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OVERSIGHT OF THE FEDERAL ENERGY REGULATORY

COMMISSION AND THE FY 2019 BUDGET

TUESDAY, APRIL 17, 2018

House of Representatives

Subcommittee on Energy

Committee on Energy and Commerce

Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2123 Rayburn House Office Building, Hon. Fred Upton [chairman of the subcommittee] presiding.

Members present: Representatives Upton, Olson, Barton, Shimkus, Latta, Harper, McKinley, Kinzinger, Griffith, Johnson, Long, Bucshon, Flores, Mullin, Hudson, Walberg, Duncan, Walden (ex officio), Rush, McNerney, Peters, Green, Doyle, Castor, Welch, Tonko, Schrader, Kennedy, Butterfield, and Pallone (ex officio).

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Staff present: Samantha Bopp, Staff Assistant; Daniel Butler, Staff Assistant; Karen Christian, General Counsel; Kelly Collins, Legislative Clerk, Energy/Environment; Wyatt Ellertson, Professional Staff, Energy/Environment; Margaret Tucker Fogarty, Staff Assistant; Adam Fromm, Director of Outreach and Coalitions; Jordan Haverly, Policy Coordinator, Environment; Zach Hunter, Director of Communications; Mary Martin, Chief Counsel, Energy/Environment; Drew McDowell, Executive Assistant; Brandon Mooney, Deputy Chief Counsel, Energy; Mark Ratner, Policy Coordinator; Annelise Rickert, Counsel, Energy; Dan Schneider, Press Secretary; Peter Spencer, Professional Staff Member, Energy; Jason Stanek, Senior Counsel, Energy; Austin Stonebraker, Press Assistant; Hamlin Wade, Special Advisor, External Affairs; Everett Winnick, Director of Information Technology; Priscilla Barbour, Minority Energy Fellow; Jeff Carroll, Minority Staff Director; Jean Fruci, Minority Energy and Environment Policy Advisor; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; John Marshall, Minority Policy Coordinator; Alexander Ratner, Minority Policy Analyst; Tim Robinson, Minority Chief Counsel; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; Tuley Wright, Minority Energy and Environment Policy Advisor; and C.J. Young, Minority Press Secretary.

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48 Mr. Upton. Good morning, everybody. Oh, man. Becoming a
49 theme. That's good.

50 So we are lucky to have all five members of the Federal Energy
51 Regulatory Commission at our hearing today to discuss the
52 priorities of this independent agency and the challenges of
53 regulating industries that are undergoing significant
54 transformation.

55 Since our last oversight hearing in 2015, FERC itself has
56 also experienced a number of changes with addition of four new
57 members, so I welcome all of you here today and look forward to
58 hearing your individual perspectives on some very complicated and
59 technical issues ranging from grid resilience to battery storage
60 to cybersecurity.

61 The past year has been challenging for the commission, having
62 struggled without a functional quorum for more than six months,
63 and during that period utility filings became backlogged and
64 decisions were delayed on matters ranging from utility rate
65 applications to million-dollar interstate natural gas pipeline
66 proposals.

67 Fortunately, I understand that FERC operations have returned
68 to near normal, having cleared much of that backlog, allowing the
69 commission to turn its attention towards a host of issues ranging
70 from controversial changes to the RTO capacity markets to how new
71 energy infrastructure projects should be evaluated under FERC's

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72 certificate policy.

73 As we recently heard at your hearing on energy
74 infrastructure, building new pipelines and electric transmission
75 towers is not a easy or simple task.

76 Affected landowners know their rights and they have
77 organized campaigns to oppose new energy projects, sometimes
78 protesting at FERC's doorstep.

79 I understand that Chairman McIntyre announced that the
80 commission is now taking a fresh look at its 1999 policy to
81 evaluate the need for new natural gas pipelines.

82 Obviously, a lot of changes have occurred over the last 20
83 years in the way infrastructure is developed. So I would be
84 interested to hear what may come from that review.

85 Another topic that has consumed much attention in the
86 industry and at FERC recently involves the question of the bulk
87 power system's ability to anticipate, withstand, and recover from
88 disruptive events.

89 This topic of grid resilience became a source of much heated
90 debate we heard from Secretary Perry just last week that the
91 national security of this country is jeopardized -- those are his
92 words -- if we don't take steps to protect the grid.

93 I understand that FERC is flagged as a top priority and has
94 directed each of the RTOs and ISOs to provide detailed information
95 regarding the state of grid resilience.

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96 The committee is reviewing the RTO's submissions to FERC and
97 will seek and track the anticipated responsive comments through
98 early next month. FERC's jurisdictional electricity markets
99 have also been a topic of frequent discussion during our Powering
100 America hearing series.

101 We have heard concerns from market participants that range
102 from the need for updated PURPA regs to changes to FERC's
103 transmission planning rules under Order 1000.

104 Additionally, recent pricing proposals developed by the RTOs
105 and ISOs aimed at accommodating state policies represent a
106 fundamental shift in how resources set prices in the wholesale
107 markets.

108 Commissioner LaFleur deserves credit for focusing on that
109 issue last May when she was chairman. But, as these federal-state
110 jurisdictional issues play out in filings at FERC and in
111 litigation at the various courts of appeals, we should consider
112 the differences between an impact of the wholesale and retail
113 electricity markets.

114 So these are tough issues and I recognize that you've got
115 a lot on your agenda right now. However, despite the tough work
116 and challenging issues FERC faces, I'd like to point out that the
117 commission is consistently ranked among the best places to work
118 in the federal government, based on employee surveys and your
119 success in maintaining such high marks by your 1,500 staff members

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120 is noted.

121 With that, I want to thank the commissioners again for
122 appearing today. I look forward to your testimony and the
123 questions and interactions that we have between us.

124 [The prepared statement of Mr. Upton follows:]

125

126 *****INSERT 1*****

127 Mr. Upton. With that, I recognize the ranking member of
128 Energy Subcommittee, Mr. Rush, my friend from Illinois.

129 Mr. Rush. I certainly want to thank you, Mr. Chairman, for
130 holding this very timely hearing today. I look forward to hearing
131 from the FERC commissioners on some of the more pressing issues
132 regarding the reliability and the resiliency of the nation's
133 electric grid.

134 Mr. Chairman, just last week this subcommittee heard from
135 Secretary Perry on what he considers a very real concern regarding
136 grid reliability, specifically, Mr. Chairman, the topic of DOE
137 intentionally using its emergency authority under Section 202(c)
138 of the Federal Power Act to grant the request made by First Energy
139 to issue an emergency must-run order for 85 coal and nuclear plants
140 within the PJM interconnected came up more than once.

141 In fact, Secretary Perry, Mr. Chairman, seemed to be sounding
142 the alarm that we are quickly heading toward a point of no return
143 when the imminent retirement of several coal and nuclear plants
144 would leave our nation in a situation where we would be unable
145 to meet our energy demands if we do not act soon.

146 Mr. Chairman, I look forward to hearing the commissioner's
147 views on these critical issues. Another topic of great debate
148 during last week's DOE hearing focused on the March 2018 study
149 by the National Energy Technology Laboratory, or NETL.

150 That report highlighted the use of coal during the prolonged

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151 cold snap that the nation experienced between December 2017 and
152 January 2018.

153 The NETL study concluded that within the PJM region, coal
154 provided the most resilient form of generation during this cold
155 blitz and went on to say that without the available capacity from
156 coal facilities then PJM would have experienced power shortfalls
157 and widespread blackouts.

158 However, Mr. Chairman, just this past Friday, PJM issued its
159 own response to the NETL study refuting those conclusions and
160 stating that PJM indeed had adequate amounts of resources to
161 supply power and then not need to invoke emergency procedures.

162 PJM also noted that, while coal and nuclear played an
163 important role during this period, that was more due to economic
164 factors and it really never faced any reliability threats.

165 Mr. Chairman, and the agency responsible for ensuring the
166 reliability of the nation's electrical grid, I look forward to
167 hearing directly from the FERC commission on this and other
168 important issues.

169 Specifically, I would like to commend the agency for its
170 recent unanimous vote finalizing the rulemaking allowing for
171 distributive energy resources to compete in wholesale markets.
172 This vote marks an important step in the right direction by
173 allowing advanced technologies such as demand response, energy
174 storage, electric automobiles, and photovoltaics potentially in

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175 the wholesale market.

176 Unfortunately, Mr. Chairman, I also have some concerns
177 regarding the recent study -- recent, rather, policy change
178 determining how impacting stakeholders may intervene in pipeline
179 review.

180 I'd like to hear from the commission on its justification
181 for a less lenient in allowing interveners to join proceedings
182 that are, quote, "out of time" and how these new changes might
183 impact public input and participating in the pipeline review
184 process.

185 That said, Mr. Chairman, I look forward to engaging the
186 commissioners today and I will yield back the balance of my time.

187 Mr. Upton. The gentleman yields back.

188 The chair would recognize the chair of the full committee,
189 the gentleman from the good state of Oregon, Mr. Walden.

190 The Chairman. Thank you, Mr. Chairman.

191 Good morning. Welcome to our FERC commissioners. We are
192 delighted that you're here. I think the last time we had all the
193 commissioners before the committee was in 2015, and so we are
194 delighted that you're here.

195 But this is the first time under the chairmanship of
196 Commissioner McIntyre. So we look forward to the discussion that
197 will take place.

198 FERC oversees, as you all know, many critical aspects of our

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199 nation's energy infrastructure and industry, and through the
200 authorities provided by Congress, namely, the Federal Power Act
201 and the Natural Gas Act, the commission regulates the interstate
202 transmission of electricity, natural gas, and oil and reviews
203 proposals to build LNG terminals, interstate natural gas
204 pipelines, and oversees the licensing of hydro power projects,
205 all of which are very, very important to our country and to my
206 state.

207 Our nation's energy industry is at the forefront of an
208 unprecedented period of change driven in part by changes in fuel
209 mixes, technological innovation, and market competition.

210 Declining natural gas prices, stable demands, zero cost
211 generation resources, greater efficiency -- they've all led to
212 a generation mix differentiated not solely by cost but through
213 operational characteristics such as dispatchability flexibility
214 and ramping.

215 So a well-functioning energy system is dependent on
216 competitive markets. However, in some wholesale electricity
217 markets, certain generation resources such as coal and nuclear
218 are struggling to recover costs and remain competitive.

219 In some cases, under wholesale market rules, inflexible
220 generation units are not permitted to set price. This presents
221 real challenges for cost recovery, which could, ultimately, have
222 an impact on the reliability and resiliency of our electricity

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223 grid.

224 So I am hopeful that FERC will take this matter seriously
225 as it conducts its review of comments regarding resiliency in the
226 organized electricity markets.

227 At the same time, advances in digital information
228 technologies are driving real change, creating new opportunities
229 for more intelligent and dynamic energy systems.

230 Many of these advanced energy technologies have applications
231 on the distribution side and behind the meter beyond the
232 regulatory reach of FERC.

233 However, given the interconnected nature of our grid, we are
234 beginning to see their impacts on the bulk power system and
235 wholesale electricity markets.

236 Of course, as our generation mix shifts toward natural gas,
237 we are going to need more pipelines to transport gas from producing
238 wells and user consumers.

239 New England is especially feeling that crunch, as we have
240 heard, as we saw when they had to import LNG from Russia on two
241 occasions this year to meet market demands.

242 So I am hopeful that Chairman McIntyre's review of FERC's
243 procedures for evaluating applications for new gas pipelines will
244 result in more efficient and timely decisions.

245 I understand that FERC will be taking formal action on this
246 review at its open meeting on Thursday. With our abundant shale

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247 resources, we can be entirely self-sufficient on natural gas.

248 But we must construct new pipelines to do that. While cross
249 border trade with our neighbors in Canada and Mexico may be a
250 win-win, we should never have to be reliant on the Russians for
251 imports again.

252 Since taking the gavel as chairman of this committee, I've
253 made it my promise to always put the consumer first in everything
254 that we do. The modern consumer expects greater control,
255 convenience, and choice when it comes to their energy consumption.

256 I am excited about the changes taking place and the
257 opportunities that it presents to our nation's economy and energy
258 security.

259 With that, I'd like to thank all of you for willingness to
260 participate in this public service and in this hearing and I look
261 forward to your testimony.

262 As you all well know, we also have another subcommittee
263 meeting at the same time on telecommunications issues so you will
264 have members, including myself, coming and going.

265 We really value your testimony and your long public service
266 and we look forward to a partnership together for America's
267 future.

268 With that, Mr. Chairman, I would yield back the balance of
269 my time.

270 [The prepared statement of Mr. Walden follows:]

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273 Mr. Upton. The gentleman yields back.

274 The chair would recognize the ranking member of the full
275 committee, Mr. Pallone, from New Jersey.

276 Mr. Pallone. Thank you, Mr. Chairman.

277 I am pleased that there is finally a full slate of five
278 commissioners at FERC. Last year, I voiced my concern that a lot
279 of important work was put on hold for an extended period of time
280 because the commission lacked a quorum, and it's a pleasure to
281 have all five of you here with us today.

282 First, I'd like to thank the commission for its decision to
283 reject Secretary Perry's notice of proposed rulemaking to provide
284 cost recovery for certain coal and nuclear facilities that are
285 no longer economical.

286 This proposed rule is a threat to competitive electricity
287 markets and would have led to higher energy prices for consumers.

288 With Secretary Perry's proposed rulemaking now behind us,
289 we must turn our attention to the feedback that the commission
290 receives from the regional transmission organization as it
291 relates to current resiliency risk.

292 I would also like touch briefly on FERC's authority to review
293 applications for the construction of interstate natural gas
294 pipelines.

295 For years I've expressed concern with the process FERC uses
296 to review pipeline applications and its tendency to green light

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297 the construction of potentially unnecessary pipeline projects.

298 Overbuilding our natural gas pipeline system has many
299 negative impacts on the public. Ratepayers ultimately foot the
300 bill for the construction of these pipelines whether they are
301 necessary or not.

302 Homeowners in the path of a pipeline also have little
303 recourse to stop pipeline companies from seizing their land
304 through eminent domain.

305 It's time for a new approach. I believe a more regional
306 review of these projects should be implemented rather than the
307 current process where every pipeline appears to be reviewed
308 individually without any consideration of other pipelines in the
309 area.

310 And I was encouraged by Chairman McIntyre's announcement in
311 December that FERC will review its 1999 pipeline policy statement.
312 I hope this review leads to a new pipeline policy that provides
313 greater protections to property owners and more holistic review
314 process that looks at all pipelines in a given region.

315 I've also heard from many property owners and advocacy groups
316 that FERC is not nearly responsive enough to the public. More
317 needs to be done at the commission to provide a greater role for
318 the general public and the FERC process.

319 My colleague, Representative Schakowsky, had introduced a
320 common sense bill that would create an office of public

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321 participation in consumer advocacy at FERC and such an office
322 would provide an important resource for everyday citizens who
323 typically lack the ability to navigate the complex FERC process.

324 And finally, I'd like to address FERC's grid storage order
325 number 841, which was issued in February. I've long advocated
326 for finding ways to introduce more distributed energy and energy
327 storage into our electric grid and removing the many barriers
328 preventing storage benefits from reaching consumers.

329 And so I am fully aware that there are some technical changes
330 that grid operators and utilities will have to overcome, it can
331 be done and I am pleased that FERC has directed the RTOs to evaluate
332 how storage can add value to our electricity markets.

333 So, again, let me conclude by welcoming everyone here today.
334 Thank you, and I yield back, Mr. Chairman.

335 Mr. Upton. Gentleman's time has expired.

336 We are now prepared to hear testimony from each of the
337 commissioners. We welcome you. Thank you for submitting your
338 testimony in advance. It'll be made part of the record.

339 We will let you spend five minutes each summarizing your
340 statements and at that point we will go to questions on both sides.

341 So Mr. McIntyre, welcome. Good to see you.

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STATEMENTS OF THE HONORABLE KEVIN J. MCINTYRE, CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION; THE HONORABLE CHERYL A. LAFLEUR, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION; THE HONORABLE NEIL CHATTERJEE, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION; THE HONORABLE ROBERT F. POWELSON, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION; THE HONORABLE RICHARD GLICK, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT OF MR. MCINTYRE

Mr. McIntyre. Thank you, Chairman Upton. Likewise.

Thank you. Good morning, Chairman Upton and Ranking Member Rush, and distinguished members of this subcommittee.

My name is Kevin McIntyre, and since December I have had the privilege of serving as the chairman of the Federal Energy Regulatory Commission, FERC.

FERC is an independent federal agency that regulates important aspects of our nation's electric, natural gas, hydro power, and oil pipeline industries.

As chairman, I am particularly pleased to be serving alongside my esteemed fellow commissioners who are also appearing before you today.

I could not have hoped for a more engaged, better informed, and more public spirited group of colleagues than these.

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366 My goals as chairman include the fostering of continued
367 excellence at FERC, which was recently recognized as you, Chairman
368 Upton, mentioned -- recognized in a prominent national ranking
369 of the best places to work in the federal government as the
370 number-one mid-sized agency.

371 My goals also include making FERC's actions as open,
372 transparent, fair, and efficient as possible. A top substantive
373 priority of mine is to protect and promote the resilience of our
374 bulk power system, as has been mentioned here this morning.

375 On January 8, we initiated a proceeding to evaluate the state
376 of that grid resilience. We are still receiving the incoming
377 public comments in response to our issuance in that proceeding,
378 and as we are informed by those comments and deliberate on them,
379 we will make determinations as to whether additional action by
380 FERC is warranted in this critical area.

381 I also am pleased that FERC is beginning a review of our 1999
382 policy statement on the certification, our term for the approval
383 process for interstate natural gas pipeline facilities.

384 As a matter of good governance, I believe that it is
385 appropriate for us, as with any other governmental body, to review
386 our policies and processes from time to time to explore whether
387 any improvements can be made.

388 Our review of gas pipeline certification processes is timely
389 in light of the many changes that the natural gas industry has

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390 witnessed in the past 20 years.

391 In addition to these specific goals and priorities, as
392 chairman, FERC is continuing to consider many other important
393 issues. My fellow commissioners will address some of those in
394 their testimony before you here this morning.

395 With that, I thank you for this opportunity to be -- to appear
396 before you.

397 [The prepared statement of Mr. McIntyre follows:]

398

399 *****INSERT 3*****

400 Mr. Upton. Thank you.

401 Ms. LaFleur, welcome.

STATEMENT OF MS. LAFLEUR

Ms. LaFleur. Thank you, Chairman Upton, Ranking Member Rush, and members of the subcommittee.

My name is Cheryl LaFleur. I've been a commissioner at FERC for nearly eight years and have appeared before this committee several times. Got a little lonely last year so I am extremely happy to be here this morning with the full commission.

What I am going to discuss today is FERC's regulation of our wholesale electricity markets and I will also touch briefly on our oversight of interstate transmission planning. Both areas are covered more fully in my written testimony.

The organized markets that provide electricity to more than two-thirds of Americans are, roughly, 20 years old now and I believe they've done a very good job for the nation's electric customers, promoting efficiency and innovation and protecting reliability at least cost by deploying resources over a broader regional footprint.

As the committee knows, there are different market structures in different regions of the country, reflecting varied state and regional regulatory choices.

Perhaps the most prominent difference is that the eastern markets -- PJM, New York ISO, and ISO New England -- use mandatory capacity markets to ensure resource adequacy because all or most

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426 of the states in those regions chose to deregulate generation in
427 the 1990s.

