



FEDERAL ENERGY REGULATORY COMMISSION

January 15, 2009

Chairman Joseph T. Kelliher

Opening Statement of Chairman Joseph T. Kelliher

Editorial Note: *Chairman Kelliher presided over his last Open Commission meeting in his capacity as Chairman on January 15, 2009. His opening remarks follow.*

"I want to thank Aidan for helping me with the Pledge of Allegiance. This meeting will be sort of a family event. Nora brought to gavel to the meeting, and may advise me on how to vote later.

My wife Karen is here, along with my parents, Joseph and Joan Kelliher. And young Damien is here as well, wearing a nice jacket. Nora complimented him, saying "You look like a businessman." Damien responded, "No, I look like a FERC Chairman!"

In a few minutes I will grant some awards to deserving staff, but first I would like to make some general comments about my service here as I move to step down as Chairman.

This is my 39th meeting as Chairman, and Suedeen's and my 61st meeting since joining the Commission in November 2003.

I warn you that my remarks will be full of historical references. The next Chairman may not like history as much as me, and I wanted to satisfy the history fans in the building and the regulated community. I ask you for your indulgence.

The job of Chairman and Commissioner has unusual power and responsibility. But, by its own terms, the job is intended to be temporary. The Romans used to have an expression "Gloria et transito" or "All glory is fleeting."

I step down entirely satisfied with the work of the Commission over the past three and a half years.

We have covered a lot of ground over that period.

We implemented the Energy Policy Act of 2005, the largest expansion of agency power since the New Deal – and did so smoothly and on time.

We pursued steady reforms of Commission policy – not because those policies were broken, but because there was room for improvement.

We reformed the agency's approach toward its economic regulation and infrastructure missions.

We defined how FERC will discharge its new enforcement mission.

We defined how the agency will discharge its new reliability mission.

We maintained the focus on infrastructure expansion, approving 7,400 miles of natural gas pipeline





additions, authorized a 500 percent increase in LNG import capacity, and the largest storage expansion in many years.

Together, we launched the following major policy initiatives:

- Prevent undue discrimination in transmission service through open access transmission tariff reform;
- Strengthen the power grid through transmission investment policy, mandatory regional planning, and new federal siting rule – resulting in a doubling of grid investment;
- Promote competition in wholesale power markets through targeted reforms to improve demand response and encourage greater entry during period of peak demand;
- Clarify and formalize FERC policies with respect to market monitoring
- Provide firm but fair enforcement of FERC rules through new policies that encourage strong corporate compliance programs, limit maximum civil penalties to most serious offenses, and allow regulated community to seek guidance without hazard;
- Exercise new civil penalty authority by approval of settlements totaling \$66 million in penalties and litigation involving \$467 million;
- Assure grid reliability by certifying an electric reliability organization, adopting mandatory reliability standards, and establishing an enforcement regime;
- Prevent exercise of market power in electricity markets by merger policy reform and market based rate policy reform;
- Prohibit market manipulation of electric and gas markets through new anti-manipulation rules;
- Strengthen gas pipeline network by reforms to blanket certificate program and changes to composition of proxy groups;
- Reduce gas price volatility through storage pricing reform and new transparency rules;
- Encourage more efficient use of pipeline capacity through reform of capacity release rules;
- Support development of hydrokinetics technology by new pilot license; and
- Promote hydropower settlements through settlement policy statement providing regulatory guidance.

We also restructured the agency, establishing an Office of Enforcement dedicated to enforcement of FERC requirements and market oversight and investigations, and a new Office of Electric Reliability to review proposed mandatory reliability standards, steadily improve standards, and oversee national and regional reliability organizations.

I do not consider myself an “activist Chairman,” but my chairmanship was marked by a high level of activity. Since I became Chairman, the Commission issued over 4,500 orders. We also issued 58 final rules – and are poised to issue a 59th final rule today.

I am particularly proud of the final rules, which will guide future Commission decisions. To put 58 final rules in context – since 1996, the Commission has issued a total of 117 final rules. In other words, half of the rules issued in the past 12 years were issued under my chairmanship. Many of these rules were related to implementation of the Energy Policy Act, but most were rulemakings we pursued at our discretion.

