



MEMORANDUM

July 24, 2021

To: Subcommittee on Energy Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “The Changing Energy Landscape: Oversight of FERC”

On **Tuesday, July 27, 2021 at 10:30 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building, and using Cisco Webex online video conferencing**, the Subcommittee on Energy will hold a hearing entitled, “The Changing Energy Landscape: Oversight of FERC.”

I. THE ROLE OF THE FEDERAL ENERGY REGULATORY COMMISSION

The Federal Energy Regulatory Commission (FERC) is an independent agency within the Department of Energy, led by five commissioners. It regulates the interstate transmission and sale of electricity and natural gas, as well as the rates for transportation of oil by pipeline. FERC also oversees the permitting of interstate natural gas pipelines and related facilities, reviews proposals for liquefied natural gas (LNG) terminals, and licenses hydroelectric projects. It is also responsible for the safety and inspection of dams associated with FERC-licensed projects. In addition to its licensing and ratemaking authorities, FERC oversees the wholesale electricity markets, protects the reliability of the electric grid, and reviews mergers, acquisitions, and corporate transactions by electricity companies, among other things.¹ President Biden named Commissioner Richard Glick as FERC Chairman on January 21, 2021.²

A. Electricity

Under the Federal Power Act (FPA), FERC regulates wholesale and interstate electricity and transmission rates. In that role, FERC regulates and oversees six Regional Transmission Organizations (RTOs): California Independent System Operator (ISO), ISO New England, Midcontinent ISO, PJM Interconnection, New York ISO, and the Southwest Power Pool. The Electric Reliability Council of Texas (ERCOT) is an RTO that operates and manages the electric grid in most of Texas; ERCOT is regulated at the state level. The FPA does not require FERC to regulate bulk power system reliability in the United States, including in Texas.

¹ Federal Energy Regulatory Commission, *What FERC Does* (www.ferc.gov/about/what-ferc/what-ferc-does).

² Federal Energy Regulatory Commission, *President Biden Names Glick Chairman of FERC* (Jan. 21, 2021).

FERC is currently pursuing several initiatives to reform transmission planning, cost allocation, and interconnection processes. On June 17, 2021, FERC and the National Association of Regulatory Utility Commissioners announced the formation of a joint federal-state task force on electric transmission to identify barriers to developing transmission and discuss mechanisms to address those regulatory impediments.³ Similarly, on July 15, 2021, FERC issued an Advanced Notice of Proposed Rulemaking which solicits comments on reforming regional transmission planning, cost responsibility for transmission facilities and related interconnection network upgrades, and FERC's oversight of the process for identifying and paying for new transmission facilities.⁴ FERC is also currently revising its electric transmission incentives policy.⁵

Another focus of FERC is on addressing the reliability issues that resulted from the severe winter weather and extreme cold throughout much of the south-central United States in February 2021. Those issues were especially acute in areas managed by ERCOT, which covers approximately 90 percent of Texas's power and 26 million customers.⁶ On February 16, 2021, FERC and the North American Electric Reliability Corporation (the entity designated by FERC to develop electric reliability standards) announced a joint inquiry to identify problems with the performance of the bulk-power system and, where appropriate, solutions for addressing those matters.⁷

In the past year, FERC has held multiple technical conferences and other proceedings to explore changing market conditions and the resilience and reliability of the bulk power system. For example, on September 30, 2020, then-Chairman Neil Chatterjee held a technical conference to explore state-adoption of mechanisms to price carbon dioxide emissions in FERC-jurisdictional electricity markets,⁸ which was followed by a policy statement on the issue.⁹ In recent months, Chairman Glick has initiated technical conferences to explore a variety of issues,

³ Federal Energy Regulatory Commission, FERC, NARUC to Establish Joint Federal-State Task Force on Electric Transmission (AD21-15-000) (June 17, 2021).

⁴ Federal Energy Regulatory Commission, FERC Begins Reform Process to Build the Transmission System of the Future (RM21-17-000) (July 15, 2021).

