

**Testimony of Commissioner Philip D. Moeller
Before the U.S. House of Representatives
Committee on Energy and Commerce,
Subcommittee on Oversight and Investigations**

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Chairman Stearns, Ranking Member DeGette, and members of the Subcommittee, thank you for the invitation to testify before you on the subject of streamlining regulation in an effort to increase the effectiveness of the federal government. This is a vital issue for the Congress to consider and I welcome your oversight of our agency and our efforts. Throughout my career in both the public sector and the private sector, my personal philosophy has always been to work toward increasing the effectiveness of regulation and legislation, with an emphasis on defining specific problems that need fixing and working toward specific solutions to those problems. I am a strong believer in effective oversight that periodically reviews government action to make sure that the solutions that are proposed and enacted through legislation or regulations were and continue to be effective, necessary and not counterproductive.

With enactment of the Federal Power Act and the Natural Gas Act in 1935 and 1938, respectively, the Federal Power Commission was required to regulate both the sales of electricity at wholesale and the transportation of natural gas along interstate pipelines, products that were often sold by monopolies. Given the monopoly power of numerous utilities, the Commission engaged in a comprehensive regulation of the costs and revenues of jurisdictional transactions. Of the many achievements of the Commission, we developed the Uniform System of Accounts, a comprehensive manner of ensuring consistency in the books and records of regulated utilities. Yet with technological improvements in the means of generating electric power and transporting natural gas, the

Commission recognized that competition among utilities could result in prices that were lower for consumers than traditional cost-based regulation.

In light of the emerging prospects for competition, the Commission began a series of initiatives, including several groundbreaking orders, which opened up wholesale markets to certain forms of competition. Thus, despite issuing more regulations comprising of more words on paper, this Commission was actually allowing the public more freedom to engage in transactions that would result in better outcomes than under traditional regulation.

Throughout the 1980s and 1990s, the Commission issued landmark rulings (*i.e.*, Order Nos. 436 and 636) which restructured natural gas pipeline services by unbundling sales of the commodity from transportation services, thereby transforming pipelines into solely transportation providers. Meanwhile, in the electric industry, the issuance of Order No. 2000 established the creation of regional markets administered by Regional Transmission Organizations and Independent System Operators, and Order No. 888 initiated changes to promote open-access transmission service that has allowed competitive forces to discipline the wholesale electric markets. Our responsibilities to monitor these markets have vastly increased after these regulations took effect.

Our economic regulation of the wholesale electric markets consumes most of the agency's time and resources, but that does not diminish our other regulatory duties: safety and environmental regulation of non-federal hydropower dams, limited safety and economic regulation of natural gas pipelines and onshore liquefied natural gas terminals, and economic regulation of interstate oil pipelines.

In my testimony today I highlight three areas where the Commission has specific regulatory challenges. In these three areas we have a difficult role in balancing the need to assure that the services provided are done safely and at just and reasonable rates --- while not imposing undue burdens on the entities we regulate. We have made a lot of progress but admittedly still have a lot of work to do on each of them.

In 2005, Congress enacted the Energy Policy Act. This wide-ranging legislation gave the Commission significant new responsibilities including a new regulatory directive to increase the reliability of the Bulk Electric System through the creation of mandatory and enforceable reliability standards and certifying a new Electric Reliability Organization (now known as the North American Electric Reliability Corporation or NERC.) Congress also tasked us with another major regulatory responsibility by enhancing our enforcement powers by requiring additional market oversight and giving us the ability to fine entities up to \$1 million per day per violation for violations of our rules. Our regulatory responsibility for Bulk Electric System reliability provides an appropriate example of the tradeoffs involved in our role as regulators. The Commission has spent considerable time and effort since 2005 implementing this regulatory responsibility.