We have also improved our standing in Congress, strengthened our relationships with state regulators, and improved our record in the courts, all of which are important.

In Congress, some of our former critics are now among our strongest supporters. Congressmen and Senators who sharply criticized the agency during the California and Western power crisis now fight to preserve FERC authority, or introduce legislation to grant us authority that in some cases we did not even request.



We now have a much stronger relationship with the states. Some respected state regulators have said they believe the FERC-state relationship has never been stronger. I take particular pride in this progress. Our electricity scheme is federalist in nature, but both FERC and the states have important roles. One lesson of the California and Western power crisis is that when FERC and the states work at cross purposes, we both fail. There will still be disagreements, but those disagreements will be honest and above-board, not borne out of suspicion.

In the courts, we have improved our track record every year under my chairmanship. In no small measure, that is because we are producing a better product that is more legally defensible.

Since I became Chairman, there have been 75 wins, 19 split decisions, and 15 losses in the courts. I should note I dissented from two of the losses and one split. Treating the split decisions as half a win and half a loss, FERC has won 77.5 percent of the time during my chairmanship.

More importantly, the trend line is up – specifically, FERC won 64-67 percent of the time between 2003 and 2005, 76 percent of the time in 2006, 79.5 percent of the time in 2007, and 80.4 percent of the time in 2008.

In 2008, out of 28 decisions, we had 20 wins, three losses (*Burlington* ad valorem taxes, *Dominion* fuel accounting, *Albany* headwater benefits), and five split decisions. I must admit the *Albany* loss hurts – as a Hamiltonian, it hurts to be called a shrinking violet by the court on preemption.

I have been using the democratic “we,” not the royal “we.” I have been saying “we” because these are accomplishments of the Commission, not the Chairman – they are successes of the Chairman and Commissioners working together, supported by an able and dedicated staff.

These are the accomplishments of both the current Commission and its predecessor, the “ancien regime,” composed of myself, Commissioner Kelly, and former Commissioner Nora Brownell. Some Commissions have nicknames, like the “Dream Team.” The Kelliher-Kelly-Brownell Commission did so much work with only three members that perhaps its nickname should simply be “The Few.”

The Chairman is not a single administrator. The job of Chairman is to present an agenda to his or her colleagues and work collaboratively with them. In a perfect world the result would be a stream of unanimous votes. At FERC we mostly have unanimous votes, but we sometimes disagree. Those disagreements are honorable, and to some extent should be expected. We are constituted as a multi-member commission to bring diverse views to bear, and diverse views will not always reach consensus – but we try.

The Chairman gets too much credit when things go well, and too much blame when things don't go so well. That is the nature of the job. Fortunately, I have enjoyed more good times than bad.

Shortly after I became Chairman, I was asked “What is the biggest difference between being Commissioner and Chairman?” I replied, “All the mean letters Pat used to get are now addressed to me.” Soon they will be addressed to someone else.

Some level of criticism of Commission actions is inevitable if we are doing our jobs properly. We have to make difficult decisions, and base those decisions on law and facts, on a record. Others would prefer we merely follow public opinion.

I think to do so would be a dereliction of duty. Edmund Burke described the duty of a legislator, but I think his advice applies equally to regulators and other government officials. Explaining to voters how a



legislator should discharge his duties, Burke said “[H]is unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. Your representative owes you, not industry only, but his judgment, and he betrays, instead of serving you, if he sacrifices it to your opinion.”

That is always how I have proceeded as Commissioner and Chairman. Our job is to exercise our collective judgment in the public interest, even when we know our decisions will be unpopular.

Criticism of Commission decisions is to be expected, and at some level is healthy. The honest critic will get a fair hearing at FERC, we will examine your arguments, and we are open to persuasion that we were wrong, and we might change our minds – but we won’t always agree. But the demagogue should expect little comfort here. FERC tends to shrug off demagogues.