428 By contrast, the Midwestern and Western markets -- MISO SPP
429 and CISO -- rely primarily on state resource planning for resource
430 adequacy.

431 The markets have grown dramatically since I've joined FERC
432 in 2010. In 2013, the Entergy companies and others in the
433 mid-south became part of MISO, nearly doubling its size.

434 Two years later in 2015, the integrated systems and part of
435 the Western Area Power Administration in the upper Midwest joined
436 SPP, marking the first time a federal power marketing
437 administration chose to join the market.

438 The big story in 2018 is the expansion of markets in the west.
439 The western energy imbalance market operated by the California
440 ISO has expanded in recent years to include utilities in five
441 Western states including several public power entities and now
442 represents the load of 55 percent of the western interconnection.

443 Several more entities are scheduled to join in the next two
444 years when two-thirds of the electricity in the West will be shared
445 and balanced by that market.

446 In addition to the group of companies primarily in Colorado
447 and Wyoming, and are known as the Mountain West Transmission
448 Group, have indicated their intent to join the Southwest Power
449 Pool.

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450 I think it's really important that these market expansions
451 are being driven at the state and regional and company level, not
452 driven by FERC.

453 In fact, I strongly believe that's the only reason they're
454 happening is that the choices are being made in the regions. They
455 reflect the increasing and increasingly broad recognition that
456 sharing resources over a large footprint can sustain reliability
457 and save money for customers, especially at a time of substantial
458 resource change.

459 FERC has worked hard to make sure the markets do what they're
460 supposed to do. We've taken a number of steps to make sure that
461 markets are fair for all resources including emerging
462 technologies.

463 We've also worked to ensure grid resilience by overseeing
464 capacity market changes to increase compensation to the resources
465 including baseload that keep the lights on at times of system
466 stress.

467 In the energy markets, we've taken a number of steps on market
468 mechanics to improve price formation. The most challenging issue
469 currently confronting the wholesale markets is their interplay
470 with state policy initiatives, which my colleague, Mr. Powelson,
471 will discuss and which I touch on in my testimony.

472 Finally, I will comment briefly on our work on interstate
473 transmission. It's been nearly seven years since FERC issued

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474 Order No. 1000 to require regional transmission planning and cost
475 allocation and require competitive transmission selection over
476 some projects.

477 All regions of the nation are in some stage of implementing
478 Order 1000 at this point. Five of them have had competitive
479 transmission processes and have proven that it saves customers
480 money.

481 They've also proven that it's hard to do and that we have
482 a lot more work to do on this, and it's something the commission
483 is going to continue to monitor and work on.

484 And with that, I will thank you again for the opportunity
485 and look forward to your questions.

486 Thank you.

487 [The prepared statement of Ms. LaFleur follows:]

488

489 *****INSERT 4*****

490

Mr. Upton. Thank you.

491

Mr. Chatterjee, welcome. Good to see you.

STATEMENT OF MR. CHATTERJEE

Mr. Chatterjee. Thank you. Great to see you, Chairman Upton, Ranking Member Rush, distinguished members of the subcommittee.

Thank you for the opportunity to appear before you today to discuss the important work FERC is doing to ensure that the American people have access to reliable and affordable energy.

As a former congressional staffer, it's always a pleasure to be back on Capitol Hill, and I would like to note that while I came to the commission from the Senate, I began my career here in the people's house and never allowed myself to become a Senate snob. I can't say the same for all of my former colleagues.

I appreciate the subcommittee's attention to the major energy issues facing our nation as well as its interest in the role the commission plays in addressing them.

I would like to focus my remarks today on our efforts regarding reliability and the Public Utility Regulatory Policies Act of 1978, or PURPA, and to touch briefly on a few of my other priorities.

I will begin with a look in the area of energy policy affecting families and businesses across the nation on a daily basis -- reliability.

Congress delegated the FERC the responsibility to approve

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and enforce mandatory reliability standards for the grid, and with our partners at the North American Electric Reliability Corporation we remain committed to that endeavor.

Our reliability standards have progressed considerably since they first became mandatory and enforceable just over a decade ago, and today they form an effective baseline for addressing day-to-day grid reliability issues like tree trimming, relay setting, communications, system planning, and emergency operations.

Another way the commission works to maintain reliability is through our oversight of jurisdictional wholesale energy capacity and ancillary services markets.

For example, the commission has recently taken a number of actions to ensure all new generators provide essential reliability services such as voltage and frequency control.

Those efforts are a good start but more work remains. Because of historically low natural gas prices and technological innovation, our country is experiencing rapid unprecedented changes in its generation resource mix.

These trends promise tremendous benefits to consumers through lower prices and greater choice. But they also highlight a need for vigilance as we ensure that reliability is not adversely impacted.

I've been pleased to see the important work that ISO New

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England has done in this regard through its assessment of fuel supply vulnerabilities in its footprint. Its analysis is an excellent example of how RTOs and ISOs should proactively evaluate the specific regional risks.

I expect that the implications of fuel security for grid reliability and resilience will continue to be areas of interest for the commission.

Finally, the commission is also taking action to address other emerging threats such as physical security, geomagnetic disturbances, and electromagnetic pulses.

FERC and NERC have made important strides on these issues and the commission remains actively engaged with our government partners and other stakeholders to improve our knowledge of these threats and evaluate creative ways to address associated risks proactively.

Now, turning to the second topic I would like to address, which is PURPA, today's energy environment is fundamentally different from that of 1978, when PURPA was enacted.

Because of this, many stakeholders are rightly asking whether changes to PURPA are needed to better align it with our modern energy landscape.

While significant changes will require congressional action, I believe the commission should review our existing regulations to ensure they fulfil PURPA's mandate of fostering

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564 the development of renewable and co-generation resources while
565 protecting customers and competition.

566 Before I close, I would like to take a moment to talk to you
567 on a couple of additional issues that I view as priorities.

568 First, the commission's current review of the 1999
569 certificate policy statement. As FERC considers how we evaluate
570 natural gas pipeline applications, I am committed to ensuring that
571 we have an efficient and transparent process that encourages
572 landowner participation.

573 From my perspective, our review should build upon our process
574 improvement efforts under the recently signed MOU implementing
575 Executive Order 13807, one federal decision policy.

576 Second, I would like to emphasize my continued commitment
577 to securing our grid against cyberattacks. While the
578 administration has taken laudable steps already, I believe these
579 challenges will continue to grow.

580 I strongly support the commission's approach to addressing
581 cyber threats which consists of mandatory standards as well as
582 voluntary best practices and information sharing.

583 Still, more work remains and I look forward to continued
584 cooperation with my colleagues at the commission and our partners
585 across the government.

586 I want to take my final seconds to commend this committee
587 in particular for the work that you guys have done to really look

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588 into these significant issues, not just by holding this hearing
589 but, Chairman Upton, under your leadership the past couple of
590 years this committee has done tremendous work to bring focus to
591 these enormously complex issue areas.

592 As an alumnus of Congress, I believe firmly in the
593 legislative branch's co-equal role in our government. And now
594 having the good fortune to serve the American public at the
595 commission, I have come to realize that in dealing with these
596 enormous challenges we are constrained by the statutes that govern
597 us.

598 But you all can take a leadership role in addressing some
599 of these complex issues and I look forward to working with you
600 and your colleagues to do that in the future.

601 [The prepared statement of Mr. Chatterjee follows:]

602

603 *****INSERT 5*****

604 Mr. Upton. Well, thanks for your kinds words. I know that
605 those are shared on both sides of the aisle so appreciate that.

606 Mr. Powelson, welcome.

607 STATEMENT OF MR. POWELSON

608

609 Mr. Powelson. Good morning, Chairman Upton, Ranking Member
610 Rush, and members of the subcommittee. I also want to echo what
611 my colleagues have said earlier in thanking you for inviting us
612 here this morning.

613 My name is Robert Powelson. I am honored to serve as the
614 commissioner on the Federal Energy Regulatory Commission. In
615 fact, I was honored to go through the process with my colleague,
616 Commissioner Chatterjee, and let me just say it's an honor to serve
617 in this capacity.

618 Before joining the commission in August, I spent nine years
619 as a member of the Pennsylvania Public Utility Commission. I
620 spent four and a half years as chairman and I also served -- I
621 had the honor in 2017 as serving as president of the National
622 Association of Regulatory Commissioners.

623 So it's -- when I look to my right and my left, the people
624 I serve with here, it's a collegial body and the people that
625 represent this agency are world class, as demonstrated in recent
626 rankings as a federal agency.

627 My experience, Mr. Chairman, as a state regulator and my
628 interaction with colleagues at the state commission level across
629 the country, have informed in my appreciation and understanding
630 of the FERC's role in interfacing with the states.

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631 Since joining the commission, I've approached each of my
632 decisions with an understanding of how the determinations impact,
633 as was mentioned earlier, families and businesses nationwide.

634 I've also prioritized my engagement with stakeholders from
635 all backgrounds and geographic regions to ensure that I hear a
636 variety of viewpoints and my decisions are fully informed.

637 For purposes of my testimony here this morning, I am focusing
638 on two areas. First, I will discuss the evolving grid, in
639 particular, how the nation's generation resource mix has changed
640 in just the last decade.

641 The second issue is one of just a huge priority for all of
642 us, and that's the proactive cybersecurity work that the FERC is
643 doing.

644 Now, when we talk about the changing electric grid, or some
645 would call it the evolving grid, what's interesting is I look at
646 my experience in Pennsylvania where, in 2008, most likely 50
647 percent of our dispatch was from coal.

648 And now, with the evolution of shale plays like Marcellus,
649 Utica, and the plays in Louisiana and Texas and Arkansas, there
650 has been a drastic shift in our power mix and it's having a profound
651 impact on wholesale power prices in a good way.

652 It's actually, in my home state, has brought a \$5 billion
653 investment in ethylene cracker to Beaver County, Pennsylvania.

654 It's also changed at the local -- we'll call burner tip --

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655 where customers with gas purchase costs in LDCs across
656 Pennsylvania -- seven LDCs -- have dropped over 70 percent, a
657 direct pass-through savings to customers in the states -- in the
658 state of Pennsylvania.

659 When we talk about the evolving grid, though, it's also
660 important to mention the impact that new resources are having.
661 As mentioned earlier by Chairman Walden, the evolution of the --
662 the evolution of battery storage, renewable energy, and the impact
663 it's also having on the grid is critically important.

664 Last year in our bulk power system, 10 percent of our dispatch
665 power came from renewable energy resources. A number of states
666 over the last decade have adopted very successful renewable
667 portfolio standards.

668 I should note for my good friends from the Republic of Texas,
669 the state of Texas is the number-one wind producer in the country
670 -- shout out to Mr. -- Chairman Barton and Ranking Member Olson
671 as well -- and it speaks to the evolution, again, of our modern-day
672 grid.

673 Now, another tectonic shift is also taking place in our grid
674 and, unfortunately, it has to deal with the flat demand for
675 electricity.

676 As I like to say, the way we generate, transmit, and
677 distribute power in this country is ever changing. The fact of
678 the matter is the grid is getting more efficient, it's getting

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679 more resilient, and it's clearly getting cleaner.

680 But we are also offering tools to customers. Those tools
681 include things like energy efficiency, real-time pricing -- as
682 mentioned earlier, in certain states like Texas and Pennsylvania
683 and New Jersey, the ability to go out and shop for retail energy
684 supply.

685 And I note that because a lot of customers are out in the
686 market -- residential and industrial customers.

687 The last item I want to touch on in cybersecurity, and I think
688 cyber is really one that keeps us all up at night, and I am just
689 very proud of the work that this commission has done, going back
690 to our former chairman, Commissioner LaFleur, and really working
691 with the states, Mr. Chairman, to develop protocols and cyber
692 capacities within the state public utility commissions, and I will
693 talk about that later on here in the hearing.

694 There's been a number of changing threat vectors in the bulk
695 power system. There are a number -- as you know, a number of bad
696 actors out there that want to infiltrate industrial control
697 systems and wreak havoc on our bulk power system.

698 But I am proud to report, again, to the work of the Federal
699 Energy Regulatory Commission, working with the Department of
700 Homeland Security. More recently, the leadership demonstrated
701 by Secretary Perry with the launch of the Office of Cybersecurity
702 within DOE is another great step forward in addressing overall

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703 cybersecurity in this country.

704 So, Mr. Chairman, I look forward to today's conversation and
705 appreciate the opportunity to be with you and your colleagues.

706 [The prepared statement of Mr. Powelson follows:]

707

708 *****INSERT 6*****

709 Mr. Upton. Thank you.

710 Commissioner Glick.

711 STATEMENT OF MR. GLICK

712
713 Mr. Glick. Thank you, Mr. Chairman, and thank you, Ranking
714 Member Rush, and members of the subcommittee. Thank you for the
715 opportunity to testify this morning.

716 As a former minority general counsel to the Senate Energy
717 and Natural Resources Committee -- and maybe I am a snob, according
718 to Commissioner Chatterjee -- but as a former counsel to the
719 committee, it's nice to be back on Capitol Hill and it's good to
720 see some familiar faces from the Joint House and Senate Energy
721 Bill Conference that took place during the last conference.

722 I've been a member of the Federal Energy Regulatory
723 Commission for almost five months. During this short period of
724 time, the commission has been called upon to consider a number
725 of challenging matters.

726 Although FERC is not typically an agency that receives a
727 substantial amount of public attention, the commission's actions
728 have a significant impact on the lives of everyday Americans.

729 I witnessed this first-hand while at the Department of Energy
730 at the end of the Clinton administration. The commission's
731 inability to come together on a unified response during the height
732 of the Western energy crisis in 2000 caused consumers to pay
733 significantly more for electricity and natural gas than they
734 should have. It is imperative that the five of us safeguard --

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735 work together to safeguard to public's interest.

736 As everyone here knows, we are in the midst of a dramatic
737 transformation in the ways Americans produce and consume energy.
738 This revolution has the potential to substantially improve our
739 energy efficiency, reduce emissions, grow the economy, and create
740 millions of new jobs. FERC can help facilitate this
741 transition by removing the barriers to participation and
742 competition that exist in the wholesale markets.

743 For instance, the commission can examine market rules to
744 ensure that they are not unduly discriminating against new
745 technologies.

746 In February, FERC voted 5-0 to approve a final rule requiring
747 RTOs and ISOs to facilitate energy storage participation in
748 wholesale electric markets.

749 Storage technologies such as batteries and pumped hydro have
750 the potential to play a leading role in the transition to the
751 electricity system in the future.

752 As the cost of energy storage continues to decline, these
753 resources are poised to become a bigger part of the generation
754 mix, leading to the development of a more robust grid that can,
755 among other things, help to accommodate the ever increasing demand
756 for clean renewable resources from states, corporations, and
757 residential customers.

758 In addition, these storage resources will enhance the

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reliability and resilience of the grid by also reducing electric rates.

Today, the cost of using lithium ion battery is less than one-quarter of what it was at the start of the decade. Partly as a result of those declining costs, industry forecasts project that the nation's installed energy storage capacity will increase by 750 percent in just five years.

The commission's action to reduce barriers to help storage -- reduce barriers to energy storage resource participation in wholesale markets will help to further this remarkable trajectory, all the while reducing consumer energy bills.

I believe FERC, pursuant to the Federal Power Act, should also identify and eliminate other barriers to participation of new energy technologies and wholesale markets.

For example, the commission last week held a technical conference to examine the potential participation of aggregated distributed energy resources in wholesale markets and the benefits these resources could provide.

Chairman Upton and Ranking Member Rush, thank you again for the opportunity to appear before the committee today. I look forward to answering your questions and the questions of your colleagues.

[The prepared statement of Mr. Glick follows:]

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*****INSERT 7*****

784 Mr. Upton. Well, thank you all. Appreciate you being here,
785 and the first thing that I want to raise -- I don't know if you
786 saw today's Washington Post. This is a copy of it. I should have
787 made copies for you.

788 But it's entitled -- the headline is "U.S., British
789 Governments Warn Businesses Worldwide of Russian Campaign to Hack
790 Routers," and it quotes the Homeland Security assistant secretary
791 for Cybersecurity, and she says, "Once you own the router you own
792 the traffic that's traversing the router."

793 And it's pretty clear in this story -- it starts off the U.S.
794 and British governments on Monday accused Russia of conducting
795 a massive campaign to compromise computer routers and firewalls
796 around the world from home offices to internet providers for
797 espionage and possible sabotage purposes.

798 And as you may know, we are planning to markup tomorrow a
799 bill that's going to help coordinate things with the Department
800 of Energy that I believe at least at this point looks to have pretty
801 widespread bipartisan support by virtually all of the members of
802 this subcommittee is what I am told in advance, but, you know,
803 got to wait until you get there.

804 So, Chairman McIntyre, my question is it's my understanding
805 that DOE has offered an open invitation for FERC commissioners
806 to receive intelligence briefings on cyber-related threats and
807 I am curious to know how many of you -- how many of those have

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808 you might have taken up with you and your fellow commissioners
809 in terms of the briefings that have been offered?

810 Mr. McIntyre. Thank you, Mr. Chairman. I don't know the
811 exact number.

812 Mr. Upton. Obviously, this is an open setting so I caution
813 everyone in terms of what they might say.

814 Mr. McIntyre. Yes, sir. But let me just note up front that
815 the issue that you have raised here it would be -- we would be
816 hard pressed to identify one of greater concern to us as an energy
817 industry, as regulators of that industry, and, indeed, as a nation
818 in terms of national security in this threat of cyberattacks from
819 bad actors, in many cases, state actors such as you have
820 identified.

821 We are increasingly working with DOE and other components
822 of the federal government on a daily basis, mostly at the staff
823 level, Mr. Chairman, to ensure that we stay on top of these issues
824 and take all appropriate measures that are available to us, and
825 I know that the staff of each and every one of my colleagues here
826 has been very much engaged in that process.

827 You are correct that we have been offered personal briefings
828 that we are I think in the process of scheduling and taking. Very,
829 very helpful. DOE has been very helpful in this regard -- DHS,
830 TSA -- and our level of engagement on this I think will only
831 continue to increase.

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832 Mr. Upton. Do you believe that there's any additional
833 statutory authority that FERC may need, as you look to the future?

834 Mr. McIntyre. That's a good question. In 2005, we were
835 given the role of ensuring that reliability is intended to --
836 through our oversight of the electric reliability organization
837 of the nation and the reliability standards promulgated by it.

838 And I believe that we are making good use of that authority.
839 I don't have a specific area right now that I can identify as
840 something where we would need broader statutory authority.

841 I am very pleased with this level of increased federal
842 engagement that I described. My colleagues may wish to add their
843 own --

844 Mr. Upton. Yes, and maybe also can you shed any light on
845 the degree and frequency of cyberattacks on the energy
846 infrastructure?

847 Mr. McIntyre. Attacks are constant, but the degree of
848 severity and the, from the perspective of the perpetrators,
849 success, that is what varies. But every day, not just
850 governmental entities but, indeed, the companies that we regulate
851 are subject to attacks and attempted attacks.

852 Mr. Upton. I would appreciate hearing from the other
853 commissioners as well.

854 Mr. Chatterjee. Thank you, Mr. Chairman.

855 I think in terms of the interactions that we've had with DOE

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856 and other agencies, I have the good fortune to represent the
857 commission at an ESCC -- Electric Sector Coordinating Council --
858 meeting with a number of stakeholders across the government and
859 industry looking at these serious issues.

860 I also got to participate in a delegation that included DOE,
861 DHS, and FERC to travel to Israel to learn about best practices
862 and ways to stay ahead of these ever-evolving threats.

