

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 14, 2005

OFFICE OF THE CHAIRMAN

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

RE: Federal Energy Legislation

Dear Congressman Dingell:

This letter responds to your request at the February 10, 2005, hearing before the Subcommittee on Energy and Air Quality on the Energy Policy Act of 2005 discussion draft. At the hearing, you requested specific legislative text for the changes proposed by the Chairman of the Federal Energy Regulatory Commission to the legislation. I have enclosed the text with this letter. I want to emphasize that the discussion draft in its current form addresses the major issues affecting Commission-regulated industries and I support it. The recommended modifications and additions are only suggested improvements to the bill.

This letter also responds to your request for an estimate of the level of expenses that would be incurred in implementing the reliability provisions in Section 1211 of the discussion draft. There are two expense-related provisions in the discussion draft. The first provision would place a \$50 million per year cap, in each of the fiscal years 2006 through 2015, on dues, fees and other charges that would be collected by the Electric Reliability Organization (ERO). The second provision would authorize to be appropriated not more than \$50 million per year, for fiscal years 2006 through 2015, "for all activities" under the new reliability provisions.

The two ERO provisions, as written, are subject to differing interpretations and my staff is still studying them and consulting with North American Electric Reliability Council (NERC) with respect to NERC expenses. However, I believe the cost to the FERC of administering its responsibilities under the new reliability provisions will be approximately \$5 million per year. Last fiscal year, in the wake of the August 2003 blackout, Congress earmarked \$5 million to the FERC for reliability activities. We have used this money productively to investigate the causes of the blackout, promote new reliability policy initiatives, and hire new staff with reliability expertise. The President has requested and we received the same \$5 million for the current fiscal year. Therefore, we estimate that the funding needed for the FERC to implement the legislation represents

no increase over the current and previous fiscal year reliability expenditures. I do not have an estimate for the additional funding that may be needed for the ERO to implement the legislation.

If you need additional information, please do not hesitate to let me know.

Best regards,

A handwritten signature in black ink, appearing to read 'Pat Wood, III'. The signature is stylized and written over a vertical line.

Pat Wood, III
Chairman

cc: The Honorable Joe Barton, Chairman
House Committee on Energy and Commerce

Enclosure

NATURAL GAS PROVISIONS

I. Proposed Amendments to the February 8, 2005 Discussion Draft Language of the Energy Policy Act of 2005.

Market Transparency

SEC. 332. NATURAL GAS MARKET REFORM.

* * *

(c) JURISDICTION OF THE CFTC- The Natural Gas Act (15 U.S.C. 717 et seq.) is amended by adding at the end:

“SEC. 26. JURISDICTION.

~~“This Act shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Any request for information by the Commission to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas, electricity, and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the Commodity Futures Trading Commission, which shall cooperate in responding to any information request by the Commission.”~~

* * *

SEC. 333. NATURAL GAS MARKET TRANSPARENCY.

The Natural Gas Act (15 U.S.C 717 et seq.) is amended—

- (1) by redesignating section 24 as section 25; and
- (2) by inserting after section 23 the following:

“SEC. 24. NATURAL GAS MARKET TRANSPARENCY.

“(a) AUTHORIZATION- The Commission is authorized to issue such rules as it deems appropriate to establish an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in wholesale natural gas markets. The Commission may require such system to provide information

about the availability and prices of natural gas sold at wholesale in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public on a timely basis. The Commission shall have authority to obtain such information from any market participant, and to rely on an entity other than the Commission to receive and make public such information.

