



MEMORANDUM

June 7, 2019

To: Subcommittee on Energy Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “Oversight of FERC: Ensuring Its Actions Benefit Consumers and the Environment”

On **Wednesday, June 12, 2019, at 10:30 a.m. in room 2322 of the Rayburn House Office Building**, the Subcommittee on Energy will hold an oversight hearing entitled, “Oversight of FERC: Ensuring Its Actions Benefit Consumers and the Environment.”

I. THE ROLE OF THE FEDERAL ENERGY REGULATORY COMMISSION

The Federal Energy Regulatory Commission (FERC) is an independent regulatory agency within the Department of Energy led by five commissioners. President Donald J. Trump appointed the current Chairman, Neil Chatterjee, on October 24, 2018, after former Chairman Kevin J. McIntyre resigned from the Chairman position, which he had held since August 2017. President Trump also nominated Commissioners Richard Glick and Bernard L. McNamee in 2017 and 2018, respectively. President Barack H. Obama appointed Commissioner Cheryl A. LaFleur in 2010, and the Senate confirmed her for a second term in 2014. Her term expires June 30, 2019.¹ Commissioner LaFleur may continue to serve until a new nominee is confirmed to her seat or until the end of the year. Former Chairman Kevin J. McIntyre passed away on January 2, 2019.² His Commission seat has not yet been filled.

FERC regulates the interstate transmission and sale of electricity and natural gas, as well as the transportation of oil by pipeline. In addition, FERC oversees the permitting of interstate natural gas pipelines and related facilities, reviews proposals for liquefied natural gas terminals, and licenses hydroelectric projects. It is also responsible for the safety and inspection of dams associated with FERC-licensed projects. Beyond its licensing and ratemaking authorities, FERC

¹ Federal Energy Regulatory Commission, About FERC, *Commission Members*, (May 29, 2019) (<https://ferc.gov/about/about.asp>).

² See The Washington Post, *Kevin McIntyre, Federal Energy Regulatory Commission chairman, dies at 58*, (Jan. 3, 2019) (www.washingtonpost.com/local/obituaries/kevin-mcintyre-federal-energy-regulatory-commission-chairman-dies-at-58/2019/01/03/6567d1da-0f78-11e9-84fc-d58c33d6c8c7_story.html?utm_term=.b0bdccbd150a).

also has many oversight and enforcement authorities, including those relating to wholesale electricity markets, protecting the reliability of the electric grid, and reviewing mergers, acquisitions and corporate transactions by electricity companies, among other things.³

A. Electricity

Under the Federal Power Act (FPA), FERC holds authority to regulate wholesale and interstate electricity and transmission rates. FERC regulates and oversees six Regional Transmission Organizations (RTOs): California Independent System Operator (ISO), ISO New England, Midcontinent ISO, PJM Interconnection, New York ISO, and the Southwest Power Pool. The Electric Reliability Council of Texas (ERCOT) is an RTO that operates and manages the electric grid in Texas. ERCOT is regulated at the state level, not by FERC.⁴ FERC established these organized markets pursuant to Order 888/889 and Order 2000 to promote wholesale competition and to ensure transmission access to the regional electricity markets.⁵

In recent hearings before the Committee, stakeholders have raised concerns about FERC's Order 1000.⁶ FERC issued Order 1000 in July 2011, to bring competition into the process of building new electric transmission capacity. Order 1000 sought to benefit consumers of electricity by allowing competitive market forces to influence the selection of new transmission projects rather than allowing incumbent utilities to unilaterally decide when and where to construct new electric transmission.⁷ Since its release, stakeholders on all sides have raised concerns that the transmission reforms on Order 1000 have not been implemented as anticipated or accomplished its goals.⁸

B. Hydroelectric Power

In general, states site generation facilities; however, FERC licenses hydropower facilities built by utilities in interstate commerce pursuant to authority granted by the FPA.⁹ Under

³ Federal Energy Regulatory Commission, About FERC, *Commission Members*, (May 29, 2019) (<https://ferc.gov/about/about.asp>).

⁴ Federal Energy Regulatory Commission, What FERC Does, (May 29, 2019) (<https://ferc.gov/about/ferc-does.asp>).

⁵ FERC Order Nos. 888/889, 75 FERC ¶ 61,078 and 75 FERC ¶ 61,080, (April 24, 1996); and FERC Order No. 2000, 89 FERC ¶ 61,285, (December 20, 1999).

⁶ House Committee on Energy and Commerce, *Examining the State of Electric Transmission Infrastructure: Investment, Planning, Construction, and Alternatives*, 115th Cong. (2018).

⁷ Utility Dive, *Has FERC's landmark transmission planning effort made transmission building harder?*, (Jul. 17, 2018) (<https://www.utilitydive.com/news/has-fercs-landmark-transmission-planning-effort-made-transmission-building/527807/>).

⁸ See note 6.