863 It's something that I think my colleagues and I all take very
864 seriously. It is the new reality that we must contend with. As
865 we benefit and gain from the technological innovation that's
866 taking place in this space we have to be cognizant that it comes
867 with that downside risk of increased cyber vulnerability and my
868 colleagues and I will all remain vigilant on this.

869 Mr. Upton. Commissioner LaFleur.

870 Ms. LaFleur. Thank you, Chairman.

871 I've received a number of briefings -- classified briefings
872 at the Department of Energy over the years. I actually have one
873 scheduled tomorrow, and I appreciate Secretary Perry continuing
874 to make them available.

875 In answer to your other question, hacks on the grid are
876 constant. The National Center for Cybersecurity and
877 Communications Integration -- whatever NCCIC stands for -- every
878 year electric grid attacks are either a slight majority or
879 slightly below 50 percent in the public numbers they put out every

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880 year.

881 Fortunately, in part because of the strong standards that
882 I believe we put in place for the high voltage electric grid on
883 perimeter security and password security and other things,
884 they're infrequently successful -- very infrequently successful
885 with the electric grid.

886 In terms of what this committee has done, I think this
887 committee had done an excellent job on the electric grid side.
888 I used to participate, when I was chairman in some kind of
889 committee that was across government of heads of the different
890 agencies, and I think where there's more we can do that's across
891 the different infrastructure sectors, among electricity, water,
892 gas, finance, and others, that's where there's real, I think,
893 weaknesses in sharing information and learning from each other
894 because they're all quite -- they're looked at individually on
895 the Hill and in government. But we all have a lot we have in
896 common.

897 Mr. Powelson. Mr. Chairman, let me also pick up on that.

898 The outreach that the FERC has done through our Office of
899 Energy Infrastructure and Security, outreaching the state public
900 utility commissions and helping state PUCs build their internal
901 capacity to address cyber, I am very proud of the work of our Office
902 of Electric -- Energy Infrastructure and Security along with our
903 Office of Electric Reliability.

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904 State public utility commissions have used us as a resource
905 to go through trainings and we've developed this checklist that
906 PUCs can use with their regulating utilities to help in a
907 management audit.

908 It's been a great collaborative. I will tell you it's very
909 difficult. When you asked about resources, we could certainly
910 use more boots on the ground.

911 I am not here to get ahead of my chairman on that but I will
912 make the request. The work getting out to 50 states and doing
913 that kind of training requires a lot of boots on the ground. The
914 good news is we are doing it in a collaborative approach with
915 NARUC.

916 Commissioners have come into Washington for read-ins.
917 These are all good things that are evolving. But to the earlier
918 points, these threat vectors are changing every day and working
919 -- trying to break down the silo mentalities between the different
920 federal agencies I think we've come a long way in the last eight
921 years as a nation to address these emerging threats.

922 Mr. Upton. Thank you. I know my time has expired so I will
923 yield to Mr. Rush.

924 Mr. Rush. Mr. Chairman, Chairman McIntyre, back in January
925 the commission voted unanimously to reject Secretary Perry's
926 notice of proposed rulemaking that sought to prop up coal and
927 nuclear facilities.

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928 Instead, the commission wanted grid operators to submit
929 additional information regarding their ability to judge and I
930 quote you, "naturally occurring and man-made threats," end of
931 quote, to their system within 60 days.

932 Where does the agency currently stand on this issue? Does
933 the commission believe that we are truly heading past the point
934 of no return when the retirement of coal and nuclear facilities
935 will leave us in a situation where we will soon be unable to meet
936 our energy demands if we do not act quickly?

937 Does the agency support action by states and RTOs, the
938 markets, or Congress? Or does it -- does the commission have the
939 means and the authority to act on this issue if and when it becomes
940 a problem?

941 Mr. McIntyre. Well, thank you for the question, Ranking
942 Member Rush, and also thank you for acknowledging the steps that
943 we as a commission have taken thus far.

944 As you note, our January order did raise the issue of the
945 grid resilience and, specifically in terms of steps forward, we
946 directed our nation's operators of our regional grids -- the
947 regional transmission organizations and independent system
948 operators -- to take the first step in helping us to build our
949 record on which we would base our decision making by submitting
950 to us their own perspectives on resilience within their respective
951 footprints.

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952 And those -- that initial round of comment has come in from
953 the original transmission organizations and independent system
954 operators. Now we are in the subsequent commenting phase.

955 The questions you raised are among the very important issues
956 that we will have to grapple with. Are there categories of
957 resources or, indeed, even perhaps specific important resources
958 that if they were to retire on a permanent basis simply go away
959 and exit the scene of resources that are available to contribute
960 to the energy that serves our nation's energy needs? Would that
961 be something that would be harmful to American interests?

962 A very important issue and a tricky one. So that is very
963 much within the scope of the matters that we will be looking at
964 as we make our decisions, going forward.

965 Mr. Rush. I would like to ask any of the other commissioners
966 would you care to comment on my question?

967 Ms. LaFleur. Well, I think, broadly, the commission has two
968 major sets of our responsibilities that really are directed to
969 the resilience of the electric grid.

970 The first is the market rules to make sure that there's enough
971 resources in the market, that there's enough of the type of
972 resources that are needed to keep the lights on at any given time
973 and that they're properly paid and the markets are stable so
974 they'll continue to attract investment and resources.

975 Secondly, the commission has put in place a number of broad

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standards, both the reliability standards we oversee as well as some of the rules that Commissioner Chatterjee referred to, for example, on frequency response or voltage to make sure that if there is an essential reliability of services that's in demand because of all the changes on the grid, we have it for customers.

I think that Chairman McIntyre really covered very well the ongoing resilience proceeding. In terms of specific resources that are needed, all of the market operators have in place reliability must-run tariffs so if a resource wants to retire a test is done to make sure that its retirement will not put customer reliability at risk.

If there are changes needed in those tariffs we'll look at them. But I think that's a good place to start.

Mr. Rush. Mr. Chatterjee.

Mr. Chatterjee. Thank you, Mr. Ranking Member.

I initially was sympathetic when Secretary Perry proposed the notice of proposed rulemaking to the commission. Being from Kentucky, having worked for Leader McConnell, I saw first-hand the devastating impact that coal plant shutdowns had on coal communities throughout Appalachia.

I also believe in climate change and man's role in it and believe that we need to mitigate emissions and I believe nuclear power will play an essential role in that.

And also am cognizant of the security concerns that Secretary

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1000 Perry himself laid out before this committee last week.

1001 That said, none of those issues were relevant to the docket
1002 that was before us, and I agree with all of my colleagues in voting
1003 to reject it because the record simply did not support
1004 compensating plants based on the availability of 90-day supply
1005 of fuel.

1006 That doesn't mean that Secretary Perry didn't ask the right
1007 question and I do believe the question of resilience that we are
1008 examining in this current docket is an essential one and I think
1009 over the course of time Secretary Perry will be proven right.

1010 We are going to ultimately have resilience challenges in this
1011 country and we need to be prepared for that, and I think that this
1012 docket will allow for that.

1013 Finally, I will say, to build on the point that Commissioner
1014 LaFleur made about, you know, existing tariffs for reliability
1015 must-runs, we've got to evaluate whether they work or not.

1016 You know, while Secretary Perry asked the right question,
1017 perhaps the NOPR was not the right solution. There may be other
1018 necessary solutions and we may in the coming days, weeks, months
1019 be confronted with situations where the existing tariffs do not
1020 allow for, you know, some of the accommodations that may be
1021 necessary.

1022 I had pushed for a show-cause order that I included in my
1023 concurrence to the NOPR that I think, as we look back in time,

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1024 may have been the right thing to do.

1025 Mr. Rush. Thank you, Mr. Chairman. I yield back.

1026 Mr. Upton. Thank you.

1027 Mr. Barton.

1028 Mr. Barton. Thank you, Mr. Chairman.

1029 I am going to ask my questions directly to the chairman. But
1030 if any of the commissioners wish to add their comments they're
1031 very welcome to.

1032 The first question, Mr. Chairman, is can you give the
1033 subcommittee a general idea of what the variances in retail cost
1034 of electricity in this country is by region from, say, the lowest
1035 region to the highest region?

1036 Mr. McIntyre. Thank you for the question, Congressman.

1037 No. I am afraid I don't actually have that information at
1038 hand. It does vary very much by region and that, in turn, is often
1039 a function of the fuel type that is generally consumed within that
1040 region.

1041 Mr. Barton. Does anybody on the -- yes, sir, Mr. Powelson.

1042 Mr. Powelson. This is not real time, Mr. Chairman, but --

1043 Mr. Barton. I don't -- I don't need down to the exact --

1044 Mr. Powelson. Okay. So let's start with probably the
1045 highest distribution rate in the country is at about 43 cents a
1046 kilowatt hour on the island of Hawaii.

1047 When we go more inland to the lowest cost of energy, I think

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1048 the Republic of Texas, through retail competition, customers are
1049 paying less for power today than they were prior to electric
1050 restructuring.

1051 So Texas has low rates. The state of Florida, from my last
1052 anecdotal meeting with officials from their utility, a nine-cent
1053 kilowatt -- per kilowatt hour all in price. That's transmission,
1054 distribution, and generation.

1055 So you from Hawaii, we know, at 43 cents to your state, maybe
1056 Florida, at a low distribution of nine cents.

1057 Mr. Barton. Well, let's exclude Hawaii, since they're 3,000
1058 miles from the mainland. Is it -- is it fair to say in the lower
1059 48 the price difference at retail -- the highest would be three
1060 times the lowest? Is that a fair generalization?

1061 I know I am close. The right answer would be to say yes,
1062 but if you disagree with me --

1063 [Laughter.]

1064 Mr. Powelson. I don't want to get ahead of my chairman so
1065 --

1066 Mr. Barton. I mean, it's at least two to one and I think
1067 if you look at California and compare California to Oregon, you're
1068 going to -- it's going to be close to three to one. Or if you
1069 compare Texas to New York, it's going to be close to three to one.

1070 Would you all agree with that?

1071 Now, the reason I ask that question is because ultimately

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1072 what the committee and the Congress and the president are
1073 responsible for is, for lack of a better term, retail electricity
1074 prices that the average citizen can pay.

1075 We also want it to be reliable, and we've developed a mix
1076 of energy sources in this country. You know, some states have
1077 regulated markets. Some states have deregulated markets. Some
1078 states pretty much rely on coal. Some states have a -- like Texas,
1079 we've got a mix of coal, natural gas, wind, and some nuclear power
1080 and a little solar power.

1081 But our nuclear plants and our coal plants are in distress.
1082 And my second question is the distress primarily caused by market
1083 forces, natural gas prices being very low, or is it caused by
1084 regulatory constraints on the nuclear industry and the coal
1085 industry?

1086 Mr. McIntyre. Congressman, I will begin. Thank you for the
1087 question.

1088 Certainly, the low prices of natural gas today that we
1089 experience in this country due in large measure to the revolution
1090 in natural gas production methods make for significant head winds
1091 for coal and nuclear because it's very, very difficult for them
1092 to compete in our open and competitive wholesale markets against
1093 that cheap natural gas resource.

1094 As to the regulatory role, hard to say. Certainly, nuclear
1095 compliance and everything associated with the prospect of

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1096 building a new nuclear generating facility today makes for
1097 enormous costs that probably has an all but prohibitive effect
1098 at short-term competition with natural gas prices.

1099 Mr. Barton. My time is about to expire.

1100 I asked the first question to bring to the attention of the
1101 commission and the committee that retail prices vary greatly in
1102 this country. The cost of generation of electricity varies,
1103 depending on the fuel source, and the regulatory burden,
1104 obviously, on nuclear is very high and you can argue that it's
1105 also very high on coal plants.

1106 If we look for solutions to keep our distressed nuclear
1107 plants and coal plants in service, we should first look at
1108 regulatory relief and only then look at market relief.

1109 When you start, in my opinion, to mess with the market, which
1110 some of these proposals do, in the long run it hurts the consumer
1111 because you either have to subsidize that price, which drives the
1112 retail price up, and eventually you can't -- you can't sustain
1113 it.

1114 So I respect my good friend at the Department of Energy,
1115 Governor Perry. But I don't think his proposed solution -- while
1116 it's well meaning, I personally don't think it would work in the
1117 long run.

1118 I would encourage the commission, to the extent you can, to
1119 look on the regulatory relief side, you know, before we begin to

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1120 look at market -- the market solutions.

1121 And with that, Mr. Chairman, I yield back.

1122 Mr. Upton. Gentleman yields back.

1123 Mr. Pallone.

1124 Mr. Pallone. Thank you, Mr. Chairman.

1125 In my opening statement, I noted that I've long advocated
1126 for finding ways to introduce more distributed energy and energy
1127 storage into our electricity grid, and one of the reasons for that
1128 is that I see too many transmission projects needlessly rubber
1129 stamped in the name of reliability.

1130 There are certainly other ways to address reliability than
1131 just gold-plating the transmission system. But perhaps when
1132 you're a hammer everything looks like a nail.

1133 So today, newer and bigger transmission lines aren't always
1134 the answer to the question of reliability. Distributed energy
1135 resources, renewable and otherwise, along with efficiency and
1136 demand response should be equally large tools in the box and
1137 technology has dramatically transformed the possibilities for
1138 cost-effective generating and efficiently delivering electricity
1139 to homes, businesses, and manufacturing facilities from a variety
1140 of sources.

1141 So I want to commend the commission for recognizing this with
1142 its recent order regarding storage. With storage and distributed
1143 generation, both fossil and renewable base, along with improving

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1144 storage options, smart meters, micro grids, and other
1145 technologies have altered the possibilities for effectively and
1146 economically ensuring reliability, and these technologies have
1147 also called into the question the most basic tenets of rate making
1148 and have challenged the longstanding financial model for
1149 utilities.

1150 Now, two years ago -- I want to talk about a local issue --
1151 two years ago, First Energy JCP&L determined that its Monmouth
1152 County -- where I live -- that its Monmouth County reliability
1153 project is necessary to retain reliability for the entire regional
1154 transmission grid and specifically for New Jersey, and they
1155 proposed a 10-mile transmission line that would run through the
1156 district I represent along New Jersey Transit's north Jersey
1157 coastline.

1158 Ever since JCP&L proposed this project, I've articulated
1159 concerns about whether constructing this Monmouth County
1160 reliability project is necessary to accomplish JCP&L's stated
1161 reliability goals.

1162 Recently, this view was echoed was New Jersey Administrative
1163 Law Judge Gail Cookson, who ruled that JCP&L failed to demonstrate
1164 that the transmission line is necessary and noted that JCP&L has
1165 not seriously considered alternative corridors and ignored
1166 non-transmission solutions entirely.

1167 In the past, building a new transmission line may have been

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1168 the only way to increase reliability. However, now there clearly
1169 are other options available. Other options include distributing
1170 -- distributed generation storage, various new grid technologies.

1171 They can only -- not only increase reliability but also
1172 modernize the grid. So this -- Judge Cookson's decision which,
1173 you know, I will send to you, but I am going to, you know, probably
1174 get back to you further, if that's okay, on this -- but her decision
1175 supports my long-held suspicion that often projects like this
1176 Monmouth County reliability project are more about the rate of
1177 return for shareholders than reliability for consumers.

1178 So my question to all of you is -- whoever wants to ask it
1179 -- how can you change this dynamic to ensure that utilities look
1180 at more than just new transmission lines -- that they look at
1181 non-transmission alternatives to ensure reliability?

1182 And how can we change incentives so that these
1183 non-transmission alternatives are still financially attractive
1184 to utilities? Can anybody, you know, take a guess?

1185 Sure.

1186 Mr. Powelson. Congressman Pallone, your home state,
1187 working with your state BPU -- and we are seeing it across other
1188 states like New York with their reinventing the energy vision in
1189 Ohio, their Power Four docket, is to address exactly your point,
1190 getting at these non-wire solutions that we are seeing now with
1191 customer -- greater customer engagement behind the meter.

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1192 Your state is a leader in that because of the lessons learned
1193 in the post-Hurricane Sandy where a grid resiliency bank has been
1194 launched under the BPU's leadership a lot of microgrid investment
1195 in your home state.

1196 And these are all good outcomes. It goes back to my earlier
1197 point of this evolving grid. We are not building 1,200 megawatt
1198 cathedrals anymore. We are doing things behind the meter and,
1199 yes, in front of the meter -- cleaner, more efficient.

1200 Mr. Pallone. Can PERC -- I mean, can FERC play a role in
1201 this, though, because, you know, everybody says oh, it's --
1202 where's the federal government --

1203 Mr. Powelson. Well, to the wholesale piece, and this is just
1204 my quick observation, we are finding in certain jurisdictions
1205 where, one, there is a lack in the post-FERC Order 1000 world of
1206 not really seeing competitive transmission being built, and
1207 that's a PJM problem.

1208 The other thing is addressing cost caps associated with these
1209 projects. I have a concern when industrial customers come in to
1210 the commission as energy users telling us that they're seeing a
1211 400 percent increase in transmission costs as wholesale prices
1212 are dropping.

1213 That's alarming. That tells me that the RTOs at the
1214 wholesale level of transmission planning are not doing a very good
1215 job with cost containment, and we are all paying for that as

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1216 consumers.

1217 So these are the things that I plan to work on with my
1218 colleagues, and I know Commission LaFleur wants to jump in on that.

1219 Ms. LaFleur. Well, just adding to that, first of all,
1220 legally the transmission planning tariffs that First Energy and
1221 others live within require consideration of non-transmission
1222 alternatives. That is what's legally is supposed to happen.

1223 I think the problem is sometimes that it's more difficult
1224 to see the company making money from some of the
1225 non-transmissional alternatives.

1226 That's where things like our storage rule comes in to make
1227 sure that those things are fairly paid for, and also the work --
1228 I was in New Jersey on Friday at an all-day meeting on New Jersey's
1229 energy future and the work that's being done at the state level
1230 to make sure those technologies are rewarded so that everyone has
1231 an incentive to install them like the wonderful work you have done
1232 on solar already, where New Jersey's a leader.

1233 I also think that the -- we've done a lot of work on the
1234 planning processes to make sure that a company can't just go off
1235 and plan something. There has to be an open process.

1236 We issued an order last month about supplemental
1237 transmission projects in PJM requiring more sunlight in the
1238 planning to make sure that all the alternatives were considered
1239 including by consumer reps and state representatives and others,

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1240 and those are some of the kind of detailed things we can do to
1241 make sure that the process doesn't ineluctably force in a certain
1242 direction.

1243 Mr. Pallone. Mr. Chairman, if I could -- I don't know if
1244 we are out of time but I would like to be able to get back them
1245 further on this, with your permission.

1246 Mr. Upton. Yes, absolutely. Absolutely.

1247 Mr. Pallone. All right. Thank you.

1248 Mr. Upton. Perhaps -- I know written questions and written
1249 answers.

1250 Mr. Pallone. Yes.

1251 Mr. Upton. Is that all right? Is that okay? Great.

1252 Thank you.

1253 Mr. Pallone. Yes.

1254 Mr. Upton. Mr. Olson.

1255 Mr. Olson. I thank the chair and welcome to our friends at
1256 FERC.

1257 I want to discuss pipelines and the MLPs that many companies
1258 use to finance getting steel in the ground. None of the things
1259 we talked about today, whether it's gas turbines or exports of
1260 liquefied natural gas, can happen without pipelines.

1261 And this is not the Ways and Means Committee and nor do I
1262 ever want to be a tax litigator or a tax legislative person. But
1263 I've heard from a number of Houston area companies that are worried

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1264 by the changes that FERC did of whether pipelines can recover their
1265 costs under MLP structures.