It has truly been a paradigm shift for an entire industry to go from a set of voluntary standards to mandatory and enforceable standards with significant potential of financial penalties as noted above. This has been a difficult transition for everyone involved, as we to date have adopted 101 national and 11 regional reliability standards that apply to the owners and operators of our Bulk Electric System. More than 7,000 possible violations both large and small have been reported since the first group of

standards approved by the Commission became mandatory on June 18, 2007. These violations are first reviewed by one of eight Regional Entities, are then reviewed by NERC, and then by the entire Commission. All of these violations are relevant to our efforts to prevent small or widespread outages in the Bulk Electric System. However, the entire system (consisting of the regional entities, NERC and FERC) currently has more than 3200 possible violations that are pending dismissal or filing with the Commission.

While some of these possible violations represent new cases, there is a significant backlog in processing these violations before NERC files them with the Commission. We have endeavored to create a more streamlined system of reviewing violations and at our direction NERC is working to develop a more efficient way to address minor violations and to develop a “lessons learned/best practices” informational resource for regulated entities. But clearly we have a lot of work ahead of us to reduce the backlog at the Regional Entities and at NERC in order to improve the effectiveness of this area of regulation.

Regarding our relatively new authority related to enforcement, I have made it a personal priority to increase the effectiveness and transparency of our Office of Enforcement. When the federal government wields the power of its sword, it should be firm and fair. In the first years of this new authority, many regulated entities contended that we lacked transparency in both our enforcement priorities and the results, with wide-ranging penalties that at times did not seem proportional to the violations that occurred. I wish to highlight that the Commission, through our Office of Enforcement, has established new measures to provide our regulated industry with a better understanding of our enforcement processes. Ultimately, our intent is not to assess penalties, but instead,

to increase compliance with our regulations. Maintaining a transparent enforcement process will provide jurisdictional utilities with a greater level of certainty that their actions will be evaluated fairly and objectively by us, their regulators.

Among the new measures that have been established since last year, the Commission is now announcing its annual enforcement priorities; we have enacted objective penalty guidelines based on the U.S. Sentencing Guidelines model; and we have formalized a process to disclose exculpatory material during the course of an investigation, similar to the due process afforded by some other Federal agencies. Moreover, to provide transparency to our investigative process, the Commission has begun issuing public notices that announce the initiation of an enforcement investigation. While the specific details of the matter remain confidential, we now make public basic facts surrounding the investigation. This information will help to inform the regulated community about the views of the Office of Enforcement and will likely contribute to a better understanding of the Commission's compliance obligations.

As someone who hails from the Pacific Northwest, I have always had a keen interest in promoting cost-effective and environmentally-friendly hydropower resources. It is a fact that the licensing process of hydropower projects (and the re-licensing of existing projects) is an expensive and multi-year process. However, most of the cost and time involved in this process can be traced to the requirements of the federal hydropower licensing law. This existing law emphasizes both extensive environmental reviews of a project's impacts and a role for federal and state resource agencies. There are no consequences to these agencies if they miss deadlines that are part of the Commission's licensing process or of the laws and regulations they must comply with before the

Commission can issue a license, such as the Endangered Species Act and the Clean Water Act. For those members interested in promoting hydropower development, an examination of this and related laws and specifically the roles and responsibilities of resource agencies could help streamline the licensing process and allow greater certainty for those seeking to develop this abundant renewable resource.

In the meantime, the Commission has worked to promote the development of both smaller hydropower resources and the newer hydrokinetic technologies that include harnessing in-stream power, tidal power, and ocean power. Specifically, the Commission has developed a pilot license process for hydrokinetic resources and focused on removing barriers to developing smaller hydropower resources by creating a small hydro initiative. This initiative includes adding new web-based resources to make it easier for applicants to understand and complete the licensing process, updating or creating Memoranda of Understanding (MOUs) with other agencies to improve coordination, and a new education and outreach program for developers and interested stakeholders.

Thank you again for the opportunity to testify before you today. I look forward to working with you in the future and to answering any questions.