

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

April 15, 2018

To: Subcommittee on Energy Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Oversight of the Federal Energy Regulatory Commission and the FY2019 Budget”

On **Tuesday, April 17, 2018, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Energy will hold a hearing on “Oversight of the Federal Energy Regulatory Commission and the FY2019 Budget.”

I. THE ROLE OF THE FEDERAL ENERGY REGULATORY COMMISSION

The Federal Energy Regulatory Commission (FERC or the Commission) is an independent agency (technically within the Department of Energy) headed by five commissioners. President Trump appointed the current Chairman, Kevin J. McIntyre, in August 2017, and the Senate confirmed him on November 2, 2017. President Trump also nominated Commissioners Neil Chatterjee, Robert F. Powelson, and Richard Glick. President Obama appointed Commissioner Cheryl A. LaFleur in 2010, and the Senate confirmed her for a second term in 2014.¹

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

¹ Federal Energy Regulatory Commission, About FERC, *Commission Members*, (Feb. 20, 2018) (www.ferc.gov/about/com-mem.asp).

to wholesale electricity markets, protecting the reliability of the electric grid, reviewing mergers, acquisitions, and corporate transactions by electricity companies, and the siting of certain electric transmission facilities.²

A. ELECTRICITY

Under the Federal Power Act (FPA), FERC has authority to regulate wholesale and interstate electricity and transmission rates. In general, state public utility commissions have authority to issue siting approvals for new intrastate transmission lines. FERC regulates and oversees six Regional Transmission Organizations (RTOs): California Independent System Operator (ISO), ISO New England, Midwest ISO, PJM Interconnection, the New York ISO, and Southwest Power Pool. The Electric Reliability Council of Texas (ERCOT) is an RTO that operates and manages the electric grid in Texas, but is regulated at the state level, not by FERC.³

B. HYDROELECTRIC POWER

In general, states site generation facilities; however, FERC licenses hydropower facilities built by utilities in interstate commerce under the FPA.⁴ Under section 6 of the FPA, FERC licenses hydroelectric projects for periods of up to 50 years.⁵ Section 15 of the FPA provides for the relicensing of existing projects and automatic annual extensions for those projects whose licenses have expired, but have not completed the relicensing process.⁶

C. NATURAL GAS

Under section 7 of the Natural Gas Act, FERC reviews applications for the siting, construction, and operation of interstate natural gas pipelines. A pipeline company cannot construct or operate an interstate natural gas pipeline without a FERC-issued “certificate of public convenience and necessity.”⁷ The certificate establishes the terms and conditions for constructing and operating a pipeline, including those related to location, engineering, rates, and environmental mitigation. Section 7 grants the right of eminent domain to a pipeline company that is issued a certificate of public convenience and necessity by FERC. Under section 3 of the Natural Gas Act, FERC also is responsible for issuing permits for specific liquefied natural gas export and import facilities.⁸

² *Id.*

³ Federal Energy Regulatory Commission, Regional Transmission Organizations (RTO)/Independent System Operators (ISO), (Apr. 11, 2018) (www.ferc.gov/industries/electric/indus-act/rto.asp).

⁴ Federal Power Act, 16 U.S.C. § 791a et seq.

⁵ *Id.* at § 799.

⁶ *Id.* at § 808(a).

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

⁸ *Id.*

II. FEDERAL ENERGY REGULATORY COMMISSION FISCAL YEAR 2019 BUDGET

The President's Fiscal Year (FY) 2019 budget requests \$369.9 million for FERC, which represents a \$2.3 million increase from the FY 2018 budget request, and \$23.1 million more than the FY 2018 enacted level. Over two-thirds of the Commission's budget is dedicated to funding salaries and benefits for FERC employees. The remainder of FERC's requested budget provides funding for the Commission's statutory responsibilities, investing in technology to improve efficiency and cyber security, and modernizing buildings to accommodate the relocation of employees to the FERC headquarters.⁹

Statute requires FERC to recover the full cost of its operations through a fee process. The Commission collects annual charges and filing fees from the industries it regulates and deposits them into the U.S. Treasury. The Commission recovers these fees to support its regulatory responsibilities, resulting in a net appropriations of zero.¹⁰

III. GRID RESILIENCE AND RELIABILITY

On September 28, 2017, the Secretary of Energy transmitted to FERC a proposed rule to address the Trump Administration's concern that regulated wholesale electricity markets are not adequately pricing the "resiliency attributes" of baseload power sources, mainly coal and nuclear generation. The Secretary's Notice of Proposed Rulemaking (NOPR) directed FERC to take final action on the proposal within 60 days of the NOPR's publication in the Federal Register.¹¹ On January 8, 2018, the FERC Commissioners voted unanimously to terminate the NOPR and initiate a new proceeding requesting the RTOs and ISOs to explore resilience issues within each electric system to determine if any further action needs to be taken by the Commission.¹²

In light of FERC's unanimous decision to decline the NOPR, on March 29, 2018, FirstEnergy Solutions Corp. (FirstEnergy) requested for DOE to use its authority under FPA section 202(c) to issue an emergency "must-run" order for 85 coal and nuclear plants within the PJM Interconnection. FirstEnergy requested further that PJM be allowed to compensate "at-risk" generators with 25 days of onsite fuel supply for the fuel security and resiliency benefits

⁹ Federal Energy Regulatory Commission, Fiscal Year 2019 Congressional Performance Budget Request (Apr. 9, 2018) (www.ferc.gov/about/strat-docs/2018/FY19-Budget-Request.pdf); All budget information for FY 2018 enacted levels in this memorandum taken from the text of the Consolidated Appropriations Act, 2018, Pub. L. No. 115-141.

¹⁰ *Id.*

¹¹ 18 C.F.R. Part 35.

¹² 162 FERC ¶ 61,012.

they provide to the electric grid.¹³ Section 202(c) allows the Secretary of Energy to issue must-run orders to generators in times of war or in the case of an emergency caused by

a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities....¹⁴

The terms of must-run orders are required to be “just and reasonable, including the compensation and reimbursement” for generators.¹⁵ Both FERC and PJM have concluded that current market conditions do not prove to be a threat to reliability, yet FirstEnergy’s request claims that current market conditions for coal and nuclear generators within the PJM Interconnection are a threat to grid security and resiliency.¹⁶

In an effort to promote resilience of the nation’s bulk power system, FERC issued Order Number 841 on February 15, 2018. This order directed RTOs and ISOs to remove barriers limiting the participation of electric storage resources in electric wholesale markets. The order requires wholesale markets to consider the physical and operational characteristics of electric storage when establishing market rules and tariffs. Wholesale electricity markets will be required to sell electric power to storage resources, which can be sold back to the market at the locational marginal price. FERC Order 841 will become effective on June 4, 2018.¹⁷ FERC announced that staff will host a technical conference June 27-28, 2018 addressing ways to promote resilience of the bulk power system.¹⁸

IV. WITNESSES

The following witnesses have been invited to testify:

The Honorable Kevin J. McIntyre
Chairman
Federal Energy Regulatory Commission

The Honorable Cheryl A. LaFleur
Commissioner
Federal Energy Regulatory Commission

¹³ Letter from Rick C. Giannantonio, General Counsel, FirstEnergy Solutions Corp., to The Honorable James Richard Perry (Mar. 29, 2018).

¹⁴ 16 U.S.C § 791a, as amended through The Fixing America’s Surface Transportation (FAST) Act of 2015, Pub. L. No. 114-94.

¹⁵ *Id.*

¹⁶ *See* Note 12.

¹⁷ 18 CFR 35.

¹⁸ 83 FR 14634.

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