1266 Companies like Ambridge -- Ambridge, who has merged with
1267 Spectra, said, I quote, "They intend to ask for rehearing of this
1268 policy change at FERC," end quote.

1269 Their argument is that FERC made this move without a long
1270 enough time for debate and you all didn't take into account that
1271 not all MLPs are created equal.

1272 Chairman McIntyre, welcome. You talked about this ruling.
1273 Do you think your approach was appropriate?

1274 Mr. McIntyre. Yes, Congressman. Happy to address that.

1275 The ruling you referenced is actually -- it was a series of
1276 steps we took in response to a court of appeals case called SFPP
1277 and we had before us fairly clear direction from the court of
1278 appeals to address the so-called double recovery issue of
1279 taxation.

1280 We felt we had no choice but to take decisive action in a
1281 manner that we read as being directed by the court. It doesn't
1282 surprise me that a number of companies out there affected
1283 adversely monetarily by that would have a quarrel with it and
1284 they're not bashful in sharing their views with us on that, I
1285 assure you.

1286 Mr. Olson. Their texts aren't bashful at all.

1287 Mr. McIntyre. Perfectly legitimate. It is their right,

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1288 under their governing statutes, to seek rehearing where they are
1289 aggrieved by an order of ours. And so we would look forward to
1290 processing those in accordance with our law and procedures.

1291 Mr. Olson. Thank you.

1292 And Commissioner Chatterjee, putting your House thinking hat
1293 on, any thoughts about this situation with the MLPs and the changed
1294 law?

1295 Mr. Chatterjee. Yes, sir. I agree substantively that the
1296 chairman is correct that our hands were tied by the courts.

1297 Coming from the legislative branch, you know, we focus a lot
1298 on process and I think -- look, I am new to the commission. Four
1299 of the five of us are new to the commission.

1300 I am not afraid to say that, you know, we are all still
1301 learning and progressing, and procedurally I do now recognize,
1302 in looking back, that perhaps there were some things that we could
1303 have done differently.

1304 For instance, voting during the market day was perhaps
1305 unfortunate. I think we incorrectly assumed, once we posted our
1306 Sunshine Act notice, that that was enough of a sort of disclaimer
1307 that this was coming and that the markets would factor that in.

1308 Clearly, that was a misread. I am sympathetic to the
1309 argument that beyond an NOI process that took place a couple--
1310 you know, in the past, maybe a technical conference, some more
1311 process, you know, could have been necessary.

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1312 And so I am always learning and trying to do my job better
1313 and will try and learn from this experience as well, going forward.

1314 Mr. Olson. Thank you. That's the man of the house.

1315 My final question is you all know I am not shy about
1316 supporting LNG exports. In fact, I was in India two weeks ago.
1317 I left there being -- they called me the congressman for LNG
1318 exports from America.

1319 I spoke to Secretary Perry last week about how important
1320 these exports are to Texas, our country, and our world.

1321 Despite that, I've heard some concerns back home that you
1322 are slipping behind schedules of some very viable Gulf Coast LNG
1323 projects.

1324 I've heard rumors that FERC had only six to eight employees
1325 targeted with approving these booming permits. I've heard you
1326 actually approached the DOE for new members to help out with the
1327 backlog of approving LNG permits.

1328 To the whole panel or the chairman, is that true? How can
1329 we help you get these things rolling as quickly as possible?

1330 Mr. McIntyre. Thank you for the question, Congressman.

1331 We are paying very close attention to the pending
1332 applications, not only for LNG export infrastructure but also for
1333 natural gas pipeline infrastructure.

1334 It's consuming an enormous amount of attention and manpower
1335 within the agency. We are looking to beef up the ranks of our

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1336 Office of Energy Projects and we are actively pursuing hiring in
1337 that regard right now.

1338 But if there's any suggestion that we are somehow not giving
1339 it our full effort right now, I can assure you that that that is
1340 not the case at all.

1341 It's consuming a huge amount of attention and effort in
1342 Energy right now.

1343 Mr. Olson. Thank you.

1344 Mr. Powelson, a quick question. Can you say you all?

1345 Mr. Powelson. You all.

1346 Mr. Olson. Very good. Welcome to Texas.

1347 Mr. Upton. The gentleman's time has expired.

1348 The gentleman from California, Mr. McNerney.

1349 Mr. McNerney. I thank the chair and I thank the commission,
1350 and your opening statements were interesting and useful. It's
1351 good to see a body working together like this and I appreciate
1352 that.

1353 Last year, we narrowly dodged the bullet at the Oroville Dam
1354 when a section of the emergency spillway collapsed. Evacuation
1355 of over 100,000 people was ordered and there was considerable
1356 damage to the dam, associated structures, the river, and many
1357 downstream communities.

1358 In January of this year, a FERC-required independent
1359 forensic team issued their report on the Oroville incident and

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1360 the report is not flattering at all to the agencies responsible
1361 for the dam safety.

1362 So I will read you a summary of the report. Although the
1363 practice of dam safety has certainly improved since the 1970s,
1364 the fact that this incident happened to the owner of the tallest
1365 dam in the United States under regulation of a federal agency with
1366 repeated evaluation by reputed outside consultants in a state with
1367 leading dam safety regulatory program is a wake-up call for
1368 everyone involved in dam safety.

1369 Challenging current assumptions on what constitutes best
1370 practice in our industry is overdue. So that's the quotation from
1371 the report.

1372 So this calls into question the adequacy of the FERC Part
1373 12(d) regulatory for ensuring comprehensive reviews of dam
1374 designs and construction.

1375 Mr. Chairman, is the commission planning to revise Part 12(d)
1376 regulations to improve the inspection process?

1377 Mr. McIntyre. Thank you for the question, Congressman.

1378 We don't have a specific plan to address the 12(d) regulation
1379 process right now. I certainly acknowledge the importance of the
1380 issues you raise and, in fact, it wasn't only the emergency
1381 spillway but, indeed, the main spillway that was very much called
1382 into question -- the integrity of that.

1383 Our office of energy projects is working, literally, daily

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1384 hand in hand with the appropriate California authorities to ensure
1385 that the remediation process is completed in an appropriate
1386 fashion so there's complete safety all around.

1387 And my understanding, based on conversations as recently as
1388 yesterday, is that that is -- that that is from our perspective
1389 going very well and that all involved on the Oroville end are doing
1390 their job very well.

1391 Mr. McNerney. Okay. Is the commission reconsidering its
1392 policies with respect to the ways in which information is
1393 submitted by participants to the license process that
1394 specifically deal with questions of safety? Will that be
1395 evaluated?

1396 Mr. McIntyre. Yes. I can tell you that that will be a
1397 matter of internal deliberation and whether that proceeds to any
1398 formal commission action is something that I can't say right now.

1399 I do know my colleague, Commissioner LaFleur, may want to
1400 chime in here.

1401 Ms. LaFleur. Well, I was at the -- commission and chairman
1402 -- when Oroville happened and spent some time out at the dam and
1403 it was really an extraordinary event. We were very fortunate not
1404 to have had loss of life when the spillway ruptured.

1405 We really have been responding on three levels and the first
1406 is the actual facility itself, closely working with the Division
1407 of Water Resources and the California agencies.

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1408 We've had people on site ever since that happened, 24/7, for
1409 several months to make sure they do what they need to do over a
1410 two-year period to correct that and, of course, the relicensing
1411 is pending as well, which we can't talk about, but that these
1412 issues are being brought in there.

1413 Secondly, looking at other spillways of common construction
1414 in California, there were several and elsewhere to make sure
1415 they're all closely inspected and we directly learned the lessons
1416 of the forensics panel that you mentioned.

1417 And third is our own safety program, and in addition to the
1418 forensics panel that you mentioned, we also set up a team of
1419 outside people to look at how we do our inspections and we are
1420 waiting for their report and we'll be taking action, just as you
1421 suggested.

1422 Mr. McNerney. Okay.

1423 To change gears a little bit here, we are experiencing more
1424 extreme weather events. What steps is FERC taking to ensure the
1425 resiliency of the grid?

1426 Again, Mr. Chairman.

1427 Mr. McIntyre. Well, we are in the process of doing the
1428 comment intake I referenced earlier on our grid resilience
1429 proceeding.

1430 The recent extreme weather events have been instructive in
1431 this regard and it's varied by region. But, certainly, just to

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1432 pick a region, in New England it's particularly challenging --
1433 this bomb cyclone event over the passage of last year into this
1434 year where increasing amounts of oil-generating resources,
1435 oil-fired generating resources were needed to be called upon in
1436 order to ensure the electricity needs of that region, triggering,
1437 of course, not only environmental concerns but significant cost
1438 increases.

1439 So these weather events are directly tied to our statutory
1440 obligation to ensure that the rates are just and reasonable and
1441 also directly tied to our need to ensure reliability of our bulk
1442 power system.

1443 Mr. McNerney. Thank you.

1444 Mr. Chairman, I yield back.

1445 Mr. Upton. Gentleman from Illinois, Mr. Shimkus.

1446 Mr. Shimkus. Thank you, Mr. Chairman.

1447 It's great to all you all here today. Thank you for coming,
1448 and you have got a big portfolio of things that you deal with.
1449 I am going to stay on the electricity side.

1450 But I just want to mention that New England, the Northeast,
1451 needs more natural gas pipelines. Just -- you know, especially
1452 with home heating oil and stuff like that, we just got to -- that's
1453 why you're in power to help resolve the difficulties of crossing
1454 state lines and siting and that stuff because it just -- just needs
1455 to happen.

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1456 Let me move to the -- obviously part of your mission statement
1457 is regulates the transmission and wholesale sales of electricity
1458 and interstate commerce.

1459 So the first one is, hopefully to you all, is with the states
1460 intervening to some extent in wholesale market support
1461 generation, how are you handling that?

1462 I mean, what -- that kind of addresses a couple things --
1463 reliability possibly. If you're trying to ensure low-cost
1464 reasonable prices in the wholesale sector, they -- the two issues
1465 kind of conflict, do they not?

1466 And if -- relatively quickly, because I want to go down on
1467 a couple other questions.

1468 Mr. McIntyre. Well, you have gone directly to one of the
1469 trickiest areas that we deal with, Congressman. The states have
1470 their valid role in making policy choices as to energy resources
1471 that are preferred by the state and they reflect that through their
1472 legal decision making.

1473 We have an obligation at the FERC level to ensure that the
1474 electricity generated by those resources that makes its way onto
1475 our grid is sold at rates that are just and reasonable.

1476 The costs behind that generation are affected by the resource
1477 policy choices. So we have to be respectful of the states' roles
1478 while ensuring that we do our federal role right of ensuring just
1479 and reasonable rates.

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1480 Mr. Shimkus. So does everyone, quickly, agree with that
1481 analysis?

1482 Mr. Glick. Mr. Shimkus, if I could just butt in here for
1483 a second.

1484 I think that it's true that we actually have to a balancing.
1485 But the Federal Power Act gave the states the authority over
1486 resource decision making, not -- the generation resource decision
1487 making, not the FERC.

1488 And so I think it's up to the commission within our
1489 responsibilities to ensure that rates are just and reasonable --
1490 wholesale rates are just and reasonable, and also that the markets
1491 are reliable to accommodate those state policies, not to override
1492 those state policies, and I think that's an important objective
1493 -- important objective for us.

1494 Mr. Shimkus. Go ahead. Chime in.

1495 Mr. Chatterjee. I support states' rights.

1496 Mr. Shimkus. I testified to that, I think.

1497 [Laughter.]

1498 Mr. Powelson. I come from a market state, now recognizing
1499 those regional differences in these markets, as Commissioner
1500 LaFleur mentioned. Some markets have capacity. Some are energy
1501 only.

1502 But I am having an epiphany now as a new FERC commissioner.
1503 States are, clearly, to my colleagues' point, are allowed to

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1504 design things like renewable portfolio standards.

1505 But what's happening, Congressman, is we are creating -- we
1506 are bastardizing these markets in such a way where the states are
1507 picking winners and losers.

1508 They're allowed to do that. But now it's coming at the
1509 consequences of the capacity market construct. And let me just
1510 say, Secretary Perry was right. That -- these constructs are
1511 bastardizing these markets and the availability of generators to
1512 receive adequate compensation for that resource.

1513 And so I might be Debbie Downer here in my approach, but it
1514 is a concern that we have to be cognizant of to the point of giving
1515 states flexibility I will say within reason of Federal Power Act.

1516 Mr. Shimkus. Okay. Let me throw another one and I -- sorry
1517 to not go to Commissioner LaFleur, but RTOs and ISOs are struggling
1518 to find consensus to drive the needed investments that we say they
1519 all need. What can you all do about that?

1520 So if we need -- I've been in this on the committee for a
1521 long time. So I understand when we had regulated markets and we
1522 went to competition and now we are schizophrenic -- some
1523 regulated, some competition -- transmission going across state
1524 lines.

1525 I think we need to continue for reliability is to make sure
1526 that we have needed pathways. But we are being told we can't fund
1527 them.

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1528 Do you have a role? Is there something you can do to help
1529 in the process of the build out?

1530 Mr. McIntyre. In terms of transmission?

1531 Mr. Shimkus. Yes.

1532 Mr. McIntyre. Yes. Well, Commissioner LaFleur mentioned
1533 the importance of attention to our transmission planning
1534 processes.

1535 I think that's something that is ripe for evaluation as to
1536 whether it's working as well as it should, as well as was hoped
1537 for when we issued our landmark Order 1000.

1538 I think it's a valid question that does indeed cry out for
1539 attention.

1540 Mr. Shimkus. Okay. If anyone wants to jump in.

1541 My time has expired, but go ahead.

1542 Mr. Glick. I would just add quickly, you know, as you know,
1543 as you worked on this in 2005 Energy Policy Act, it added a
1544 provision that provided incentives or allowed FERC to provide
1545 incentives to provide incentives for transmission.

1546 And I think it's a good time maybe now to revisit that policy
1547 and are we really incentivizing what we need to do -- are we
1548 incentivizing the right investments and are we incentivizing the
1549 actual investments that are needed.

1550 And so I would -- I would -- that's what I would look at first
1551 is the incentives for transmission.

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1552 Mr. Shimkus. Yes. My time has expired. I would just say
1553 if we ever move on infrastructure, expansion of the transmission
1554 grid might be a good thing to put an infrastructure package to.

1555 I yield back. Thank you, Mr. Chairman.

1556 Mr. Upton. Mr. Green.

1557 Mr. Green. Thank you, Mr. Chairman, and since our
1558 commissioner talked about the Republic of Texas, being a Texan
1559 and I have the Houston area, and if you look at your maps on
1560 pipelines you don't see anything. It might be white in outer
1561 parts of the country but in my area in southeast Texas, pipelines
1562 are the way we move product, and crude oil will come in or natural
1563 gas to come to in to make chemicals out of it.

1564 Texas was an independent nation for 10 years and some of us
1565 still think we should be. But we lost that battle in 1865, too.

1566 But we got a pretty good deal in Texas. We -- the federal
1567 government in 1845 paid off our \$10 million of state debt and we
1568 got to keep our state lands. And so that's why some of our Western
1569 states friends have problems. But we kept those lands and the
1570 federal government didn't get them.

1571 But we are in the middle of a revolution almost, I guess,
1572 in generation, and our subcommittee has held a number of hearings
1573 about looking at how other markets do.

1574 And one of the things I want to say is that Texas, a decade
1575 ago, produced 492,000 megawatts of wind power. This last year,

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1576 Texas produced 58 million megawatts of hours a year.

1577 And so we are benefiting from the wind power. In fact, there
1578 are certain days that wind power actually is producing more
1579 electricity than coal in Texas. Of course, we also benefit from
1580 the regional price of natural gas. It's in our back yard.

1581 One of my concerns, and we've heard the talk of resiliency,
1582 and I disagree with Secretary Perry, even though I served in the
1583 legislature with him many years ago, and he -- Texas went the route
1584 we have when he was governor for so many years.

1585 But many supporters of the proposed subsidies have said that
1586 we are on the brink of resiliency crisis.

1587 Chairman McIntyre, can you elaborate on the commission's
1588 views about the state of resiliency in the grid and do we face
1589 an immediate crisis due to future closing of coal and nuclear
1590 plants?

1591 Mr. McIntyre. Resilience is now a matter of declared
1592 priority for the FERC, and we are proceeding in that fashion. We
1593 are assembling the record that I referenced earlier.

1594 We've heard already from our nation's operators of regional
1595 transmission organizations and independent system operators --
1596 their perspectives and we are awaiting further input from
1597 stakeholders on it.

1598 It's a critical issue, and there are different ways of
1599 looking at it. One is operational in terms of is there equipment

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1600 or are there facilities that would be needed to help shore up the
1601 resilience of the grid.

1602 The other is economic and, in effect, a market -- a need to
1603 ensure that our markets are properly compensating the resources
1604 that we regard as important to ensure resilience of our grid.

1605 So we are looking very hard at those issues now. We'll
1606 continue to examine the materials submitted to us in the record
1607 and in the hope of getting this right.

1608 Mr. Green. And you're looking at alternatives too, because
1609 I know the same problem -- we get about 20 percent of our
1610 electricity in Texas from nuclear power. We couldn't expand it
1611 because the investment is not available now.

1612 And so there are other ways and, of course, from Texas, as
1613 my colleague from Fort Bend County would say, we'd be glad to put
1614 another pipeline up to the northeast to send them some more natural
1615 gas or export it around the coast for them.

1616 My colleague, Pete Olson, mentioned -- my next question is
1617 on the concern about United Airlines Inc. versus FERC, and I
1618 apologize -- I haven't read that case.

1619 But I always view that mastered limited partnerships, it's
1620 been so successful in capitalizing pipelines, particularly, it's
1621 almost like a Chapter S corporation.

1622 You pass through that so it's not corporate double taxation,
1623 and -- but that would -- if we cannot use that as an investment

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1624 instrument I don't know how we are going to continue the expansion
1625 of growth -- that I think FERC recognizes we need more pipelines
1626 to get product to the market where -- so we won't have a resiliency
1627 problem.

1628 Mr. Chairman, I realize FERC's public policy as precipitated
1629 by the D.C. Circuit Court's opinion, I would like to know if FERC
1630 has conducted its own analysis of whether or not double recovery
1631 existed before the decision.

1632 Has FERC thought there was a problem at the policy prior to
1633 the United case.

1634 Mr. McIntyre. That's a matter that was in effect handed to
1635 us by the court so we had no choice really as a regulatory agency
1636 but to take it at face value and to act upon it.

1637 We had no independent analysis of the double recovery issue
1638 as is customary under the statutes that govern our actions.

1639 We act in accordance with the arguments that are put forward
1640 for us by the litigants, in most instances, and this was such a
1641 situation.

1642 Mr. Green. I thought the court directed the FERC to consider
1643 how it could demonstrate there was no double recovery. Is FERC
1644 looking at that particular issue to be able to answer whatever
1645 the circuit court said?

1646 Mr. McIntyre. Well, here too, back to legal processes, I
1647 suspect that we will have no choice but to look closely at that

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1648 issue in light of further procedural steps that the parties will
1649 have a right to invoke, such as request for rehearing.

1650 Mr. Green. Okay. Mr. Chairman, thank you, and I know the
1651 jurisdiction of that typically is in Ways and Means. But since
1652 it deals with FERC we have some jurisdiction in our own committee.

1653 So we might look at that to make sure we don't eliminate this
1654 ability for investment in the pipelines that the whole country
1655 needs, and I will yield back my time.

