 also established section 216 of the FPA, which directed the DOE to designate National Interest Electric Transmission Corridors (NIETCs).[16] Once DOE designated a NIETC, section 216(b) of the FPA directed FERC to "issue one or more permits for the construction or modification of electric transmission facilities" if the Commission made a series of conclusions.[17] One such conclusion was that "[a] state commission with siting authority has withheld approval of the facilities for more than one year after the application was filed or after designation of the relevant national interest corridor, whichever is later."[18] This provision was previously interpreted by FERC to include any action (such as denial by a State) that resulted in an applicant not receiving state approval within one year. In *Piedmont Environmental Council v. FERC*, the Fifth Circuit held that FERC's interpretation did not apply when a state denied a permit application within the one-year deadline.[19] In response to this decision, the *Infrastructure Investment and Jobs Act* amended section 216 to give FERC backstop siting authority when a state (1) has not made a determination on an application by the one-year date, (2) has conditioned its approval such that the proposed project will not significantly reduce transmission constraints or congestion or is not economically feasible, or (3) has denied an application.[20]

On May 8, 2024, DOE's Grid Deployment Office issued a preliminary list of 10 NIETCs.[21] The comment period on the issuance closed on June 24th and DOE is expected to publish the final list in the fall. On May 13, 2024, FERC finalized Order 1920, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*.[22] The Order was adopted by a 2-1 party-line vote with Chairman Phillips and former Commissioner Clements concurring. Commissioner Christie was the lone dissent. Order 1920 focused on four key policy areas:

- Expanding the transmission planning horizon to a minimum of 20 years.
- Requiring transmission developers to use at least three long-term scenarios when developing plans
- Dictating that transmission developers measure seven specific benefits, including:
    - Avoided or deferred reliability transmission facilities and aging infrastructure replacement;
    - Reduced loss of load probability or reduced planning reserve margin;
    - Production cost savings;

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[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] FERC Proposes To Update Its Backstop Siting Authority for Electric Transmission Facilities | Perkins Coie
[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] Initiation of Phase 2 of National Interest Electric Transmission Corridor (NIETC) Designation Process: Preliminary List of Potential NIETCs (energy.gov)
[22] FERC Takes on Long-Term Planning with Historic Transmission Rule | Federal Energy Regulatory Commission

  - Reduced transmission energy losses;
  - Reduced congestion due to transmission outages;
  - Mitigation of extreme weather events and unexpected system conditions; and
  - Capacity cost benefits from reduced peak energy losses.[23]
- Requiring transmission developers to file one or more *ex ante* cost allocation methods to recover costs for those projects determined to be solutions to long-term transmission needs.

IV. ISSUES

The following issues may be examined at the hearing:

- FERC's mission of ensuring abundant ad affordable supplies of energy at just and reasonable rates
- FERC's FY25 budget request
- Natural gas policy statements
- Improving reliability of the electric grid
- Transmission policy
- Wholesale electricity markets

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Mary Martin, Brandon Mooney, Elise Krekorian, or Drew Lingle of the Committee staff at (202) 225-3641.

[23] 89 FR 49280, 720.