I don’t consider that I will have a “legacy” – this country is much better at remembering villains than public servants. Charles DeGaulle once said the cemeteries were full of indispensable men – so I operate under no illusions about my importance. The Commission will continue to function efficiently with my departure. Commissioner Kelly and I have been part of three, four, and five member Commissions, and all functioned well.

A word to the senior staff. I believe “The Prince” is an excellent management book. In particular, it describes the relationship between a Prince and his councilors, or senior staff. Machiavelli wrote the following:

“[A] wise prince ought to choose the wise men in his state, and give to them only the liberty of speaking the truth to him, ... he ought to question them upon everything, and listen to their opinions, and afterwards form his own conclusions. With these councillors, separately and collectively, he ought to carry himself in such a way that each of them should know that, the more freely he shall speak, the more he shall be preferred; ...he should ... pursue the thing resolved on, and be steadfast in his resolutions.”

I thank the senior staff for always speaking the truth to me. You always had my trust and my respect.

I have described the senior staff as my corps commanders. In my first senior staff offsite, we visited the Sharpsburg battlefield. We visited the sunken road, when the Irish brigade attacked. If you are an Irish American you have to visit the battlefields where the Irish brigade spilled its blood.

We also visited Burnside's Bridge, to make a point. At Sharpsburg, the Union commander, General McClellan, surrendered control of the battle. He had no plan, and left his corps commanders on their own. The result was a series of disjointed attacks. At one point, General Burnside had 11,000 men poised to cross Antietam Creek. He was confronted by only 300 Confederates. However, Burnside would not move to cross the bridge until he was given an express command to do so by the Union commander McClellan. I made a deal with the senior staff – I would not be General McClellan if they would not be General Burnside. I would never fault them for showing too much initiative, only too little.

I have identified John Mott as my Stonewall Jackson, and Dan Larcamp as my Longstreet. For that reason, Joe McClelland has been asking me to tell him which corps commander he is. I have given it a lot of thought, and narrowed it down to two, and I will let Joe choose between them. First, General John Gordon, Lee’s last corps commander, the last commander of the Second Corps. He rose from brigade command, to leading a division, to corps command. He was responsible for Lee’s last attack on Fort Stedman.

Second, Union General John Gibbon. Gibbon was the leader of the Iron Brigade, one of the best Union brigades. He rose to division command and corps command. He was responsible for the final



breakthrough through the Confederate lines at Petersburg.

One of the best compliments I received since joining the Commission was a remark by a member of the senior staff last week, who said "We felt like you were one of us." I consider that high praise.

I would like say a word to the broader staff. I am proud to have been your chairman for three and a half years. To quote General Lee in his Farewell Address to his army, I recognize your "arduous service" during this period and "admire your constancy and devotion" to the public interest. I hope "you will take with you the satisfaction that proceeds from the consciousness of duty faithfully performed."

I am indebted to the staff for your hard work and dedication. I don't know all of you by name, but if sometime down the road you approach me and say "I worked for you when you were Chairman of FERC" you will have my friendship and my respect.

Our children grew up here at FERC – Aidan was 5 when I took the oath of office, Nora was 3, and Damien was not even born.

A year and a half ago, I broke the news to Aidan and Nora that I would not always be FERC Chairman. They were shocked – "Why not?" they asked. I told them there was going to be a presidential election, and the new president might want a different chairman. They asked "Why would he?" I replied, "Well, sometimes presidents like to pick people they know to be chairmen and secretaries." Finally, they asked, "Will the new person do a better job than you?" I said, "I don't know about that! They will be different, not necessarily better or worse".

It has been an honor to be FERC Chairman – and it has been a particular privilege to be Chairman at this point in time.

I would like to thank President Bush for giving me this opportunity to serve the public.

I also would like to thank my wife Karen for supporting my desire to serve.

When a successor is named, I will work closely with my successor to assure a smooth transition, freely offering my candid views and advice. There are many challenges facing the agency, it is a difficult job that will only get harder, and it is important that it continue to function well.

FERC is in good hands – the agency has some of the finest Commissioners that have ever served the agency and a superb, dedicated staff."