1656 Thank you.

1657 Mr. Upton. Thank you.

1658 Gentleman from Ohio, Mr. Latta.

1659 Mr. Latta. Thank you very much, Mr. Chairman, and thanks
1660 to the commissioners for being with us today. Really appreciate
1661 it and hearing your views.

1662 Commissioner Powelson, if I could start my questions with
1663 you. As you point out in your testimony, under the Energy Policy
1664 Act of 2005, FERC was given the authority to oversee the
1665 reliability of the bulk power system.

1666 This included the authority to improve mandatory
1667 cybersecurity reliability standards and first -- during the first
1668 half of 2018 we have seen new stories about hackers working to
1669 undermine the safety and security of our nation's energy
1670 infrastructure including cyberattacks launched by Russian agents
1671 against the power grid energy, nuclear, and commercial facilities

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1672 and critical manufacturing sectors.

1673 Would you go into more detail about what FERC is doing to
1674 address these attacks and how will you work with the North American
1675 Electric Reliability Corporation to reassess and, if necessary,
1676 revise the reliability standards?

1677 Mr. Powelson. Thank you, Congressman, for your question.

1678 First and foremost, these reliability standards, which apply
1679 to users, owners, and operators of the bulk power system, were
1680 developed, as you mentioned, by NERC, and I think we continue to
1681 collaborate with other federal agencies in those compliance
1682 measures.

1683 You also have on top of that the critical infrastructure
1684 protocols, or CIP standards, and I mentioned earlier in my
1685 testimony the collaborative effort with NERC and working with the
1686 ISACs and the collaborative effort around the utilities, the gas
1687 industry, and the other impacted entities, working in
1688 collaboration together.

1689 Some have reported back they think these -- some of these
1690 reporting requirements are a little onerous. I would refrain
1691 from saying that because, again, we can't really cut corners on
1692 cybersecurity.

1693 We've got to give you all peace of mind that we are protecting
1694 and applying the needed resources to protect the bulk power
1695 system. And as I mentioned earlier, these threat vectors are

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1696 changing radically, daily, and it's important that we continue
1697 to work with the other agents. That's why I gave a nice shout
1698 out this morning to Secretary Perry and the leadership that DOE
1699 has shown on this issue with the launching of their new Office
1700 of Cybersecurity.

1701 Mr. Latta. And we appreciate it. When the secretary was
1702 here when he gave his testimony, let me just follow up, because
1703 to address the threat of cyberattacks to our energy grid, I am
1704 working with my colleague, Representative McNerney, introducing
1705 two bipartisan pieces of legislation.

1706 These bills, H.R. 5239, the Cyber Sense Act, and H.R. 5240,
1707 the Enhancing Grid Security Through Public-Private Partnership
1708 Act, was the subject of a legislative hearing in the subcommittee
1709 last month.

1710 Under H.R. 5239, the secretary of energy would be directed
1711 to establish a voluntary cyber sense program to test cyber secure
1712 products intended for use in the bulk power system.

1713 The secretary would then maintain a database on these
1714 products and the technologies and provide technical advice to
1715 energy stakeholders to develop solutions to mitigate identified
1716 Cybersecurity vulnerabilities.

1717 You mentioned in your testimony that FERC has worked closely
1718 with DOE to maintain an awareness of emerging cyber threats.

1719 Do you think this policy would help improve the safety and

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1720 security of our energy infrastructure and would help address these
1721 threats?

1722 Mr. Powelson. Congressman, I think it is a wonderful effort
1723 that we -- any type of legislative construct that recognizes, one,
1724 collaboration in the cyberspace; two, adequate capacity building
1725 even in -- even at the state level.

1726 So I can just at first glance tell you I would be very
1727 supportive of a bipartisan bill to give those resources to DOE.

1728 Working with the FERC, as Chairman McIntyre mentioned, we
1729 do have a strong collaborative effort in place with TSA, FMSA,
1730 DOT, Homeland Security, and I think this is another example of
1731 how we can build on those capacities.

1732 Mr. Latta. Thank you.

1733 Chairman McIntyre, I've long believed in an all of the above
1734 energy policy. Our nation has vast energy resources that need
1735 to be utilized and we should be doing everything we can to make
1736 sure that our energy industries grow.

1737 By doing this, we can make sure that we are truly energy
1738 independent. Mr. Chairman, do you believe that it is of vital
1739 importance to our national security that we continue to maintain
1740 a diverse portfolio of energy sources for electricity generation?

1741 Mr. McIntyre. Very much so, Congressman.

1742 I, too, express my view in the same terms. All of the above
1743 is the appropriate approach to how we should satisfy our

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1744 electricity needs as a nation.

1745 All different types of electrical generating resources and
1746 other resources indeed -- storage, distributed energy resources,
1747 and the like.

1748 Where this will be tested is in the very tricky area that
1749 a number of us have addressed here today -- the interplay between
1750 state resource choices and our federal role of ensuring that our
1751 markets operate properly.

1752 If we really do mean that we are committed to an all of the
1753 above resource policy, can we be content to see a category
1754 resources go away and exit the scene?

1755 Very, very tricky public policy question that we are
1756 grappling with as we proceed with our grid resilience work.

1757 Mr. Latta. Well, thank you very much.

1758 Mr. Chairman, my time is expired and I yield back.

1759 Mr. Upton. Mr. Doyle.

1760 Mr. Doyle. Thank you, Mr. Chairman.

1761 Good morning and thank you all for appearing before us today.
1762 Many of us are running between two hearings simultaneously. So
1763 I apologize that I wasn't here to hear your testimony.

1764 Commissioner Powelson, as a fellow Pennsylvanian, I am going
1765 to pick on you first. At your confirmation hearing last year you
1766 said, what I learned from my experience in NARUC is that what works
1767 in Pennsylvania might not work in other jurisdictions, and you

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1768 highlighted the proud appreciation that we all have for individual
1769 states' rights in supporting our state energy policies.

1770 However, I also read that you may have some reservations
1771 explaining that state interventions come with consequences to
1772 reliability and I can't argue with Secretary Perry's point that
1773 these markets aren't pure but the policies all sound good and I
1774 respect that.

1775 But the reality is the policies aren't synchronizing with
1776 the system and therein lies a significant challenge. Your
1777 testimony highlights an inherent tension -- the oversight role
1778 of FERC with the independence of the states.

1779 And I know my good friend, Representative Shimkus, asked for
1780 some additional clarification here. But I wasn't present for
1781 that.

1782 So I understand you said you felt the commission should
1783 respect states' rights within reason. Do you think FERC
1784 oversight or potential intervention will or should be applied on
1785 a case by case basis? Do you think that Congress ought to provide
1786 additional clarity here also?

1787 Mr. Powelson. Congressman Doyle, I will start -- well, I
1788 think the FERC is well equipped, if you look at some cases that
1789 we've had over the last decade -- Talen Energy v. Hughes in
1790 Maryland, Talen Energy v. Solomon in New Jersey -- recent
1791 constructs of addressing in the post-Polar Vortex, we had an issue

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1792 in PJM with a 24 percent forced outage rate. We dealt with
1793 capacity performance.

1794 So I think the markets and the work that the FERC does, we
1795 have the tools to address these issues. When you say case by case
1796 basis, if I look over those cases where we had to send a loud and
1797 clear message to the state of New Jersey and the state of Maryland
1798 on capacity resources being subsidized in the market and, by the
1799 way, it would have had with generation in Pennsylvania, we -- the
1800 FERC, in terms of a rule of law, did its job and the court
1801 recognized that.

1802 I have said it earlier. I am very proud of my Pennsylvania
1803 experience. Pennsylvania has a very successful renewable
1804 portfolio standard led under Governor Rendell and former DEP
1805 Secretary Katie McGinty.

1806 Let me give you, as a former state senator, what happened.
1807 In that construct, we looked at picking -- the state picked really
1808 13 categories of what qualifies for a renewable portfolio
1809 standard.

1810 Well, guess what? Back then I remember there were pushes
1811 to get nuclear as part of that RPS. It was outright rejected.

1812 So here we are today is we are having conversations. That
1813 state construct in Pennsylvania, as an example, did not recognize
1814 the value of nuclear power.

1815 And if the state wants to go down that path, we are seeing

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1816 it more recently this past week in New Jersey, they're more than
1817 willing to do so.

1818 My drawing the line in the sand is how it impacts the
1819 wholesale power markets. And once we surrender that flag it's
1820 -- you know it's -- we are out of business. We've got to protect
1821 the sanctity of those organized markets.

1822 So I recognize that as a Pennsylvanian but I also recognize
1823 in my new role that oversight of those highly functioning well
1824 organized markets.

1825 Mr. Doyle. And many Pennsylvanians, including myself, are
1826 strong supporters of nuclear power. It both satisfies
1827 reliability issues and it's also carbon free, and I think there
1828 should be alarm bells going across the country as we see how many
1829 of these plants may not go through relicensing and they're going
1830 to be replaced mostly for baseload capacity with -- whether it's
1831 natural gas or something else that emits greenhouse gases and
1832 it makes it almost impossible for us to meet our climate change
1833 goals.

1834 Commissioner LaFleur, I want to quote from your statement
1835 regarding the NOPR because I think it's exceptional in describing
1836 the current situation we face.

1837 The commission -- and this is your quote, "The commission
1838 should continue to focus on its efforts not on slowing transition
1839 from the past but on easing the transition to the future.

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1840 We must continue to guide grid operators in sustaining
1841 reliability and resilience within a system that is likely to be
1842 more cleaner, more dynamic and, in some instances, more
1843 distributed, and deployed by an efficient market for the benefit
1844 of customers."

1845 I am amazed by the technological developments we've
1846 witnessed in the energy sector. The pace has gone from a walk
1847 to a jog to a sprint.

1848 And looking into the next decade or two decades from now,
1849 how do you think the regulatory bodies or agencies need to change
1850 to better reflect and adapt to these changes and what can we do
1851 here at our committee to facilitate those changes?

1852 Ms. LaFleur. Well, thank you for the question and for the
1853 compliment.

1854 I think one of the points of stress in the future is going
1855 to be the line between federal and state, not because of any
1856 overweening ambition on the part of this commission or the federal
1857 government but because we are seeing more distributed resources,
1858 even behind the customer meter, collectively behaving just like
1859 a central station resource.

1860 And sometimes even more resilient because of the ability to
1861 modularize them if there's any kind of a weather event or an
1862 attack.

1863 So I think that we -- as has been mentioned, we had a two-day

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1864 tech conference last week. But I think figuring out how we best
1865 deploy those resources for the future is where we are the -- where
1866 the public policy people, like everyone in this room have to be
1867 working now because the technology is coming so quickly.

1868 Mr. Doyle. Thank you.

1869 Mr. Chairman, thank you very much.

1870 Mr. Upton. Mr. Harper.

1871 Mr. Harper. Thank you, Mr. Chairman.

1872 Thanks to each of you for being here and for the dedicated
1873 job that you're doing on important issue.

1874 Maybe as a follow up to Mr. Doyle's questions, Mr. Chairman,
1875 if I could ask you, traditionally the regulation of DERs had been
1876 the jurisdiction of states and localities.

1877 However, with the issuance of Order No. 841 and its proposal
1878 for the aggregation of DERs for the purpose of participating in
1879 wholesale electricity markets, FERC could expand its authority
1880 at the expense of states and localities.

1881 So my question would be was how will you deal with any
1882 jurisdictional challenges that may come about?

1883 Mr. McIntyre. Thank you for the question, Congressman.

1884 There are a couple of different things going on here. One
1885 is electricity storage resources and then, separately from that,
1886 distributed energy generating resources.

1887 As to each category, honestly, I am not particularly troubled

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1888 by any sort of jurisdictional creep because that power would make
1889 its way onto our grid in a way that we could regulate it only after
1890 it had been aggregated and put forth to a market that we regulated
1891 -- a wholesale electricity market.

1892 And there certainly is no attempt on the part of this
1893 commission to in any way thwart the ability of the state, for
1894 example, to determine in a retail level transaction what the owner
1895 of the generating resource would be -- what level that owner would
1896 be compensated.

1897 And so, honestly, I don't see that as being a particularly
1898 great concern.

1899 Mr. Harper. Well, thank you for that answer.

1900 And Mr. Chairman, if I may ask you, you know, certainly, as
1901 you know, we talk about energy infrastructure. It's a very
1902 capital intensive venture, and Wall Street investors require a
1903 very high degree of regulatory certainty and sound rate making
1904 policies before committing capital.

1905 Does FERC currently have a methodology in place to set
1906 transmission ROEs?

1907 Mr. McIntyre. Yes, we do, sir, longstanding.

1908 Mr. Harper. Okay. Longstanding. And how many complaints
1909 are currently pending regarding transmission ROEs?

1910 Mr. McIntyre. We have a number of them pending.

1911 Mr. Harper. A ballpark. You said a number.

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1912 Mr. McIntyre. A dozen or so.

1913 Mr. Harper. Okay. So what is the timetable for resolving
1914 those complaints that you just mentioned?

1915 Mr. McIntyre. Those matters are actively being worked upon
1916 within our agency right now. They are not subject to a specific
1917 timetable. They are something are -- we are paying attention to.

1918 Our most important job, obviously, is to get it right.

1919 Mr. Harper. Obviously, and we want you to do that. That's
1920 good.

1921 Under EPACT 2005, FERC developed a policy, and that's in
1922 Order 679, I believe, which provides for incentive rate treatment
1923 to encourage the development of transmission line infrastructure.

1924 While this policy had been in effect since 2006, can you
1925 elaborate on the status of this incentive policy now?

1926 Mr. McIntyre. It's something that Commissioner Glick
1927 mentioned as -- in his view as something that probably is ripe
1928 for some fresh attention.

1929 In a general sense, I would agree with that.

1930 Mr. Harper. Commissioner Glick, do you care to comment?

1931 Mr. Glick. Thanks, Mr. Harper.

1932 I -- you were exactly right. So in 2005 Congress did provide
1933 FERC the authority to provide incentive rate making and the
1934 commission did have an incentive rate making policy and there was
1935 a believe that the commission was going too far in providing

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1936 incentives for too many activities.

1937 So the commission subsequently issued an new policy
1938 statement that somewhat retransformed that particular policy and
1939 I think that the criticism may be that the commission may have
1940 gone too far in the other direction.

1941 I think that we need to take a fresh look at the policies
1942 or are we incentivizing the right things.

1943 For instance, we incentivize RTO participation but a lot of
1944 people already -- utilities are participating in RTOs regardless
1945 of whether they have an incentive or not. But we really should
1946 be incentivizing are we using transmission capacity more
1947 efficiently -- are we using new technologies to make transmission
1948 capacity more efficient.

1949 Those are the type of things that I think Congress gave us
1950 the authority to do and I think it's a good idea to take a look
1951 at it.

1952 Mr. Harper. Are we still seeing our transmission developers
1953 still filing applications for incentive rates? Is that still
1954 happening?

1955 Mr. Glick. Absolutely. We do often.

1956 Mr. Harper. Okay. And are you -- do you believe it's at
1957 the appropriate rate and amount?

1958 Mr. Glick. I think there are -- we have to take that on a
1959 case by case basis. I actually dissented from one of those

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1960 particular cases. But for the most part, I think the commission
1961 has approved those -- those incentive rates.

1962 Mr. Harper. Thank you, Commissioner Glick.

1963 And with that, I yield back, Mr. Chairman.

1964 Mr. Upton. The chair recognizes the lady from Florida, Ms.
1965 Castor.

1966 Ms. Castor. Thank you, Chairman Upton, and welcome to our
1967 -- FERC commissioners, thank you for being here today.

1968 In the hearing last week on the Department of Energy budget
1969 with Secretary Perry, I asked him about research and development
1970 investments in energy storage because energy storage is so crucial
1971 to increasing America's renewable energy sources, incorporating
1972 them, and modernizing the electric grid.

1973 And even though the budget doesn't really match what we'd
1974 like to do, I think the Congress will come back and say we are
1975 committed to doing this just like we did in the omnibus bill.

1976 In fact, I noticed the Department of Energy just this morning
1977 issued a big press release on solar technology and investments.

1978 So but I have to say I was heartened by FERC's recently issued
1979 order, a 5 to 0 vote to remove market barriers for energy storage
1980 to participate in wholesale markets in the bulk power grid,
1981 because allowing energy storage should compete with fossil fuels
1982 like gas and coal will enhance competition.

1983 It will help us develop more clean energy resource and

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1984 hopefully keep electric rates affordable for the average
1985 American. And experts say that the number-one issue in clean
1986 innovative technologies is being able to integrate renewable
1987 energy with the large bulk transmission grid.

1988 So I commend you on your recent efforts to accommodate the
1989 growing clean renewable energy sources.

1990 However, the commission declined to also eliminate barriers
1991 for distributed energy resources, something that we were just
1992 talking about, which would help further integrate renewable
1993 sources into the electric grid.

1994 I saw in one press report it said that the commission was
1995 disappointed that you could not issue an order similar to your
1996 storage decision for distributed energy resources.

1997 So Mr. Glick, why did the commission not remove market
1998 barriers for distributed energy sources, like it did for energy
1999 storage, and what's the next step?

2000 Mr. Glick. Thank you for your question, Ms. Castor, and I
2001 agree with you, I think the technologies origin and distributed
2002 energy resources are the wave of the future and are going to
2003 provide significant amount of benefits.

2004 I think the commission had a number of -- there's still some
2005 questions that were left during the rulemaking process about
2006 reliability and how we interact with the states in terms of the
2007 distributed resource aggregation.

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2008 So we actually had a technical conference last week. We had
2009 a two-day conference, seven panels. I think we had enough
2010 information, in my opinion, to address the issue.

2011 The commission has a statutory responsibility to make sure
2012 that we don't -- that there's no undue discrimination again as
2013 any particular technologies and I think this is a good example
2014 where I think we are required to address this matter.

2015 Ms. Castor. So what are the next steps? You have the
2016 technical conference. Mr. McIntyre, what's next on your agenda
2017 on this?

2018 Mr. McIntyre. We did, indeed, have the technical
2019 conference. It was a two-day technical conference. A lot of
2020 very, very good input from stakeholders of various roles within
2021 the industry and I anticipate -- I agree with Commissioner Glick
2022 that the record that we are assembling through that process will
2023 enable us to take steps comparable, I would suggest, to the steps
2024 that you noted with regard to storage.

2025 That's -- I am not intending to forecast a particular
2026 outcome. I am just saying that we've got enough now to go on the
2027 make a determination about what the appropriate steps forward are.

2028 Ms. Castor. So would stakeholders still have the ability
2029 to weigh in with FERC?

2030 Mr. Glick. Yes, ma'am.

2031 Ms. Castor. Okay.

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2032 Ms. LaFleur, where do you think this is going? What advice
2033 would you give to stakeholders and folks in the public who are
2034 interested in weighing in?

2035 Ms. LaFleur. Well, the advice I always give is to be as
2036 specific as possible to help us and that's true even more so in
2037 this docket because of the real complexity of what we are looking
2038 at.

2039 There are only two macro issues. The first is the money
2040 issues, you know, where you have these deployed distributed
2041 storage resources that can be paid at the state level. They can
2042 be used by the customer or they can be paid at the wholesale level.

2043 Who pays what to whom, how do we figure out we don't have
2044 double counting and so forth -- I think that'll require some very
2045 specific rules. But the more suggestions we get, the better.

