

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C. 20426

OFFICE OF THE COMMISSIONER

February 15, 2005

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:

Thank you for the opportunity to respond to your letter dated January 24, 2005, related to consideration of energy legislation in the 109th Congress.

I have enclosed my responses. If you need additional information, please do not hesitate to contact me.

Sincerely,



Suede G. Kelly
Commissioner

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

Enclosure

**COMMISSIONER KELLY'S RESPONSES TO
REPRESENTATIVE JOHN DINGELL'S QUESTIONS TO CHAIRMAN WOOD**

Question to Chairman Wood

1. At your appearance before the Subcommittee on Energy and Air Quality on March 5, 2003, you testified as follows:

In my view, the three most important steps that Congress can take are these: first, clarify FERC's authority to obtain market information necessary for price discovery and effective monitoring of natural gas and electric markets; second, increase civil and criminal penalties for violations of the Federal Power Act (FPA) and Natural Gas Act (NGA) or our rules and regulations thereunder; and, third, take the steps required to make the Alaska Natural Gas Pipeline project a reality in this decade.

- a. To what extent have these issues been addressed in the time since you presented this testimony, and how?
- b. Does the FERC have adequate authority to address these matters under current law? If not, please describe what new authority you believe is needed and provide legislative language.
- c. Are these topics still the Commission's top legislative priorities? If not, please explain and describe your new priorities, including legislative language.

Commissioner Kelly's Response

a. Chairman Wood's response to this question summarizes the steps the Commission has taken with respect to obtaining market information necessary for price discovery and effective monitoring; increasing civil and criminal penalties; and making the Alaska Natural Gas Pipeline a reality.

b. I believe the Commission should be granted greater authority to collect market information to ensure that electric and gas markets are working effectively and appropriately and to adequately prevent market manipulation. This information should be collected from all market participants.

Congress should increase the Commission's civil and criminal penalty authority under the FPA and NGA. The Commission has no civil penalty authority under the NGA and only limited civil penalty authority under Part II of the FPA. Therefore, in most cases, the only tools available to the Commission to address violations of the NGA or

FPA are refunds, disgorgement of unjust profits or revocation of market-based rate authority. Existing civil penalty amounts under Part II of the FPA should be increased and civil penalties should be expanded to include violations of any provision of Part II or Part III of the FPA. In addition, existing criminal penalties under the FPA, NGA and NGPA should be increased. Legislation should also amend the FPA, NGA and NGPA to add a separate civil penalty for false statements made during the course of any proceeding, hearing, investigation, audit or inquiry conducted by the Commission or its staff.

Congress' enactment of the Alaska Natural Gas Pipeline Act has allowed the Commission to take steps to make the Alaska natural gas pipeline a reality.

c. I believe that obtaining greater access to market information and increasing civil and criminal penalty authority continue to be important legislative priorities for the Commission. I also believe that other legislative proposals, which I discuss in my responses to Questions 2 and 4, are important.

Question to Chairman Wood

2. Your testimony of September 3, 2003, focused on issues surrounding the August 2003 blackout, and stressed the need for mandatory and enforceable reliability rules.

Your testimony also addressed the need for legislation on a number of other electricity issues, including encouragement of membership in regional transmission organizations (RTOs), transmission rate incentives, and transmission siting authority.

- a. In the absence of new federal authority, how has the Commission dealt with these issues? Please summarize significant rulemakings, policy statements, orders, or other Commission initiatives, as well as any court rulings that may affect these issues.
- b. Does current law provide the Commission with adequate authority to address these matters?
- c. If you believe new authority is needed, please provide legislative language.

Commissioner Kelly's Response

a. Chairman Wood's response to this question summarizes the Commission's initiatives with respect to reliability rules; encouraging RTO membership; and

transmission rate incentives.

b. I believe that mandatory reliability standards, with penalties available for violations, are necessary to ensure the reliability of the nation's transmission grid. I agree with the approach proposed by Commissioner Kelliher in his response to this question that the Commission should be able suspend approved reliability standards if the Commission finds they are unjust, unreasonable, unduly discriminatory or preferential, or not in the public interest, and establish an interim reliability standard pending development of a standard on remand to the electric reliability organization. In addition, legislation should allow the Commission to administer penalties, up to a specified maximum amount.

I believe the Commission currently has adequate authority to encourage membership in RTOs by public utilities.

I believe that the Commission currently has adequate authority to authorize certain transmission rate incentives.

The Commission currently lacks any transmission siting authority. I believe that Congress should allow the Commission, as a backstop, to authorize siting of needed transmission facilities.