“(b) EXEMPTIONS- The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security. In determining the information to be made available under this section and time to make such information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

~~(1) Not later than 180 days after the date of enactment of the Energy Policy Act of 2005, the Federal Energy Regulatory Commission shall issue rules directing all entities subject to the Commission's jurisdiction as provided under this Act to timely report information about the availability and prices of natural gas sold at wholesale in interstate commerce to the Commission and price publishers.~~

~~“(2) The Commission shall evaluate the data for adequate price transparency and accuracy.~~

~~“(3) Rules issued under this subsection requiring the reporting of information to the Commission that may become publicly available shall be limited to aggregate data and transaction-specific data that are otherwise required by the Commission to be made public.~~

~~“(4) In exercising its authority under this section, the Commission shall not—
“(A) compete with, or displace from the market place, any price publisher;
or
“(B) regulate price publishers or impose any requirements on the publication of information.~~

“(b)(c) SAVINGS PROVISION- In exercising its authority under this section, the Commission shall not--

“(1) compete with, or intentionally displace from the market place, any commercial price publisher; or

“(2) regulate price publishers or impose any requirements on the publication of information by such price publishers.

~~TIMELY ENFORCEMENT—No person shall be subject to any penalty under this section with respect to a violation occurring more than 3 years before the~~

~~date on which the Federal Energy Regulatory Commission seeks to assess a penalty.~~

~~“(e)(d) LIMITATION ON COMMISSION AUTHORITY- (1) The Commission shall not condition access to interstate pipeline transportation upon the reporting requirements authorized under this section.~~

~~“(2) Natural gas sales by a producer that are attributable to volumes of natural gas produced by such producer shall not be subject to the rules issued pursuant to this section.~~

~~“(3) The Commission shall not require natural gas producers, processors, or users who have a de minimis market presence to participate in the reporting requirements provided in this section.”.~~

II. Proposed Amendments to the Statutory Language of the Natural Gas Act and Natural Gas Policy Act.

Liquefied Natural Gas Provisions

The following proposed amendments would replace Section 1442 in Title XIV of the Feb. 8, 2005 discussion draft.

Section 3 of the Natural Gas Act (15 U.S.C. 717b) is amended by adding at the end the following:

“(d) IMPORT FACILITIES. –

“(1) The Commission shall have the exclusive authority to approve or disapprove the siting, construction, expansion, or operation of facilities located onshore or in State waters for the import of natural gas from a foreign country or the export of natural gas to a foreign country. Requirements for authorizations from other Federal or State agencies under Federal law, including the Coastal Zone Management Act and the Clean Water Act, shall remain in effect subject to the provisions of sections 16 and 19 of this Act.

“(2) No facilities located onshore or in State waters for the import of natural gas from a foreign country or the export of natural gas to a foreign country shall be sited, constructed, expanded, or operated, unless the Commission has authorized such acts or operations.

“(3) The provisions of section 7(h) of this Act shall apply to the acquisition, pursuant to authorization under this section, of land or other property necessary for the siting, construction, expansion, or operation of facilities located onshore or in State waters for the import of natural gas from a foreign country or the export of natural gas to a foreign country.”

Section 16 of the Natural Gas Act (15 U.S.C. 717p) is amended by adding at the end the following:

“(c) ENVIRONMENTAL REVIEW

“(1) With respect to any application for authorization under section 3 or a certificate of public convenience and necessity under section 7 of this Act, and any other Federal or State administrative proceeding under Federal law that is required in connection therewith, the Commission shall, unless it orders otherwise, be the lead agency for purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(2) (A) For each proceeding referenced in subsection (1), the Commission shall, after consulting with affected Federal and State agencies and with due consideration of recommendations by such agencies, establish a schedule for all Federal and State administrative proceedings under Federal law that are required in connection with the siting, construction, expansion, or operation of a natural gas pipeline or import or export facility.

“(B) If a Federal or State administrative agency or officer fails to complete a proceeding in accordance with the schedule established by the Commission, any approval or other action required by Federal law shall be presumed without condition, and no further approval or other condition from that agency or officer shall be required.

“(3) With respect to the siting, construction, expansion, or operation of any facility under section 3 or section 7 of this Act, the administrative record compiled by the Commission shall be the sole record for all actions under Federal law with respect to the authorization of those facilities, and for judicial review of those actions.”

