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**Peter Cook, Anchor:**

The energy bill passed by Congress and signed by the President marks the first comprehensive legislation aimed at changing US energy policy in more than a decade. Some of the biggest changes in the bill affect the Federal Energy Regulatory Commission, especially the commission’s regulatory authority over the power and natural gas industries. Joseph Kelliher was named chairman of FERC a short time ago by President Bush. He will have responsibility for implementing portions of the energy bill. Chairman Kelliher joins me now in the studio.

First of all, thanks for the time today.

**Joseph Kelliher, Chairman, FERC:**

Thanks, Peter.

**Cook:**

I want to ask you first of all, just—the big picture, this energy bill—does it provide sweeping changes for the Federal Energy Regulatory Commission?

**Kelliher:**

I wouldn’t say it gives us “sweeping” changes, but I would say it’s the most significant change in the laws that we administer in seventy years. It’s really the most important change in federal electricity and gas laws since the 1930s. It does give us some new responsibilities. It gives us new authorities.



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**Cook:**

Let me start first on the electricity and power side. Mandatory reliability standard, so much attention drawn to those after the 2003 blackout—there are some responsibilities for FERC, as a result of this legislation, to start imposing those mandatory standards. When will they be put in place? How difficult will that be?

**Kelliher:**

Sure, that's a very big piece of work that we've been given for the first time. It's very important that Congress took that action, because the last three blackouts that occurred in this country, 2003, and two in the summer of '96, all occurred in part because of violation of voluntary reliability standards. So the standards need to be mandatory. We now have the authority to require compliance.

Under the legislation, within six months we are supposed to certify—within six months we're supposed to issue rules that will govern certification of an industry group, a private group that will develop reliability standards. We will approve the standards, so with FERC action they will be enforceable, and then we will be ultimate enforcer of those standards, once they are established.

**Cook:**

How difficult is it going to be to meet that six-month deadline?

**Kelliher:**

I am committed to meeting all the deadlines and the law that apply to FERC.



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**Cook:**

Let me ask you again—in the energy bill there’s the repeal of the Public Utility Holding Company Act—it’s been in place for a long time—PUHCA, as it’s so often called here in Washington.

There is a sense that the repeal of PUHCA will lead to greater investment in the electricity sector, much needed investments, some would argue, perhaps also a much greater consolidation, mergers. Do you expect a significant uptake in mergers as a result of the repeal of PUHCA, and is FERC prepared to handle these new responsibilities—to watch over those?

**Kelliher:**

First of all, we are prepared to meet our new responsibilities. We have been steadily reviewing mergers throughout the period of PUHCA’s existence. We approved a number in recent years. We approved the largest one in the electricity business in June—the Excelon-PSE&G merger. So we’re perfectly situated to review mergers. The bill largely codifies our existing standard on mergers, and makes one change with respect to cross subsidies.

I agree with you that the electricity business needs a tremendous amount of cash, a tremendous amount of investment, and with PUHCA’s repeal, there will be a greater ability to get investment in the electricity business. It probably did serve as a barrier to entry by the—from the financial sector to some extent, and with PUHCA repealed, you might see more energy from the financial sector. You’ve seen significant entry by the financial sector up to this point, but you might see more of it. You might see some foreign entry. You might see entry by companies that are in the energy business, but not in the electricity business.

**Cook:**

And those are good things in your view?



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**Kelliher:**

I think so. It's a capital-intensive industry. We need a lot of investment in transmission, in generation. We need an investment on the gas side in pipelines. And I think entry is a good thing. It will result in more investment.

**Cook:**

Consumer groups have raised concerns that those consumer protections that were in place as a result of PUHCA—that those might be lost now, as a result of these changes. How can you try and allay those fears?

**Kelliher:**

Well, I think first of all, PUHCA really was properly viewed—it was an investor protection statute, not a consumer protection statute. And to the extent it protected investors, those protections were surpassed by the securities laws that have been enacted since the '30s, beginning with the '34 and '35 act on the security side. And so the goals of PUHCA have been overtaken by events, by other laws.

The consumer protection—to the extent there was a consumer protection aspect of PUHCA—it's been surpassed by the changes in the very same law. The policy energy Act of 2005—it gave FERC additional merger review authority. We can review generation acquisitions, something we didn't used to be able to review in the past. And the new law also provides an expressed prohibition of market manipulation. And it gives us significant civil penalty authority, something that we didn't have in the past. So we have a greater ability to prevent wrongdoing and to sanction it with very significant civil penalties.

**Cook:**

Let me shift—if I could—to the natural gas side, and specifically, an area of increased attention at the FERC, and that is the sighting of liquefied natural gas terminals. This legislation, as I understand it, enhances your ability to be sort of the federal overseer for the permitting of those



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facilities, the licensing of those facilities. Do you think the changes will result in a significant increase in the number of LNG terminals in operation in this country, say in the next five years?

**Kelliher:**

What—I think what the legislation really does with respect to FERC authority is eliminate some regulatory uncertainty that was introduced by a lawsuit filed in California that challenged FERC's authority to be the exclusive agency that authorized LNG import facilities. That was an area that I personally thought was settled thirty years ago, with some other litigation, but there was a pall cast over our authority to approve LNG import facilities by the lawsuit.

And I think what Congress really did was in effect vitiate the lawsuit. They clarified that we have exclusive authority to approve LNG import facilities. And I think that's appropriate, since we're talking on an area of foreign commerce. And it's also important to remem—recognize what is FERC's role when it comes to LNG import facilities. We are a safety regulator. We're not an economic regulator when it comes to LNG. We're a safety regulator. And I think it makes sense to have one, high, federal standard for safety regulation of these facilities, rather than a dozen different, varying safety standards.

**Cook:**

Now, just a couple of seconds left—I want to ask you about—just the outlook for LNG terminals going forward. States will still have the right to challenge the LNG terminals, and we are seeing that in several states on the east coast, even in the last few weeks. Do you expect that there will be any major change in terms of, again, the operation of these terminals? Will we see new LNG terminals, or is there still a fight over that?

**Kelliher:**

I think we will see more LNG facilities built. You'll also probably see expansions of the existing facilities. We have seen a number of expansion proposals of the existing operational facilities,



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and also some of the ones that we've approved recently that are not yet operational. So I think LNG import capacity will increase—to some extent—at existing facilities.

And as you said, as you pointed out, states do still have a very significant role in the development of these sites. When we authorize a pipeline, the company that we—whose pipeline we authorize—they get eminent domain authority. They can acquire land and pay just compensation. When we authorize an LNG import facility, that eminent domain is not attached. They have to acquire the land rights under state law. So sometimes legislation is portrayed as a major increase in FERC authority. I don't really think it is.

**Cook:**

All right. Got to leave it there. Chairman Joe Kelliher of the Federal Energy Regulatory Commission, thanks very much the time. We appreciate it.

**Kelliher:**

Thank you.



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