Question to Chairman Wood

3. The conference report for H.R. 6 included a number of other provisions related to electricity matters pending before the Commission, including standard market design (section 1235), native load obligation (section 1236), voluntary transmission pricing plans (section 1242), and sanctity of contract (section 1286).
 - a. Does the Commission need new legislative authority with respect to these four areas? If so, please explain why you believe FERC's existing statutory authority is inadequate.
 - b. If the answer to (a) is yes, does the Commission favor enactment of the specific language in conference report? If the answer is no, please explain why and provide alternate language.
 - c. How would enactment of these four provisions affect current Commission policy. Please be specific.

Commissioner Kelly's Response

I do not think legislation regarding native load obligation (section 1236) is required because the Commission has adequate authority in this regard. I do not think legislation is advised in the other three specified areas. Section 1235 would remand the Commission's proposed rulemaking on standard market design. The Commission is not implementing a standard market design. Rather, different regions across the country are taking different approaches to wholesale markets for electricity and their design. Also, RTOs and ISOs are being formed taking into account regional differences. I think that section 1242 is not advisable since RTOs and ISOs use their stakeholder process to determine which customers benefit from new facilities and therefore pay for them. I do not support Section 1286, which requires the Commission to apply a "public interest" standard of review to determine whether to modify or abrogate a contract, unless the contract expressly provides for a "just and reasonable" standard of review. I believe that, unless a party specifically waives its "just and reasonable" rights under section 206 of the FPA, the Commission should review the contract under the "just and reasonable" standard.

Question to Chairman Wood

4. Please describe any other issues you would like to bring to Congress's attention as members prepare to take up energy legislation in the 109th Congress.

Commissioner Kelly's Response

FPA Merger Authority – If Congress repeals the Public Utility Holding Company Act of 1935 (PUHCA), legislation should amend FPA section 203 to give the Commission jurisdiction over public utility acquisitions of generation-only facilities and gas facilities in order to protect competitive markets. Legislation should also broaden the Commission's authority over public utility holding company mergers. I would support language that provides: "no holding company in a holding company system that includes a transmitting utility or an electric utility company shall purchase, acquire, or take any security of, or, by any means whatsoever, directly or indirectly, merge or consolidate with a transmitting utility, an electric utility company, a gas utility company, or a holding company in a holding company system that includes a transmitting utility, an electric utility company, or a gas utility company, without first having secured an order of the Commission authorizing it to do so." At a minimum, if PUHCA is repealed, legislation should provide for broad access to books and records of holding companies and their affiliates by the Commission and state commissions.

Market Manipulation – The FPA does not explicitly prohibit all forms of market manipulation. I support legislation that would prohibit energy market manipulation explicitly. Specifically, I would amend Part II of the FPA to make it unlawful for any person to use, in the purchase or sale of electric energy or transmission services, any manipulative or deceptive device or contrivance to contravene the Commission's

regulations promulgated as appropriate in the public interest or for the protection of customers. Those who manipulate the electricity markets should also be liable to pay refunds to customers impacted by the manipulation.

Transmission Investment – Studies indicate that, over the past 20 years, investment in transmission has fallen behind previous levels. I believe that legislation should provide a “Sense of Congress” to allow the Commission to encourage grid investment through stand-alone transmission companies that provide investment opportunities for all utilities dependent on a system, or by developing inclusive joint transmission systems through agreements that enable all utilities in an area to participate in owning their share of the combined transmission system.

Emergency Authority to Revise FPA Tariffs: Power markets today are much more dynamic than traditional cost-based arrangements and can require more expeditious corrective action than the procedures historically used under the FPA. The Commission should be granted emergency authority to allow temporary immediate tariff changes, or suspend tariff provisions, if necessary, to preserve reliability of electric service or to prevent market power abuse.

Open Access by Unregulated Transmitting Utilities – I support legislation that would require a transmitting utility not generally subject to the Commission’s jurisdiction to provide open access transmission services comparable to services provided by jurisdictional transmitting utilities. Open access to the part of the grid owned by unregulated transmitting utilities would make the benefits of wholesale power markets available to all customers.

Review of Market-Based Rate Authority– I do not support any legislation that would restrict the Commission’s ability to review the market-based rate authority of utilities that do not pass the Commission’s screens. I believe the Commission should continue to develop, through its rulemaking proceeding, a comprehensive market power test, and that it should retain flexibility to modify its test, if appropriate, as circumstances change over time.

Refund Effective Date – I support amending section 206 of the FPA to allow the Commission to make rates subject to refund as of the date a complaint is filed or the Commission institutes a proceeding under section 206 of the FPA.

Offshore Gathering Facilities – The Natural Gas Act does not allow the Commission to regulate offshore gathering facilities. States do not have authority to regulate offshore gathering facilities. Legislation should give the Commission authority to regulate offshore gathering facilities in order to prevent the potential abuse of market power by offshore gatherers.