Section 19 of the Natural Gas Act (15 U.S.C. 717r) is amended by adding at the end the following:

“(d) All State or Federal decisions under Federal law that are required in connection with the siting, construction, expansion, or operation of a natural gas pipeline or import or export facility authorized under this Act, may be appealed directly and exclusively to a single circuit court of appeals of the United States, following action by the Commission on any application for rehearing of the Commission order under Section 3 or 7 of this Act, and in the manner prescribed in this section.

Penalties

- i. Increase in criminal penalties under the NGA and the NGPA

Section 21 of the Natural Gas Act is amended as follows:

Subsection 21(a):
by striking “\$5,000” and by inserting “\$1,000,000”; and
by striking “two years” and by inserting “five years”

Subsection 21(b):
by striking “\$500” and by inserting “\$50,000”

Section 504 of the NGPA is amended as follows:

Subsection 504(c)(1)(A):
by striking “\$5,000” and inserting “\$1,000,000”

Subsection 504(c)(1)(B):
by striking “two years” and inserting “five years”

Subsection 504(c) (2):
by striking “\$500 for each violation” and inserting “\$50,000 for each and every day during which such offense occurs”

ii. Creation of civil penalty authority under the NGA

The Natural Gas Act is amended as follows:

Inserting a new Section 21A to immediately follow Section 21, with Section 21A to read as follows:

“Any person who violates this Act or any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this Act, shall be subject to a civil penalty of not more than \$1,000,000 per day per violation for as long as such violation continues. Such penalty shall be assessed by the Commission after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation and the efforts to remedy the violation.”

iii. Increase in the amount of civil penalties available under the NGPA

Section 504 of the Natural Gas Policy Act is amended as follows:

Subsection 504(b) (6) (i):
By striking “\$5,000” and inserting “\$1,000,000”

Subsection 504(b) (6) (ii):
By striking “\$25,000” and inserting “\$1,000,000”

ELECTRIC PROVISIONS

I. Proposed Amendments to the February 8, 2005 Discussion Draft Language of the Energy Policy Act of 2005.

Market Transparency

SEC. 1281. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

“SEC. 220. MARKET TRANSPARENCY RULES.

~~“(a) IN GENERAL AUTHORIZATION- Not later than 180 days after the date of enactment of this section, t~~The Commission shall issue~~is authorized to issue such~~ rules ~~establishing as it deems appropriate to establish~~ an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction under this Act. The Commission may require ~~such systems to shall~~ provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis. The Commission shall have authority to obtain such information from any electric utility or transmitting utility, including any entity described in section 201(f), and to rely on an entity other than the Commission to receive and make public such information.

~~“(b) EXEMPTIONS-~~ The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security. This section shall not apply to transactions for the purchase or sale of wholesale electric energy or transmission services within the area described in section 212(k)(2)(A). In determining the information to be made available under this section and time to make such information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

~~“(c) COMMODITY FUTURES TRADING COMMISSION-~~ This section shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.).~~Any~~

~~request for information to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas, electricity and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the Commodity Futures Trading Commission.~~

“(d) SAVINGS PROVISION- In exercising its authority under this section, the Commission shall not--

“(1) compete with, or intentionally displace from the market place, any commercial price publisher; or

“(2) regulate price publishers or impose any requirements on the publication of information by such price publishers.”.

Electric Reliability Standards

SEC. 1211. ELECTRIC RELIABILITY STANDARDS.

(a) In general. – Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

“SEC. 215. ELECTRIC RELIABILITY.

“(a) DEFINITIONS. –

* * *

“(3) The term ‘reliability standard’ means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities, ~~and~~ the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, ~~and, in an area not included in a Commission-recognized regional planning process, the enlargement of existing transmission facilities or construction of new transmission facilities needed for reliable operations.~~ The term does not include any requirement to enlarge existing generation capacity or to construct new generation capacity. ~~but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.~~ A requirement to enlarge or construct transmission facilities shall be subject to applicable State or local siting requirements and also subject to the provisions in section 216b – 216k [Siting of Interstate Electric Transmission Facilities].