2046 The second is the operating issues of how the different
2047 control centers talk to each other. We've got some great
2048 testimony on that. I think one of the big issues we are going
2049 to have to think about as a body now is how uniform we make the
2050 rules as we put them out versus allowing regional variation.

2051 We heard a lot from the people -- some of the people who
2052 testified about wanting different regions to go in different
2053 directions here.

2054 I am somewhat of the belief that the technology is marching
2055 so quickly that we should try to figure out what best practices

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2056 are now. But that's what we'll be debating and I think we'd like
2057 input on that.

2058 Ms. Castor. Well, thank you very much. I think it is an
2059 exciting time for the development of clean energy technology and
2060 I commend you on your interest in pushing this forward. Thank
2061 you very much.

2062 Mr. Upton. Mr. McKinley.

2063 Mr. McKinley. Thank you, Mr. Chairman.

2064 Over the past eight years on this committee, we've heard a
2065 lot of comments in hearings about the -- our aging coal and nuclear
2066 fleet -- that it's out there, and unfortunately, in many regards,
2067 it's very expensive to upgrade those facilities and, in so doing,
2068 when they do make those upgrades, sometimes they lose their
2069 competitiveness and it puts them in a dilemma.

2070 Now, what we are talking about now is, again, is we have
2071 across this country a 531 coal-fired power plants shuttered in
2072 the last 10 years.

2073 We've had 11 nuclear power plants have closed down during
2074 that period of time, and we keep having hearings -- keep discussing
2075 it -- but I want to move from the abstract to something concrete.

2076 I've got a power plant in Pleasants County, West Virginia.
2077 It's a 1.3 -- 1,300 megawatt -- 1.3 gigawatts of power. They tried
2078 to sell that plant back in -- because it's a merchant plant --
2079 they tried to move it over to the regulated and they were denied.

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2080 So as a result, the operator now is seriously considering
2081 -- and I believe it'll happen before the end of the year -- of
2082 declaring bankruptcy and shutting that plant down.

2083 Just follow the ramifications of that. This is a small
2084 county. Thirty percent of the tax revenue comes from that power
2085 plant -- 30 percent. So 30 percent, that's an overnight reduction
2086 that's going affect their school system.

2087 What about their EMS? What about their hospital? All of
2088 the things that the country provides services are now a 30 percent
2089 reduction as a result of this.

2090 It goes further. We can further this domino effect. If
2091 this power plant closes down, there's a very high likelihood the
2092 coal producer that supplies that power plant will similar declare
2093 bankruptcy.

2094 If he declares bankruptcy, his relief will be to get away
2095 from his pension, is UMWA pension responsibility, which currently
2096 now funds 120,000 retirees.

2097 Now, the object would be, if that's reduced, they would fall
2098 -- they would be shifted over likely to the federal pension
2099 guarantee fund.

2100 But I've got a letter from the pension guarantee fund that
2101 says don't put those 120,000 on us because then we'll go under.

2102 So you see the domino effect of this. A mere request --
2103 somehow provide some assistance so they could be an existing power

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2104 plant and have been -- have been rebuffed.

2105 So I am just curious about -- you know, wouldn't -- just
2106 wouldn't it be more efficient and prudent to try to find a vehicle
2107 -- a means, whether it's a 403, whether it's a 2028 some
2108 modification of that so we can keep some of our marginal power
2109 plants operative?

2110 So, Mr. Chairman, if I could ask you, when FERC denied the
2111 403, was there a -- did anyone come up with what the cost to the
2112 consumer could have been if we had -- if 403 had been imposed on,
2113 let's say, in Pleasants County power plant?

2114 Do any -- does anyone have an idea what the costs could be
2115 just to keep it operating?

2116 I guess the answer is none of you know.

2117 Mr. McIntyre. I am sorry, Congressman.

2118 You refer to the costs of the secretary of energy's fourth
2119 NOPR directed to us?

2120 Mr. McKinley. Just what would it cost to keep that power
2121 plant operating. Are you talking about \$50 a year per customer?

2122 Mr. McIntyre. I do not have that figure.

2123 Mr. McKinley. Could you get that to me? Because this --
2124 we have reason to believe it's less than \$50 a year per customer
2125 and they -- the consumer currently is paying \$50 a year for tree
2126 trimming.

2127 That's hundreds of jobs that could be lost -- the pensions

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2128 that could be lost for our miners and our steelworkers, all that
2129 would be affected with this.

2130 I think we have a moral responsibility to look at this thing
2131 holistically rather than just an ideological fight against what
2132 we think is a free market and I think too many of you have said
2133 both publicly and privately that we really- are questioning
2134 whether we have a free market system in energy.

2135 Would you agree -- let me just ask you, do we have a free
2136 market system in energy?

2137 Mr. McIntyre. We do not have a perfect market system in
2138 energy, that is certain.

2139 Mr. McKinley. Okay. Because I think, Mr. Powelson, you
2140 said in Pennsylvania that without the subsidy for wind and solar
2141 there wouldn't have been any build up there. Is that correct?

2142 Mr. Powelson. I put it in the context of the renewable
2143 portfolio standard, how it was designed.

2144 Mr. McKinley. Okay.

2145 Mr. Powelson. We also, though, in our RPS I believe we have
2146 a requirement set aside for waste coal in that RPS.

2147 So yes, your point -- to the chairman's point and to -- and
2148 to Secretary's point, these are not pure markets. There's been
2149 --

2150 Mr. McKinley. Thank you. I don't think they are either.
2151 So I will just close with again, I am asking look seriously at

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2152 the bigger picture -- what we are going to do to communities like
2153 Pleasants County. A 30 percent overnight loss of tax revenue
2154 -- how are they supposed to meet their education demands, their
2155 health care needs?

2156 Thank you. I yield back.

2157 Mr. McIntyre. Thank you, Congressman.

2158 Mr. Upton. Mr. Tonko.

2159 Mr. Tonko. Thank you, Mr. Chair, and thank you, Chair
2160 McIntyre and all of our commissioners for appearing here this
2161 morning.

2162 Last month, I held a round table with a variety of
2163 stakeholders interested in storage, and everyone agreed that
2164 Order 841 was a necessary step forward to lower barriers for
2165 storage's participation in the markets.

2166 Chairman McIntyre or Commissioner Glick, do you believe that
2167 reducing barriers and enabling greater storage deployment will
2168 be beneficent to grid reliability and resilience?

2169 Mr. McIntyre. I will jump in first.

2170 I think every avenue for reliable energy that can make its
2171 way to our grid can only help resilience and reliability, hence
2172 my expression earlier of my support for an all of the above
2173 approach to satisfying our nation's energy needs.

2174 Mr. Tonko. Thank you, and Commissioner Glick.

2175 Mr. Glick. Thank you, Mr. Tonko.

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2176 I agree. There are numerous benefits with access in
2177 distributive resources and aggregating distributed resources.

2178 I would point out that, too, would be one, increased
2179 competition in the market will certainly lower wholesale electric
2180 prices, but secondly, I think it gives RTO and ISO operators more
2181 input, more understanding of what's going on behind the meter,
2182 which is certainly, I think, an increasing concern with regard
2183 to the reliability of the grid.

2184 Adding aggregation to the mix would actually increase and
2185 enhance reliability on resilience.

2186 Mr. Tonko. Thank you. That's good to hear, because I
2187 believe it has a number of significant benefits -- reduction of
2188 peak demands, integration of variable renewable energy, frequency
2189 of regulation and congestion relief.

2190 So it's encouraging. As this order moves forward, I hope
2191 you will continue to seek to reduce barriers for emerging
2192 technologies and work to resolve issues from the distributed
2193 energy resources technical conference.

2194 But I also want to address another recent issue that was
2195 considered by the commission. The relationship between FERC
2196 electricity markets and state policies is not a simple one. But,
2197 certainly, states have a significant role in determining their
2198 generation mix.

2199 I want to ask about ISO New England's competition auctions

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2200 with sponsored policy resources proposal. In paragraph 22 the
2201 commission's order states, we intend to use the minimum offer
2202 price rule to address the impacts of state policies on the
2203 wholesale capacity markets, and minimum offer price rule will be
2204 the, quote, "standard solution" to manage the impact of state
2205 policies.

2206 I know that there's been some discussion about state
2207 opportunity, state rights. But Commissioner Glick, I would like
2208 to hear from you.

2209 I know you dissented due to this section. Can you explain
2210 your concerns about the use of MOPR to interfere with state
2211 policies?

2212 Mr. Glick. Thank you, Mr. Tonko.

2213 Yes, I did dissent and dissent in large part to that paragraph
2214 22 that you referenced.

2215 In large part, I don't believe the Federal Power Act gives
2216 FERC the ability to make resource decision making -- resource
2217 decisions.

2218 I think it's up to the states to do that. In addition to
2219 that, I have some grave concerns that it's actually going to
2220 dramatically increase the cost of electricity in these regional
2221 markets as well because states may still choose to pursue these
2222 policies, but if their -- if those resources have been replaced
2223 with another generation of resources it's just going to lead to

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2224 overbilling and then consumers are going to pay more.

2225 Mr. Tonko. And thank you for that.

2226 And do you believe there's a role for governmental programs
2227 to address legitimate policy considerations that arise as a
2228 consequence of power generation such as clean air or climate
2229 change, if I dare mention that?

2230 Mr. Glick. Absolutely. These electric markets, for the
2231 most part, don't take into account externalities. So I think
2232 states and the federal government both have a role in ensuring
2233 externalities such as greenhouse gas emissions need to be
2234 addressed in another manner.

2235 Mr. Tonko. And I believe you're indicating this, but just
2236 for clarity, if MOPR is a standard solution, could it result in
2237 consumers paying more to prop up generators that run counter to
2238 the policies adopted by those states?

2239 Mr. Glick. Absolutely. That's one of my significant
2240 concerns, yes.

2241 Mr. Tonko. In my home state of New York, we recently
2242 implemented a clean energy standard to make significant
2243 reductions in greenhouse gas pollution, which is not currently
2244 priced into the market.

2245 Should New York have the right to determine its energy future
2246 and protect its citizens from environmental impacts?

2247 Mr. Glick. Certainly New York should have the right and I

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2248 think one of the concerns if you are supportive of these capacity
2249 markets is that if state policies are then overturned by FERC
2250 decision making those states are going to cause their utilities
2251 to pull out of these capacity markets.

2252 Mr. Tonko. Uh-huh. And I know you all supported the
2253 storage order. But similarly, we are seeing states enact or
2254 consider mandates and incentives for storage resources.

2255 Like you all, states have recognized the benefits of these
2256 technologies including reliability benefits and want to see them
2257 as part of their resource mix.

2258 As storage resources are able to participate in capacity
2259 markets, might some of these state policies come into conflict
2260 with the MOPR solution?

2261 Mr. McIntyre. I think there's a very little danger of that
2262 under paragraph 22.

2263 Mr. Chatterjee. If I could just add to that, Congressman,
2264 in regards to specifically paragraph 22.

2265 I voted for the underlying CASPR order because I thought it
2266 was important and a necessary step in ISO New England. I put a
2267 great amount of time and effort into it.

2268 Having worked in this chamber before, you don't always agree
2269 with every single word of legislative text on a bill that you vote
2270 for and I think, going forward, I thought it was more important
2271 that CASPR pass than to focus on, you know, every word of paragraph

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2272 two, what's in there, and I agree with the valid concerns that
2273 you're raising.

2274 Mr. Tonko. So with that being said, is there a need for
2275 addressing this as we go forward?

2276 Mr. Chatterjee. I think that, as the chairman quite
2277 eloquently spoke to earlier, that juxtaposition, that collision
2278 between market forces and our wanting to uphold these markets with
2279 state policy rights and state interventions that is going to be
2280 something that we continue to juggle with and I, for one, believe
2281 that, you know, some accommodation is necessary.

2282 Mr. Tonko. Well, I am proud of the efforts my state is making
2283 and as a downwind state we don't want to be impacted by poor policy.

2284 So with that, I appreciate all of your comments and I yield
2285 back, Mr. Chair.

2286 Mr. Upton. Gentleman's time has expired.

2287 The gentleman from Illinois, Mr. Kinzinger.

2288 Mr. Kinzinger. Thank you, Mr. Chairman.

2289 Thank you all for being here and spending some time with us
2290 today. We appreciate it, and I just want to thank you also for
2291 your commitment to making sure that our homes and businesses have
2292 reliable energy.

2293 I think we all recognize how vital your mission is to our
2294 nation's economic and national security. That being said, our
2295 main concern about the resiliency and reliability of our energy

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2296 supply.

2297 For years now, we've recognized the precarious situation
2298 that our nuclear plants are in. My district is home to four
2299 nuclear power plants and -- which is the most in the country and
2300 it accounts for 12 percent of the nation's nuclear power.

2301 These plants provide good jobs. They're good for our
2302 environment and I think we've seen that they're proven performers
2303 during extreme weather events, whether it's Polar Vortex,
2304 hurricanes, things like that.

2305 Yet, two plants in Illinois are still almost closed.
2306 Thousands of jobs and a significant amount of clean energy were
2307 almost lost. The state of Illinois had to step in to recognize
2308 the important role that these plants play in our state economy
2309 but also in the reliability of our energy supply.

2310 Unfortunately, now other plants in other states are facing
2311 the same fate. So to the whole panel, as you know, in some
2312 wholesale energy markets certain resources like nuclear are
2313 struggling to recover costs and remain competitive, which has led
2314 to the earlier retirement of plants that could otherwise continue
2315 to run for decades.

2316 Do you think energy markets can better value resource
2317 attributes for all types of energy generators and what about
2318 resiliency and reliability specifically?

2319 Mr. McIntyre. Congressman, I will jump in first here.

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2320 Thank you for the question.

2321 Mr. Kinzinger. Sure.

2322 Mr. McIntyre. We have acknowledged here the importance of
2323 ensuring that states are able to exercise their legitimate role
2324 in making resource decisions and expressing resource preferences
2325 through law, such as you have acknowledged that Illinois has done
2326 with regard to the nuclear fleet there, and we just have to ensure
2327 that with regard to the wholesale markets that we oversee that
2328 rates are indeed just and reasonable, which is our longstanding
2329 statutory standard, and that nothing done at the state level
2330 amounts to a pressing of the thumb on the scale or, as my colleague,
2331 Commissioner Powelson has said, picking winners and losers in a
2332 way that we would regard as inconsistent with the statutory role
2333 --

2334 Mr. Kinzinger. But let me ask you, like, kind of more deeply
2335 on that, if you look at -- is there a value to the reliability
2336 issue? Are we just -- I mean, is there a value to resiliency,
2337 reliability, things along that line?

2338 Mr. McIntyre. As to nuclear?

2339 Mr. Kinzinger. Yes.

2340 Mr. McIntyre. Certainly my view is we very much need to be
2341 an all-of-the-above. We need an all-of-the-above policy in terms
2342 of satisfying our nation's generating needs and I certainly
2343 personally include nuclear in that mix.

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2344 Mr. Kinzinger. Well, I mean, that's great. I appreciate
2345 that.

2346 But the question is do you think that you can better value
2347 resource attributes like that to nuclear, for instance?

2348 Mr. McIntyre. That's a question that's before us now in our
2349 ongoing proceeding on grid resilience. Are there resilience
2350 attributes that are present but are not being adequately
2351 compensated?

2352 If the answer to that question is yes, then I think we've
2353 got to decide what steps are appropriate.

2354 Mr. Kinzinger. Okay. Anybody else want to add to that?

2355 Mr. Powelson. I would pick up on it. I heard earlier from
2356 Chairman Walden we talked about customers and customers having
2357 choice in these competitive markets.

2358 In your state, your former governor and your legislature
2359 adopted electric restructuring. Those nuclear plants you
2360 referenced, customers paid a competitive transition charge as
2361 part of a stranded cost investment.

2362 And so where we are today in my state and your state where
2363 we have -- we are the second largest nuclear production state --
2364 where something that was, quote, "too cheap to meter" is coming
2365 back into the market, whether it's a value around resiliency, and
2366 we are being asked -- theoretically, your constituents are being
2367 asked to do another stranded cost for those assets.

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2368 So if I am a gas operator or I am an emerging technology in
2369 the market, I am not getting any type of backstop for my resource,
2370 and I could be clean and efficient and resilient.

2371 So I think, to the chairman's credit, we are looking at that
2372 and developing this record. There are characteristics of nuclear
2373 plants that will clear in these markets.

2374 It's a concern that I've seen in my state that where a
2375 standalone nuclear reactor like Three Mile Island is under
2376 tremendous stress, and why is that?

2377 Well, it's because 100 miles north up the 83 corridor is gas
2378 coming out of the ground at \$1.21 per MMBTU and a power plant that
2379 has a much lower cost to run and can provide baseload resource
2380 on the grid.

2381 Mr. Kinzinger. And I -- but I think the question is long
2382 term. How do we value the fact that that may change? It may go
2383 from \$1.20 to a billion dollars, right? In which case now we find
2384 ourselves, as some European markets and other markets have that
2385 undervalued nuclear power in a tail chase against the cost of
2386 electricity.

2387 Specifically, I just got back from Australia and they're,
2388 like, finding themselves in that kind of a situation as well.

2389 So my time has run out. I thank you all for being here and,
2390 Mr. Chairman, I yield back.

2391 Mr. Upton. Thank you.

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2392 The chair would recognize Mr. Griffith.

2393 Mr. Griffith. Thank you, Mr. Chairman. I appreciate it
2394 very much. A lot of good information floating around here.

2395 I want to go talk about pipelines. We've talked about how
2396 we need pipelines to get the natural gas where it needs to go,
2397 particularly in the northeast.

2398 But in the Commonwealth of Virginia, we have two pipelines
2399 coming through right now pretty much at the same general area,
2400 and people have a lot of questions and I have a lot of questions,
2401 and FERC can do a better job.

2402 And I talk to you all about this because a lot of you all
2403 are new and we got to figure it out. And so I appreciate, Mr.
2404 Chairman, you revisiting the 1999 standing policy on pipe --
2405 policy on pipeline applications. But let me just tell you about
2406 the one coming through my district.

2407 One comes through my district and one doesn't but they're
2408 fairly close together. I learned about when a member of a board
2409 of supervisors in the county called me up and said there's
2410 surveyors all over the county. Nobody knows what they're doing
2411 but they claim it has something to do with a gas pipeline.

2412 Now, that's not your all's fault. I get it. That's
2413 somebody else's fault -- the folks who were, you know, not
2414 informing the elected officials. But I didn't know anything
2415 about it. The county didn't know anything about it. Nobody knew

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2416 anything.

2417 Then comes FERC, adding insult to injury. Had two public
2418 hearings. Goodlatte, Hurt, who was here then, and myself begged
2419 for more public hearings so that people could travel a shorter
2420 distance to get to these hearings because it was affecting their
2421 communities.

2422 Didn't happen. Crickets. And so I am glad you're looking
2423 at it and I -- and I am going to assume, Mr. -- or Chairman McIntyre,
2424 that this new plan that you're looking at will review the public
2425 comment meeting process as part of your evaluation.

2426 Is my assumption correct? Yes or no.

2427 Mr. McIntyre. Yes, it is correct. That's very much within
2428 the scope of what we intend to review.

2429 Mr. Griffith. And can I further assume that you are
2430 committed to working to ensure there's a method by which FERC
2431 offers full and transparent comment from the public about
2432 potential projects? Can I make that assumption as well? Yes or
2433 no.

2434 Mr. McIntyre. Yes.

2435 Mr. Griffith. I have a bill and it's been so frustrating
2436 that Senator Tim Kaine and I -- we don't generally agree on a lot
2437 of things -- we both have bills in. Now, we got different versions
2438 because we don't always agree on things, but we have bill in on
2439 this.