⁵ Federal Energy Regulatory Commission, FERC Proposes Further Reforms to Electric Transmission Incentives Policy, (RM20-10-000) (Apr. 15, 2021).

⁶ Energy Information Administration, *Extreme winter weather is disrupting energy supply and demand, particularly in Texas* (Feb. 19, 2021).

⁷ Federal Energy Regulatory Commission, *FERC, NERC to Open Joint Inquiry into 2021 Cold Weather Grid Operations* (Feb. 16, 2021).

⁸ Federal Energy Regulatory Commission, *Carbon Pricing in Organized Wholesale Electricity Markets* (AD20-14-000) (Apr. 15, 2021).

⁹ Federal Energy Regulatory Commission, *Policy Statement*, (AD20-14-000) (Oct. 15, 2020).

including resource adequacy and pricing in eastern electricity markets, extreme weather events, and resource adequacy in the western United States.¹⁰

B. Natural Gas

Under section 7 of the Natural Gas Act (NGA), FERC reviews applications for the siting, construction, and operation of interstate natural gas pipelines. A pipeline company cannot construct or operate an interstate natural gas pipeline without a FERC-issued “certificate of public convenience and necessity.” The certificate establishes the terms and conditions for constructing and operating a pipeline, including those related to location, engineering, rates, and mitigation of potential environmental disruption. Section 7 grants the right of eminent domain to a pipeline company that is issued a certificate of public convenience and necessity. Under NGA section 3, FERC is also responsible for issuing permits for LNG export and import facilities.¹¹ Under section 5 of the NGA, entities believing they have been overcharged file a complaint at FERC against an interstate natural gas pipeline to recover these costs.¹² However, FERC does not have the authority to establish a refund date and order refunds of over-collections, preventing customers from recovering these costs while the FERC complaint proceeding occurs for months or even years.

On February 18, 2021, FERC issued a Notice of Inquiry (Gas NOI), initiating its review of the 1999 Policy Statement on the Certification of New Interstate Natural Gas Facilities. The 1999 Policy Statement sets forth FERC’s analytical framework for deciding whether a proposed natural gas pipeline is required by the public convenience and necessity. The Gas NOI requests comments on how FERC determines the market need for a project, whether FERC should revisit its policies governing certificate holders’ use of eminent domain authority, FERC’s consideration of the environmental impacts of a proposed project, and how FERC should account for an application’s effect on environmental justice communities.¹³

FERC also recently clarified when an applicant for a certificate of public convenience can commence construction of a pipeline. In Order 871, FERC held that an applicant who has been granted a certificate of public convenience and necessity cannot commence construction until FERC acts on any request for rehearing. In Order 871-B, issued on May 4, 2021, FERC clarified that an applicant who has been granted a certificate cannot commence construction until the earlier of the date that the rehearing request is no longer pending, or 90 days following the date on which a request for rehearing is deemed denied by operation of law.¹⁴

¹⁰ See Federal Energy Regulatory Commission, *Technical Conference Schedule – 2021* (www.ferc.gov/technical-conference-schedule-2021).

¹¹ Natural Gas Act of 1938 § 7; 15 U.S.C. § 717f.

¹² *Id.* at § 717d.

¹³ *Certification of New Natural Gas Facilities*, 174 FERC 61,125 (Feb. 18, 2021).

¹⁴ Federal Energy Regulatory Commission, *Commission Provides Clarity for Landowners and Developers on Order No. 871* (May 4, 2021).