* * *

“(i) SAVINGS PROVISIONS. – (1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk power system.

“(2) This section does not authorize the ERO or the Commission to order the construction of additional generation ~~or transmission~~-capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or service.

* * *

SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

* * *

“(b) CONSTRUCTION PERMIT. – Except as provided in subsection (i), the Commission is authorized, after notice and an opportunity for hearing, to issue a permit or permits for the construction or modification of electric transmission facilities in a national interest electric transmission corridor designated by the Secretary under subsection (a) or the construction or modification of electric transmission facilities required under section 215 if the Commission finds that –

* * *

II. Proposed Amendments to the Statutory Language of the Federal Power Act

Penalties

- i. Increase in the criminal penalty authority under the FPA

Section 316 of the Federal Power Act is amended as follows:

Subsection 316(a):

by striking “\$5000” and inserting “\$1,000,000”; and
by striking “two years” and inserting “five years”

Subsection 316(b):

by striking “\$500” and inserting “\$25,000”

by striking Subsection 316(c).

- ii. Addition of Civil Penalty Authority for the FPA

Section 316A of the Federal Power Act is amended as follows:

Subsection 316A (a):

by striking “section 211, 212, 213, or 214” and inserting “Part II or Part III
of this Act”

Subsection 316A (b):

by striking “section 211, 212, 213, or 214” and inserting “Part II or of Part
III of this Act”; and
by striking “\$10,000” and inserting “\$1,000,000”

Economic Dispatch

Section 205(f) of the Federal Power Act is amended as follows:

by striking subsection (3);
by renumbering subsection (4) as subsection (3); and,
by adding a new subsection (4) at the end stating:

“(4)(A)“Efficient dispatch” defined – For purposes of this section, the term “efficient dispatch” means the operation of the integrated transmission and electric power supply system in a manner that schedules and economically prioritizes all available electric generation resources, including proposed offers from nonaffiliated power suppliers, so as to minimize the cost of electric power used to serve customers reliably, recognizing any operational limits of generation and transmission facilities, and applicable laws on environmental limitations and renewable portfolio standards.

(B) Not later than 180 days after the date of enactment of this section, the Commission, after consultation with State commissions, shall adopt (and from time to time thereafter revise) standards to guide public utilities in the implementation of efficient dispatch. Such standards shall be designed to ensure that all generation resources have the opportunity, under terms that are just, reasonable and not unduly discriminatory or preferential, to specify their availability to provide, and their price for, power and energy for inclusion in efficient dispatch.

(C) The Commission may, on its own motion or upon complaint, after an opportunity for hearing and after consultation with affected State commissions, order a multi-state public utility to use efficient dispatch if the Commission finds that its use will reduce the cost of electric power used to serve the utility’s customers reliably.”

Emergency Authority

Section 202 of the Federal Power Act is amended as follows:

By inserting a new subsection 202(h):

“Section 202(h). If necessary in emergency circumstances to ensure continued reliability of service to electric customers or to protect electric customers from potential abuse of market power in wholesale markets regulated by the Commission, the Commission, upon petition or upon its own motion, and before providing notice and an opportunity to be heard, shall have emergency authority to change or suspend temporarily the rates, terms or conditions of service on file with the Commission pursuant to the Federal Power Act, provided that the change or suspension may remain in effect no more than 30 days unless the Commission, during such period, provides formal notice and an opportunity to be heard pursuant to section 206 of the FPA and determines that such change or suspension shall remain in effect pursuant to findings under section 206. Any temporary change or suspension of a filed rate, term or condition of service pursuant to this provision shall take effect only upon a written public notice issued by the Commission which states the Commission’s findings in support of the temporary change or suspension.”