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2440 Mine is H.R. 2893, the Pipeline Fairness and Transparency
2441 Act, and this is to express these concerns that our constituents
2442 have been living with now for several years and still feel very
2443 frustrated.

2444 But I would like to even look at going further than that.
2445 So I want your -- you all's input on that. But I would also like
2446 input on things that we can do like on placing the lines, on putting
2447 the lines in the same corridor.

2448 While the folks in that corridor may not appreciate it, you
2449 don't have two different sets of communities all across the
2450 Commonwealth of Virginia being disrupted, and then maybe taking
2451 a look at where are -- where are the companies and what are the
2452 policies where the companies are placing not only the pipeline
2453 but the pumping facilities to move the pipe down the line and do
2454 they need to be quite as big. A lot of folks are concerned about
2455 that.

2456 So as we go forward, are you all willing to work, and I would
2457 ask each of you, are you willing to work with us to try to get
2458 some legislation that makes folks feel like it's not just being
2459 crammed down their throats but they actually have input and that
2460 somebody out there is actually listening?

2461 Mr. McIntyre. We welcome the opportunity to work with you
2462 on that. I don't want to leave you with the false impression that
2463 we don't have mechanisms in place today for proper public input

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2464 because we certainly do, and one of the key issues that's before
2465 us even in our -- under our existing policy is to make a
2466 determination as to whether a particular project is needed and
2467 that's to root --

2468 Mr. Griffith. Okay.

2469 Mr. McIntyre. Sorry to interrupt, sir.

2470 Mr. Griffith. Well, and I will be happy to give more answer,
2471 but my time is running out and I've got another subject to hit.

2472 But will just tell you the frustration level in Virginia is
2473 so high, that while you all have a system I appreciate you looking
2474 at it because it apparently isn't working to give confidence to
2475 the public, and I appreciate that.

2476 Now I've got to move on to some issues related to businesses
2477 and homes that are on that -- on non-federal hydropower project
2478 facilities.

2479 I have gotten a lot of questions from Friends of Claytor Lake
2480 that I will submit for the record and hope that you all will answer
2481 after the fact because we have some real issues related to
2482 shoreline management plans.

2483 This issue didn't really develop until in the last 10 or 15
2484 years and so we have some questions about how that goes forward.

2485 I picked up Robert Hurt's bill on shoreline management, the
2486 SHORE Act, which is H.R. 1538, and I hope that you all give us
2487 some input on that.

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2488 But I think this is something that we need to work on
2489 together, because a lot of folks feel their property rights have
2490 been affected and, of course, economic development has been
2491 affected as well.

2492 So I look forward to working with you all on those issues
2493 as well, and I see that my time is up and, Mr. Chairman, I yield
2494 back.

2495 Mr. Upton. The gentleman yields back.

2496 Dr. Bucshon.

2497 Mr. Bucshon. Thank you, Mr. Chairman.

2498 Chairman McIntyre, in your testimony you state that one of
2499 your top priorities is to protect and promote the resilience of
2500 the bulk power system.

2501 I am pleased to hear that we share this same priority. But
2502 I remain concerned with the lack of urgency to address properly
2503 valuing reliable and fuel security energy sources.

2504 There are many sources of energy that can power the grid and
2505 I am a supporter of an all-of-the-above energy strategy.
2506 However, after every major winter storm, whether it be the 2014
2507 Polar Vortex or the most recent bomb cyclone, studies conclude
2508 that coal-fired electricity was needed to prevent major
2509 blackouts, establishing coal-fired electricity as one of the most
2510 reliable, fuel-secure, and affordable energy sources available.

2511 Just so you know, every coal mine in the state of Indiana

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2512 is in my district and many of the coal-fired power plants.

2513 Even with its reliability, coal-fired power plants continue
2514 to retire in alarming numbers for many of the reasons we've already
2515 discussed. Thirty-nine coal-powered generating units have been
2516 forced to close in my home state of Indiana alone.

2517 I am supportive of the efforts you're taking to properly
2518 value traditional baseload generation that provide our nation
2519 with a more reliable and secure grid.

2520 But I am concerned that if we don't act soon, more coal plants
2521 will continue to retire prematurely, leaving my constituents in
2522 my state without reliable energy and many of the risks -- that
2523 risk of losing their jobs, as was outlined by the -- Congressman
2524 McKinley about how that goes down the line.

2525 This is why I have introduced H.R. 5270, the Electricity
2526 Reliability and Fuel Security Act, which would create a temporary
2527 tax credit covering only a small portion of the cost to operate
2528 and maintain existing coal-fired power plants.

2529 And in fact, just yesterday, Senator Capito from West
2530 Virginia introduced a companion bill to H.R. 5270 in the Senate
2531 showcasing the urgency of this matter.

2532 I believe the temporary tax credit, which would last for five
2533 years, is necessary to maintain the reliability and resilience
2534 of the grid while policy makers work together to agree on a
2535 long-term plan for the grid.

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2536 We need a little bit more level playing field. Chairman
2537 McIntyre, can you provide an update on FERC's efforts on this issue
2538 and are you supportive of congressional action to maintain a
2539 reliable grid while the commission collects comments on how to
2540 best address grid reliability.

2541 Mr. McIntyre. Yes, sir.

2542 The question you have raised about coal is very much wrapped
2543 up within our grid resilience work, particularly given the way
2544 that the grid resilience topic was teed up for us in the first
2545 instance by Secretary Perry with the Section 403 action -- the
2546 NOPR that was presented to us for our consideration.

2547 So we have to look at this and ask ourselves the question
2548 whether those coal-fired generating resources are contributing
2549 grid resilience attributes in a way that cries out to be
2550 compensated at levels higher than they currently are receiving
2551 in the -- in the marketplace.

2552 If the answer to that question is yes, then I think we have
2553 to address the very difficult question of what are -- what is it
2554 appropriate for us to do about that. The question is completely
2555 legitimate and, as you suggest in your statement, Congressman,
2556 this is broader than just grid resilience.

2557 I mean, there are economic issues here in play as well. So
2558 we understand how important the issue is.

2559 Mr. Bucshon. Yes. I mean, when we are buying -- when we

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2560 are important LNG for energy sources and we are using a lot of
2561 energy from our friends in Canada, you know, to turn a blind eye
2562 to our own ways to generate energy, at least in the short run,
2563 is not the right thing.

2564 Mr. Chatterjee.

2565 Mr. Chatterjee. Congressman, I just want to echo that I
2566 share your sense of urgency. I am optimistic about the resilience
2567 proceeding and the docket that we have ongoing.

2568 But I am concerned that it'll take time and that's why, during
2569 the course of our consideration of Secretary Perry's NOPR, I had
2570 advocated for an interim solution.

2571 What I've come to learn in the subsequent months since we
2572 dealt with that NOPR is there are real challenges and in sight
2573 of the situation in New England -- the ISO New England fuel
2574 security study, you know, highlights that and I do think the moment
2575 will come sooner rather than later when we are going to have to
2576 confront this and your sense of urgency is right on and look
2577 forward to seeing how the legislative effort you have progresses.

2578 Mr. Bucshon. Thanks.

2579 And also just because -- all of the above, earlier this
2580 Congress the House unanimously passed my bill 2872, the Promoting
2581 Hydropower Development at Existing Non-Dams Act.

2582 You probably are -- may or may not be aware of that. But
2583 it would promote hydropower development at existing non-power

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2584 dams by establishing an expedited licensing process for
2585 qualifying facilities that would result in a decision on an
2586 application two years or less.

2587 Senator Portman and Senator McCaskill just recently
2588 introduced a companion bill in the Senate and I think we have a
2589 good chance of getting that across the finish line so that we can
2590 convert some non-hydro power generating dams across this country
2591 in ones that produce long-standing clean energy.

2592 Thank you. I yield back.

2593 Mr. Upton. Mr. Johnson.

2594 Mr. Johnson. Thank you, Mr. Chairman, and thank the
2595 commission for being here with us today.

2596 I've been closely following the discussion surrounding DOE's
2597 NOPR that the commission rejected. As some of you probably know,
2598 my district in eastern and southeastern Ohio is home to an
2599 abundance of natural energy production, particularly natural gas
2600 and coal.

2601 So these issues hit especially close to home and I take notice
2602 when major employers in my district speak out on this issue. For
2603 instance, the CEO of Murray Energy recently stated that FERC did
2604 not do its job when it rejected this proposal -- that is, the DOE
2605 NOPR.

2606 Commissioner Powelson, I believe you recently made some
2607 comments indicating that you disagree with Mr. Murray. Can you

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2608 expound on that?

2609 Mr. Powelson. I take offense to the word feckless being used
2610 to colleagues that I serve with here, and as I mentioned earlier
2611 --

2612 Mr. Johnson. That term was what again?

2613 Mr. Powelson. Feckless, used to describe the FERC, my
2614 colleagues, and the 1,320 employees that show up to work every
2615 day to do their job around safety and economic regulation and
2616 making sure our wholesale power markets are functioning. So --

2617 Mr. Johnson. I think your testimony -- I mean, your
2618 statement on social media, though, was more about conducting a
2619 debate, right?

2620 Mr. Powelson. I refrain from going down that path. I
2621 thought it was inappropriate and I dialled it back rather quickly.

2622 Mr. Johnson. All right.

2623 Commissioner Chatterjee, I've read your testimony and
2624 wondered if you had any further thoughts on this issue.

2625 Mr. Chatterjee. Yes, sir. Obviously, throughout our
2626 consideration of the DOE NOPR, I expressed great sympathy with
2627 what Secretary Perry had proposed and I saw first-hand during my
2628 time serving Leader McConnell and working in the Kentucky
2629 delegation, working with folks like yourself through various
2630 energy caucuses in the Congress the impact -- the severe impact
2631 that was taking place in whole communities throughout Appalachia,

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2632 throughout Kentucky, throughout Ohio.

2633 The challenge we had is, you know, serving at the commission
2634 at the independent regulator. We have to work based on the record
2635 that was before us and, unfortunately, the record did not support
2636 compensating fuel sources based on having that onsite fuel
2637 capability.

2638 That doesn't mean that the question that was posed by
2639 Secretary Perry wasn't the right question and that doesn't mean
2640 that in our further work we won't be able to address these
2641 sensitive issues.

2642 But speaking to the manner in which the NOPR was handled,
2643 I am a conservative. I believe in a narrow interpretation of
2644 statute and my narrow reading of the record in this case was it
2645 simply didn't support it, and while I have deep sympathy for the
2646 sentiments that Mr. Murray, folks in your community, are
2647 expressing and the concerns they have about the economic impact,
2648 the job impact, the cultural impact of these shutdowns from the
2649 seat I sit in now, our records simply didn't support taking action
2650 at that time.

2651 Mr. Johnson. Thank you for clarifying.

2652 Moving on to another subject, we've also discussed
2653 cyberattacks and data policy violations have been issues recently
2654 and frequently highlighted in the news -- attacks on U.S.
2655 government agencies and universities including FERC, for example,

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2656 the recent Energy Services Group attack, and the platform policy
2657 violation by a Facebook developer.

2658 In light of these events, what are the commission's thoughts
2659 on its current security practices for protecting sensitive
2660 information such as CEII, Critical Electric Energy Infrastructure
2661 Information, that FERC collects and regulated -- from regulated
2662 energy companies and shares with third parties?

2663 Is there any discussion on evaluating methods to strengthen
2664 those practices? And let me -- let me go back to you, Commissioner
2665 Powelson, in light of your focus on cybersecurity in your
2666 testimony. Do you have any insight on this issue?

2667 Mr. Powelson. Well, I think the work that's being done right
2668 now working with NERC and refining some of these standards, one,
2669 there's kind of four points we are looking at.

2670 One is the vendor remote access to data, also software
2671 authenticity and information system planning, and then vendor
2672 risk management.

2673 This all coincides with what I call the, say, best practices
2674 around cyber hygiene, and to your point of that critical
2675 infrastructure information being lockboxed and protected is
2676 critically important. You mentioned the situation that unfolded
2677 at the FERC where our internal system was violated.

2678 We are still looking at that issue, making assessments on
2679 what kind of data might have been exposed, and I think to the work

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2680 of the folk at the FERC, we seem to be in a good spot in developing
2681 proper protocols around fishing expeditions and making sure that
2682 we are hygiene proficient as well, and that's what happened in
2683 that particular case.

2684 Mr. Johnson. Okay. Well, thank you very much.

2685 Mr. Chairman, I yield back.

2686 Mr. Upton. Mr. Long.

2687 Mr. Long. Thank you, Mr. Chairman, and thank you all for
2688 being here today and for your testimony.

2689 Chairman McIntyre, recently City Utilities of Springfield,
2690 Missouri, has seen a substantial rise in transmission costs in
2691 the Southwest Power Pool. Most of these costs are related to
2692 funding transmission projects outside of Missouri.

2693 Some of the projects allow utilities to access renewable
2694 energy located outside the state. However, the benefits far
2695 outweigh by the rise in transmission costs for the projects
2696 located far away.

2697 Southwest Power Pool's own studies have shown the City
2698 Utilities' transmission costs and energy prices are substantially
2699 higher than other customers in the Southwest Power Pool.

2700 What will FERC do to address the issue of rising transmission
2701 costs in the Southwest Power Pool's footprint?

2702 Mr. McIntyre. I am not familiar with the study you
2703 reference, Congressman. But I will say that, as a general matter,

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2704 our transmission costs allocation is subject to policies under
2705 a landmark order we call Order 1000 that governs our transmission
2706 planning processes and the determination of how to allocate the
2707 cost of transmission projects across their geographic footprint.

2708 Generally speaking, it would be surprising that a particular
2709 entity paying those transmission costs is paying significantly
2710 higher than other entities served by the same facility.

2711 Mr. Long. These are studies that Southwest Power Pool --
2712 they had their own study, City Utilities -- Southwest Power Pool
2713 did. So I will get you that information, and if you can have your
2714 folks look into it and get with my people, I would really
2715 appreciate it because --

2716 Mr. McIntyre. Yes, I was going to make that offer. We'd
2717 be delighted to.

2718 Mr. Long. It sounds like an egregious situation.

2719 So what will FERC -- will FERC address the concerns that some
2720 customers like the City Utilities are paying for assets for which
2721 they have no benefits?

2722 Mr. McIntyre. Well, we do have processes in place today that
2723 enable any entity that feels that it is paying for something it
2724 should not have to pay for -- in effect, to initiate a complaint
2725 proceeding with us -- and our role at that point would be to address
2726 the merits of the complaint and determine whether there is
2727 legitimacy to it and, if so, what steps we should take to remedy

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2728 the situation.

2729 Mr. Long. Okay. Well, I know you have --

2730 Mr. McIntyre. This is also something we can follow up on.

2731 Mr. Long. Yes. I know you have some good folks and I have
2732 some good folks so, hopefully, we can get them together and I think
2733 we are going to be in close contact for a while on that until we
2734 get some answers.

2735 Mr. McIntyre. I would welcome that.

2736 Mr. Long. Thank you.

2737 And Commissioner Chatterjee, in May or on May 22nd in 2011
2738 -- I had been in Congress for five months -- and we had an F5 tornado
2739 ravage through Joplin, Missouri, in my district -- killed 161
2740 people, took out 8,000 homes, 500 businesses, leaving over a
2741 hundred -- well, I already said that -- 161 people dead and
2742 thousands without power.

2743 In your testimony, you talk about the importance of planning
2744 for potential catastrophes as it relates to electric
2745 vulnerabilities in a region and you highlight the work being done
2746 by IOS New England.

2747 Can you talk about the proactive working being done to
2748 mitigate these risks and how other RTOs and ISOs can plan for
2749 catastrophic weather events?

2750 Mr. Chatterjee. I want to start, Congressman, with saying
2751 that, you know, I mean, such events like that are just -- they're

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2752 tragic. They can devastate communities and, obviously, we all
2753 need to work collectively to get ahead of these kinds of tragedies.

2754 We at the commission, you know, focus on electric reliability
2755 and in ensuring that power remains available, that the lights stay
2756 on.

2757 The reason we are undergoing this resilience proceeding is
2758 we want to make sure that in the event that the power goes off
2759 that it can be restored quickly. I think as these types of severe
2760 weather events become the new normal, we've got to take great steps
2761 to get ahead of that.

2762 I was actually in Georgia last week meeting with folks from
2763 Georgia Power about the extensive efforts that they take in
2764 advance of storm preparation and afterwards. And so I think the
2765 private sector will continue to do a tremendous job.

2766 I think our linemen and women are some of the bravest people
2767 in this country. They should be honored and recognized for the
2768 sacrifices that they make and we at the commission will continue
2769 to do our job to maintain electric grid reliability and I am
2770 counting on the great linemen and women of our country to be
2771 responsive in the light of tragic events like, unfortunately, to
2772 your district.

2773 Mr. Long. Okay. Thank you.

2774 And I am running close to be out of time so, Chairman
2775 McIntyre, I have a question that I will get to your folks from

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2776 my folks, once again, concerning the Iranian hackers' attempt to
2777 breach FERC's computer systems and I know we are in an unclassified
2778 setting here.

2779 I was going to have you explain as much in a unclassified
2780 setting as you can. But I will submit that in writing to your
2781 office and I would like to have some answers on that. And also
2782 what steps are being taken to prevent this from happening again?

2783 Mr. McIntyre. Absolutely, sir. I look forward to
2784 following up with you and your staff on that.

2785 Mr. Long. Mr. Chairman, I yield back.

2786 Mr. Upton. Mr. Walberg.

2787 Mr. Walberg. Thank you, Mr. Chairman, and thanks to the
2788 panel.

2789 This is a panel we've looked forward to for a long time. It's
2790 good to have you all here.

2791 I want to -- I want to dive right in with a fairly
2792 straightforward question which I hope will be just a simple yes/no
2793 answer. We can all agree that the energy landscape is vastly
2794 different than it was back in 1978 and even in 2005.

2795 Do you believe that PURPA should be updated or modified to
2796 reflect today's energy environment? Yes or no, and beginning
2797 with the chairman.

2798 Mr. McIntyre. Yes, I believe it's time for us to look at
2799 that issue.

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2800 Ms. LaFleur. Yes. I think it would be timely for Congress
2801 to look at PURPA.

2802 Mr. Chatterjee. Yes, but I think not only should Congress
2803 look at PURPA but FERC should look at our own regulations and see
2804 what steps we may be able to take.

2805 Mr. Powelson. Yes, PURPA needs to be modernized.

2806 Mr. Glick. I think it's -- I think it's appropriate for FERC
2807 to take a look at some of the issues of PURPA but I think the major
2808 issues that were addressed in the 2005 Energy Policy Act need to
2809 be addressed by Congress in terms of PURPA's future.

2810 Mr. Walberg. Well, I appreciate the fact that it's a
2811 generally yes answer. I think PURPA right now is holding us back
2812 on an all-of-the-above energy plan.

2813 It's intentions, certainly, assisted in moving forward
2814 renewables. But right now, we are holding back some of the
2815 renewables in being more efficient in the process. So I
2816 appreciate that.

2817 Chairman McIntyre, I am pleased that FERC held a PURPA
2818 technical conference in June 2016. The docket has been open for
2819 nearly two years now and I am curious as to the time line for acting
2820 and what possible actions you believe the commission could take.