C. Hydroelectric Power

Generally, states site generation facilities, and FERC licenses hydropower facilities built by utilities in interstate commerce pursuant to authority granted by the FPA. Under FPA section 6, FERC licenses hydroelectric projects for periods of up to 50 years.¹⁵ FPA section 15 provides for the relicensing of existing projects and automatic annual extensions for those projects whose licenses have expired, but have not yet completed the relicensing process.¹⁶

In May 2020, the failures of the Edenville and Sanford Dams in Michigan caused catastrophic flooding, resulting in the evacuation of over 10,000 residents and hundreds of millions of dollars in damage.¹⁷ On April 15, 2021, FERC assessed a \$15 million civil penalty against Boyce Hydro for numerous dam safety violations.¹⁸ Recognizing the public safety hazards posed by non-operational or non-compliant hydroelectric projects where licensees cannot afford ongoing operation and maintenance expenses, FERC issued a Notice of Inquiry (NOI) on January 19, 2021. In this NOI, FERC sought information on what changes, if any, it should make to its practices for requiring financial assurance measures in licenses and other authorizations for hydroelectric projects.¹⁹

II. OTHER INITIATIVES

FERC is undertaking a number of other initiatives related to cybersecurity, environmental justice, and in response to a Congressional directive that it establish an Office of Public Participation.

In December 2020, a cyberattack affected the departments of Homeland Security, Defense, Commerce, the Treasury and State, as well as the Department of Energy, and FERC.²⁰ On July 7, 2021, FERC and the Electricity Information and Analysis Sharing Center (E-ISAC) issued a report that, among other things, emphasizes the need for continued vigilance by the

¹⁵ Federal Power Act, 16 U.S.C. § 799.

¹⁶ *Id.* at § 808(a).

¹⁷ Letter from Hon. Gretchen Whitmer to Hon. Donald Trump (Jun. 15, 2020), (www.mlive.com/news/saginaw-bay-city/2020/06/gov-whitmer-formally-asks-president-trump-to-declare-mid-michigan-flooding-a-major-disaster.html).

¹⁸ Federal Energy Regulatory Commission, *FERC Imposes \$15 Million Penalty for Dam Safety Violations at Michigan Dams* (Apr. 15, 2021).

¹⁹ Federal Energy Regulatory Commission, *Financial Assurance Measures for Hydroelectric Projects* (Jan. 19, 2021).

²⁰ E&E, 'This is bad.' Hacking chaos engulfs FERC, DOE, Microsoft (Dec. 18, 2020).

electricity industry related to such incidents.²¹ The E-ISAC report recommends actions to ensure the reliability and security of the bulk power system.²²

FPA Section 319 directs FERC to establish an Office of Public Participation (OPP). In December 2020, Congress directed FERC to provide explanatory details on how the agency will establish and operate the OPP and to provide Congress with an organizational structure and proposed budget for such office. In response to this Congressional directive, FERC sought public input on the OPP through listening sessions, a Commissioner-led workshop, and a written comment period. FERC issued the required report on June 24, 2021,²³ setting forth the OPP's proposed structure, recommended functions, and stating that the OPP will reach its full operating capacity in 2024.

FERC has also taken action to incorporate environmental justice concerns into its decision-making process. In addition to its environmental justice efforts within the Gas NOI, on May 20, 2021, Chairman Glick announced Montana Cole's appointment as FERC's Senior Counsel for Environmental Justice and Equity.²⁴ Further, FERC's June 24, 2021 report on the OPP states that OPP will ensure that "[t]ribal members, environmental justice communities, and other historically marginalized communities are fully and fairly considered in Commission proceedings."

III. WITNESSES

The Honorable Richard Glick
Chairman
Federal Energy Regulatory Commission

The Honorable Neil Chatterjee
Commissioner
Federal Energy Regulatory Commission

The Honorable James Danly
Commissioner
Federal Energy Regulatory Commission

The Honorable Allison Clements
Commissioner
Federal Energy Regulatory Commission

²¹ Federal Energy Regulatory Commission, *SolarWinds and Related Supply Chain Compromise* (July 7, 2021).

²² *Id.*

²³ Federal Energy Regulatory Commission, *The Office of Public Participation* (June 24, 2021).

²⁴ Federal Energy Regulatory Commission, *Glick Names Montana Cole to Top Environmental Justice Post at FERC* (May 20, 2021).

The Honorable Mark C. Christie
Commissioner
Federal Energy Regulatory Commission