⁹ Federal Power Act, 16 U.S.C. § 791a et seq.

section 6 of the FPA, FERC licenses hydroelectric projects for periods of up to 50 years.¹⁰ Section 15 of the FPA provides for the relicensing of existing projects and automatic annual extensions for those projects whose licenses have expired, but have not completed the relicensing process.¹¹

C. Natural Gas

Under section 7 of the Natural Gas Act, FERC reviews applications for the siting, construction, and operation of interstate natural gas pipelines. A pipeline company cannot construct or operate an interstate natural gas pipeline without a FERC-issued “certificate of public convenience and necessity.”¹² The certificate establishes the terms and conditions for constructing and operating a pipeline, including those related to location, engineering, rates, and mitigation of potential environmental disruption. Section 7 grants the right of eminent domain to a pipeline company that is issued a certificate of public convenience and necessity by FERC. Under section 3 of the Natural Gas Act, FERC is also responsible for issuing permits for Liquefied Natural Gas (LNG) export and import facilities.¹³

FERC has recently been involved in litigation related to allegations that it purposefully curtailed analysis and limited disclosure of greenhouse gas emissions from projects it considered for authorization. Otsego 2000—a non-profit organization—challenged FERC in court, alleging that the Commission purposefully failed to calculate greenhouse gas emissions associated with final approval of Dominion Energy’s New Market Project pipeline. In May 2019, the U.S. Court of Appeals for the District of Columbia Circuit found that the plaintiff did not have sufficient standing to challenge FERC’s approval of the project and resolved the case on technical grounds.¹⁴ Commissioners LaFleur and Glick, as well as several environmental advocates, opposed FERC’s decision to authorize the New Market Project.

In June 2019, the D.C. Circuit Court of Appeals upheld a decision by FERC to grant a permit for the construction of a pipeline in the State of Tennessee but raised concerns with the Commission’s justification for abstaining from analyzing greenhouse gas emissions that may be produced by the project.¹⁵ The panel of judges found that FERC was incorrect in its interpretation of its obligations under circuit precedent, and it criticized the Commission for

¹⁰ *Id.* at § 799.

¹¹ *Id.* at § 808(a)

¹² Natural Gas Act of 1938 § 7; 15 U.S.C. § 717f.

¹³ *Id.*

¹⁴ E&E News, *Landmark FERC pipeline challenge fails* (May 9, 2019) (www.eenews.net/stories/1060302403).

¹⁵ *Lori Birckhead, et al v. FERC*, Case No. 18-1218 (D.C. Cir. Jun. 4, 2019).

making “no effort” to seek information regarding possible changes to greenhouse gas consumption and emissions associated with the project.¹⁶

II. GRID RESILIENCE AND RELIABILITY

In September 2017, the Secretary of Energy transmitted to FERC a proposed rule to address the Trump Administration’s concern that regulated wholesale electricity markets are not adequately pricing the “resiliency attributes” of baseload power sources—mainly coal and nuclear generation.¹⁷ On January 8, 2018, FERC commissioners voted unanimously to terminate the proposed rule and initiate a new proceeding requesting the RTOs and ISOs to explore resiliency issues within each electric system to determine what, if any, further action is required by FERC.¹⁸ Numerous stakeholders submitted comments to the proceeding, including all the RTOs and ISOs. The resilience docket remains open.

In an effort to promote resilience of the nation’s bulk power system, FERC issued Order Number 841 on February 15, 2018. This order directed RTOs and ISOs to remove barriers that limit the participation of electric storage resources in electric wholesale markets. The order requires wholesale markets to consider the physical and operational characteristics of electric storage when establishing market rules and tariffs. Wholesale electricity markets will be required to sell electric power to storage resources, which can be sold back to the market at the locational marginal price. All RTOs and ISOs filed compliance filings for Order 841 in December 2018, and FERC has set a December 2019 deadline for the implementation of market changes filed in the compliance filings.¹⁹ On May 16, 2019, FERC denied several requests for rehearing Order 841 and upheld its decision not to adopt a state opt-out of electric storage resource participation in wholesale markets.

III. WITNESSES

The following witnesses have been invited to testify:

The Honorable Neil Chatterjee
Chairman
Federal Energy Regulatory Commission

¹⁶ Id. at 13. See also Courthouse News Service, *DC Circuit Deals Defeat to Tennessee Pipeline Opponents* (Jun. 4, 2019) (www.courthousenews.com/dc-circuit-deals-defeat-to-tennessee-pipeline-opponents/)

¹⁷ 18 C.F.R. Part 35.

¹⁸ 162 FERC ¶ 61,012.

¹⁹ Utility Dive, *As grid operators file FERC Order 841 plans, storage floodgates open slowly*, (Dec. 11, 2019) (www.utilitydive.com/news/as-grid-operators-file-ferc-order-841-plans-storage-floodgates-open-slowly/543977/)

The Honorable Cheryl A. LaFleur
Commissioner
Federal Energy Regulatory Commission

The Honorable Richard Glick
Commissioner
Federal Energy Regulatory Commission

The Honorable Bernard L. McNamee
Commissioner
Federal Energy Regulatory Commission