2821 Mr. McIntyre. There are a number of different actions we
2822 could take. As has been referenced, any significant overhaul of
2823 PURPA would have to come from the Congress. Within the scope of

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2824 FERC, some of the issues that we look at and that we hear from
2825 constituents on -- constituencies, I should say -- stakeholders
2826 on, are have we properly treated the question of how a particular
2827 project is measured.

2828 Some accuse some of the players in industry as engaging in
2829 gamesmanship in how they slice the size of a project -- to take
2830 a project of a certain size and break it into smaller components
2831 for purposes of PURPA treatment so that it gets the benefit of
2832 being considered to be a so-called qualifying facility under
2833 PURPA.

2834 That's one of many examples I could give you. The states
2835 have a role here too because it is the states that determine the
2836 rate at which PURPA generators are compensated -- the so-called
2837 avoided cost rates.

2838 So I think that these are issues that we can look at within
2839 our existing statutory authority.

2840 Mr. Walberg. I appreciate hearing that. I would agree with
2841 you and I agree in looking at PURPA myself that while Congress
2842 I think ought to take action on it, yet there are significant
2843 changes -- significant upgrades, modifications that I believe
2844 FERC can make on your own, and then we can follow on and be an
2845 asset to you.

2846 Commissioner Chatterjee, you stated in your testimony that
2847 significant changes related to PURPA would require congressional

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2848 action, as we agree. But I am under the belief that FERC can
2849 address many issues with PURPA right now, including problems with
2850 the one-mile rule, which I think goes into gaming, as you talked
2851 about, Chairman, and reduce the 20-megawatt threshold of a QF in
2852 organized markets if the FERC decided to do.

2853 So would you consider, Mr. Chatterjee, fixing the one-mile
2854 rule and adjusting the megawatt size of QFs in organized markets
2855 a significant change?

2856 Mr. Chatterjee. Thank you for the question, Congressman.
2857 Just to clarify, what I said in my testimony was that major
2858 structural changes to PURPA need to come from Congress but that
2859 does not mean that we can't look at things within FERC's own
2860 regulations and I do believe both issues that you have identified
2861 the one-mile rule and the 20-megawatt threshold are things that
2862 FERC could consider and address.

2863 I think the record is already there to potentially act on
2864 the one-mile rule and while additional development of the record
2865 could be helpful on the 20-megawatt threshold, there is already
2866 arguably enough in the existing record that the commission could
2867 proceed on it.

2868 And in the limited time I served as chairman I stated that
2869 this was a top priority of mine and I hope to work with Chairman
2870 McIntyre and my colleagues to work on these and other elements
2871 of it.

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2872 While you have an excellent bill, the likelihood of that bill
2873 getting through my former colleagues in the United States Senate
2874 could be a challenge and therefore I think it's incumbent upon
2875 us to do what we can.

2876 Mr. Walberg. Don't curse the project.

2877 [Laughter.]

2878 Thank you. I see my time has expired so I yield back.

2879 Mr. Upton. Mr. Duncan.

2880 Mr. Duncan. Thank you, Mr. Chairman.

2881 Commissioner Powelson, you mentioned in your opening
2882 statement I believe that FERC is aware of the frequency of cyber
2883 and physical threats to the nation's infrastructure and that you
2884 believe that threat is only increasing.

2885 And I want to commend the commission for making cyber and
2886 physical security a top priority. How can Congress work together
2887 with you and with the administration to make this a top priority
2888 in our upcoming infrastructure reform bill?

2889 Mr. Powelson. Congressman, great question, and I think it
2890 starts with where we've evolved over the last eight years with
2891 cyber -- building these cyber protocols. Interagency
2892 cooperation has been critically important.

2893 It started off really as a silo mentality, and now the
2894 dissemination of that information and that capacity building, as
2895 I mentioned earlier, down to the states, your state included,

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2896 that's a big challenge, going forward.

2897 But I think it's a resource issue. Resources as -- you know,
2898 our operation at the FERC there's probably 20 to 25 people who
2899 are fully engaged in this effort -- the effort that Secretary Perry
2900 is undertaking with his Office of Cybersecurity another step
2901 forward.

2902 But I just think it continues to evolve. There's no silver
2903 bullet to this, if I could use that expression lightly.

2904 Mr. Duncan. Are you all working with any private entities?
2905 And I guess the question is are you familiar with what Clemson
2906 University is doing with grid simulator and infrastructure
2907 simulator down in Charleston? Are you all familiar with that?

2908 Mr. Powelson. So two things that you're seeing across the
2909 states that we are involved with -- one is the GridX exercise,
2910 which I understand is run by NERC. We also have these tabletop
2911 exercises in my home state. We did what we call a black sky event
2912 and you look at all these different scenarios and under I guess
2913 Chairman --

2914 Mr. Duncan. Is it primarily looking at cyberattacks when
2915 you do that?

2916 Mr. Powelson. It is all part of that, yes.

2917 Mr. Duncan. Because, I mean, you're familiar with the
2918 geomagnetic storm that have hit in the northeast and Canada --
2919 power outages and -- you know, we've got to be prepared for both

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2920 natural GMDs but also EMPs -- manmade -- because we've got "Rocket
2921 Man" in North Korea that could definitely send a nuclear weapon
2922 into the atmosphere and create an EMP and I hope that you guys
2923 are looking at that as well.

2924 Mr. Powelson. I think from a preparedness posture, I think
2925 we -- I can say we are. But it is -- again, it's evolving. Again,
2926 another great step is the work at DOE in their cyber office, and
2927 collaborating with the states. I firmly believe we are helping
2928 states build much-needed capacity.

2929 Mr. Duncan. Can we drill down on that, helping states? And
2930 let me ask how you're helping, say, the private or the small
2931 cooperative -- electrical cooperatives in the states. What are
2932 you doing to help those guys?

2933 Mr. Powelson. I don't know. That's a good question. The
2934 reason I don't know is some of these entities are not regulated
2935 by a state public utility commission. They're part of public
2936 power.

2937 But I do know that public power is participating in these
2938 cyber protocols. So --

2939 Mr. Duncan. Just bringing it up with Duke Energy then, and
2940 you're working with companies like Duke and Southern?

2941 Mr. Powelson. We are.

2942 Mr. Duncan. Okay. In what ways? I mean, technical
2943 advice, you know, inviting them to these simulations?

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2944 Mr. Powelson. Well, Southern -- under their chairman and
2945 CEO Tom Fanning, he's a leader in the ISAC. We also do it through
2946 an audit process.

2947 Lynn Good, who runs Duke Energy, is also active in that.
2948 We've had through the working groups at EEI, the evolution of a
2949 cyber mutual assistance protocol which, again, was a newly tasked
2950 effort.

2951 So these are -- again, these are merging resources that are
2952 coming out of the discussions here in Washington. I think it's
2953 a good -- it's a good posture for us to be -- to be leading.

2954 But there are challenges and I think those challenges start
2955 with providing those resources to build up these capacities.

2956 Mr. Duncan. As we work on the infrastructure bill. I am
2957 one member of Congress that hopes we will look at grid hardening
2958 as part of the infrastructure package that we do.

2959 Let me just ask one further question. Duke Energy has the
2960 Bad Creek project in northern Pickens County, which has a hydro
2961 storage facility to pump water from Lake Jocassee to a hydro
2962 storage facility, release it. Turns the turbines during peak
2963 demand, provide electricity for that demand, and then during low
2964 peak it'll pump the water back up, reverse the turbines, and store
2965 that water.

2966 It's a great energy storage concept. I know we are doing
2967 that with solar power. How active are you all involved with --

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2968 I think Ms. Castor asked that question -- with the hydro storage
2969 for basically battery capacity for wind and solar?

2970 Mr. Glick. Mr. Duncan, if I may, I think we actually issued
2971 a rule several weeks ago which actually provides -- and it's not
2972 only for battery storage but also for pump storage in terms of
2973 facilitating their participation in the wholesale markets and I
2974 think that's -- I think in addition to that, the commission has
2975 authority over the licensing of hydro projects as well. So we'll
2976 be involved in that.

2977 For the most part, it's actually just facilitating or ending
2978 or eliminating those market barriers that currently exist for
2979 those types of technologies participating.

2980 Mr. Duncan. I thank you for that.

2981 My time is expired. I yield back.

2982 Mr. Upton. Mr. Lance.

2983 Mr. Lance. Thank you, Mr. Chairman, and I want to thank you
2984 and Ranking Member Rush for permitting me to participate today.
2985 I am a member of the full committee but I am not a member of this
2986 subcommittee.

2987 Chairman McIntyre, on January 19th, FERC issued a
2988 certificate of public convenience and necessity to the PennEast
2989 Pipeline Company authorizing a natural gas pipeline through
2990 Pennsylvania and New Jersey, including in the congressional
2991 district that I serve.

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2992 The certificate also gave PennEast the legal ability to file
2993 eminent domain lawsuits against private landowners. As FERC opens
2994 a docket to re-examine the pipeline certification policy, what
2995 kinds of measures will you consider to ensure a robust economic
2996 analysis of public need, especially in those instances when
2997 precedent agreements are largely signed with affiliates of the
2998 owner like in the case of PennEast?

2999 Mr. McIntyre. Well, as you know, Congressman, we have
3000 initiated a fresh look at our 1999 certificate policy statement
3001 that addresses some of these issues.

3002 We are looking forward to robust public input, input from
3003 stakeholders and the public on the important issues involved here
3004 including the ones that you have cited.

3005 Mr. Lance. I thank you.

3006 Commissioner LaFleur, how will you ensure a project's
3007 environmental impacts are sufficiently considered, a topic you
3008 discussed in your concurring opinion?

3009 Ms. LaFleur. I think that's one of the main issues we will
3010 be teeing up for looking at when we look at the policy statement,
3011 both how we best do our environmental work on the traditional parts
3012 of the pipeline but also downstream impacts of the end uses that
3013 the pipeline contributes to, including climate impacts. I think
3014 that'll be directly to that.

3015 Mr. Lance. Commissioner Chatterjee, what steps will you

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3016 take to prevent negative consequences on landowners, a concern
3017 you described in your concurring opinion?

3018 Mr. Chatterjee. Yes, sir.

3019 I did have concerns about landowner protection and it's
3020 something that as we explore the revisitation of our pipeline
3021 certificate process I want to ensure that landowners' voices are
3022 heard, that they understand the steps available to them to
3023 potentially, you know, mitigate concerns that they may have --
3024 rerouting and other types of elements.

3025 I want to make sure that they feel that their voices are
3026 recognized as part of that process and there's a commitment.

3027 Mr. Lance. Thank you.

3028 Commissioner McIntyre -- Chairman McIntyre, as FERC reviews
3029 the pipeline certification policy, how will you ensure state and
3030 local rights are adequately protected?

3031 This past June, the New Jersey Department of Environmental
3032 Protection denied PennEast a freshwater wetlands individual
3033 permit and a water quality certificate, which are required to
3034 begin construction under the Natural Gas Act.

3035 What steps, if any, will FERC take to safeguard state and
3036 local autonomy?

3037 Mr. McIntyre. There are certain actions that are well
3038 beyond our reach in terms of our ability to restrict state roles
3039 assigned to them by statute.

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3040 Often, it is the case that these questions that come up have
3041 to be resolved by the courts and I do not expect that to change
3042 anytime soon. But, certainly, we are reflective of and
3043 respectful of the state's role.

3044 Mr. Lance. Thank you. It's my considered judgment that
3045 this is not in the best interest of the United States. It's
3046 certainly not in the best interest of New Jersey, and we in New
3047 Jersey -- our state officials have significant concerns with this.

3048 Some of the pipeline would be under preserved land and there
3049 is in the underlying statute I think written in the 1930s a belief
3050 in comity with state statutory law and I would hope that the
3051 commission would re-examine all of this.

3052 On a completely unrelated issue, Chairman McIntyre, with
3053 regard to FERC's March 15th revised policy statement on the
3054 treatment of income taxes for masters limited partnerships, could
3055 you please explain your rationale in advancing a blanket
3056 prohibition of recovering of an income tax allowance for oral
3057 MLPs? You may have discussed this previously. But I
3058 respectfully ask you that question.

3059 Mr. McIntyre. Yes, that's fine, Congressman.

3060 We were faced with an appellate court decision directing us
3061 to address that specific issue. We took action that we regarded
3062 as appropriate in light of the directives from the court.

3063 Mr. Lance. Does any other member of the commission wish to

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3064 discuss that?

3065 Commissioner LaFleur.

3066 Ms. LaFleur. I would just say that even before the United
3067 Airlines case that led to the March order there was an earlier
3068 case where we were chastised by a court for double taxation.

3069 It's been brewing ever since then. We did a notice of
3070 inquiry and took a lot of testimony from people in the pipeline
3071 industry and others to try to build a full record and did not find
3072 any way to achieve the requirements of the court other than the
3073 way that we --

3074 Mr. Lance. Thank you for your responses, and I yield back
3075 three seconds. And thank you very much, Mr. Chairman.

3076 Mr. Upton. Gentleman's time has expired.

3077 Mr. Kennedy.

3078 Mr. Kennedy. Thank you, Mr. Chairman.

3079 I want to thank all our witnesses for being here. It's nice
3080 to have a full complement of the commissioners testifying before
3081 Congress. Grateful for your service. Grateful for the time.

3082 For those of you that I have not met yet, I look forward to
3083 working with you. For those of you who I have, welcome back.

3084 Over the past five years, I've become very familiar with FERC
3085 processes, more so than I ever thought I would. I've appreciated
3086 the willingness of both members from the commission and,
3087 critically, your staff to engage with both me and my staff on this

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3088 issue and I look forward to continuing that cooperation in the
3089 future.

3090 As you all know, the issue of transparency and the
3091 opportunity to be heard have been a focal point of my work here
3092 in Congress and with the commission, and you have heard the issue
3093 about transparency come up a number of times from my colleagues
3094 today.

3095 Several years ago, ratepayers in my home region, ISO New
3096 England, were shut out of the administrative and judicial review
3097 processes due to an unintended consequence in the Federal Power
3098 Act.

3099 Chairman McIntyre, I gratefully appreciate your comments in
3100 your written testimony describing your commitment to
3101 transparency, sir, and as I've said before, if there's any lesson
3102 that I've learned from Washington is that the more complex an issue
3103 is, the more likely that someone's being taken advantage.

3104 So we've worked on a bipartisan basis on this committee to
3105 advance, in my estimation, a straightforward bill to address that
3106 issue. We are working with our colleagues in the Senate to try
3107 to find agreement on the legislation.

3108 Under Section 205, the rates are allowed to take effect by
3109 operation of law if the commission does not act within a statutory
3110 time period of 60 days.

3111 To start, I guess, with Mr. Glick, to the extent that you

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3112 know, sir, how often does that happen? How often does it take
3113 -- do rates take effect by operation of law? Are you familiar
3114 at all?

3115 Mr. Glick. Thank you, Mr. Kennedy.

3116 I don't -- I couldn't give you an exact number. I will supply
3117 that for the record.

3118 I can tell you it is -- it is relatively rare, although it
3119 is certainly foreseeable. We have five commissioners now, you
3120 would think, but the commissioners do recuse themselves on certain
3121 occasions and you could very well have a 2-2 vote, in which case
3122 the commission would actually not be able to stop or either --
3123 or prevent a particular proposed change in the tariff under
3124 Section 205 of the Federal Power Act from becoming law.

3125 Mr. Kennedy. And is there a difference -- if, for instance,
3126 the commission fails to act within 60 days? A difference in the
3127 actual distinction?

3128 Mr. Glick. The only distinction is that, and I think as you
3129 pointed out, that the party that feels itself aggrieved doesn't
3130 have the ability to seek rehearing or take it on appeal to the
3131 D.C. Circuit.

3132 Mr. Kennedy. And how do we know if a commission actually
3133 deadlocks? Is there a requirement that a vote be held or is that
3134 more out of custom than formal practice?

3135 Mr. Glick. There's not requirement a vote can be held. If,

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3136 again, if the commission doesn't act at all within 60 days it
3137 automatically -- the tariff change automatically goes into
3138 effect.

3139 Mr. Kennedy. And so, Mr. Glick, what is the commission doing
3140 to ensure that aggrieved parties are not locked out of that review
3141 process?

3142 Mr. Glick. Well, again, I think -- I think that, at least
3143 for this particular issue, I think it does require a congressional
3144 change, and I know you have a bill and there's a bill in the Senate
3145 as well Mr. Markey has put forward.

3146 But I think that -- I think the best we can do is actually
3147 ensure as much transparency as possible and involve public
3148 participation. But if there is a 2-2 deadlock we are unable --
3149 I don't think we have the authority currently to address that.

3150 Mr. Kennedy. And I appreciate that, sir, and I guess I would
3151 go back to Mr. McIntyre, given your comments about transparency.

3152 Your thoughts on this issue and whatever else the commission
3153 should be doing or can be doing to take on that issue of
3154 transparency.

3155 Mr. McIntyre. Thank you, Congressman.

3156 It's a valid concern, but I personally am heartened by the
3157 fact that it arises very, very rarely, and I don't have a figure
3158 for you either. But the one I've heard informally within the
3159 agency is once every dozen years or so.

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3160 Mr. Kennedy. And, Mr. McIntyre, and I appreciate that, sir.
3161 I don't mean to make light of that. The fire hydrants outside
3162 my street haven't been used all that frequently either. I am glad
3163 they're there because when they do need to be used I hope they
3164 work.

3165 And so, respectfully, and understood that it doesn't happen
3166 very often, but when it does, it comes with a fairly big
3167 consequence, as we saw if -- in FCCA for residents in
3168 Massachusetts.

3169 And so just because it doesn't happen very often I don't think
3170 -- well, we can be heartened by it -- doesn't mean that we shouldn't
3171 address the fact because when it does it can be a big deal.

3172 Mr. McIntyre. I agree with you. In terms of legislative
3173 approach, if this is something where it would be helpful for us
3174 to work with you on language, we'd be happy to do that, because
3175 language wise right now under existing law, unless a party is
3176 aggrieved by a commission order -- an order of the commission --
3177 it cannot go forward to judicial review.

3178 And so the lack of an order is what would be a stymieing factor
3179 there.

3180 Mr. Kennedy. Yes, I agree.

3181 Ms. LaFleur.

3182 Ms. LaFleur. Well, I am on record in favor of the Fair Rates
3183 Act. I believe I've testified or done it in a QFR or something

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3184 before.

3185 I think it would be a good improvement to the Federal Power
3186 Act. I was on the commission. I was the chairman of the
3187 commission when we split 2-2.

3188 We did put out statements of the underlying views in dispute
3189 to provide transparency and I think we worked very hard to avoid
3190 deadlocks.

3191 I did believe -- I was in the group that thought that the
3192 rates were just and reasonable but I think the act would be a good
3193 improvement.

3194 Mr. Kennedy. I appreciate that.

3195 Thank you, Chairman.

3196 Mr. Upton. Thank you.

3197 Be that there are no further members wishing to ask
3198 questions, I would like to thank all of our witnesses for appearing
3199 today for sure.

3200 Before we conclude, I want to ask unanimous consent to submit
3201 the following documents for the record: a letter from the
3202 Utilities Technology Council and a joint letter from the American
3203 Public Power Association and the National Rural Electric
3204 Cooperative Association.

3205 [The information follows:]

3206

3207 *****INSERT 8*****

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3208 And in pursuant to committee rules, I remind members that
3209 they have 10 business days to submit additional questions for the
3210 record. I would ask that the witnesses submit their response
3211 within 10 days upon receipt of those questions if you can.

3212 Without objection, this subcommittee stands adjourned.

3213 [Whereupon, at 12:53 p.m., the subcommittee was adjourned.]

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