

Testimony of Chairman Jon Wellinghoff
Federal Energy Regulatory Commission
Before the House Subcommittee on Oversight and Investigations
Of the Committee on Energy and Commerce
United States House of Representatives

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Mr. Chairman and members of the Subcommittee:

My name is Jon Wellinghoff, and I am the Chairman of the Federal Energy Regulatory Commission (FERC or Commission). Thank you for the opportunity to appear before you today to discuss my views on regulatory reform and independent agencies. It is my belief that the Commission continually seeks to streamline its regulations in order to foster competitive markets and facilitate enhanced competition to minimize consumer costs.

In implementing the statutory authority provided by Congress, the Commission is committed to assisting consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost through appropriate regulatory and market means. Fulfilling this mission involves pursuing two primary goals: ensuring that rates, terms and conditions are just, reasonable and not unduly discriminatory or preferential, and promoting the development of safe, reliable and efficient infrastructure that serves the public interest. While independent agencies such as the Commission are not subject to Executive Order 13563, consistent with the goals of the executive order, the Commission

has taken, and continues to take, a number of steps to make certain that its regulations meet the fundamental objectives set by Congress without imposing undue burdens on regulated entities or unnecessary costs on those entities or their customers. I describe below some of the Commission's recent efforts toward these important goals.

Reducing Regulatory Burdens

The Commission regularly reviews its regulations to ensure that they achieve their intended purpose and do not impose undue burdens on regulated entities or unnecessary costs on those entities or their customers. For example, in the Energy Policy Act of 2005, Congress directed FERC to establish new rules under which the Commission would provide incentive rates to encourage development of electric transmission infrastructure. In July 2006, the Commission implemented that directive by issuing Order No. 679. Since then, the Commission has received more than 75 applications for transmission incentives. Given the significant changes in the electric industry and the Commission's experience in applying Order No. 679, the Commission issued a Notice of Inquiry in May of this year regarding the scope and implementation of its transmission incentives program. Through this Notice of Inquiry, the Commission is seeking public comment on whether its incentive regulations are encouraging the development of transmission infrastructure in a manner consistent with the intent of Congress. The development of transmission infrastructure will facilitate competition in regional electricity markets, which helps ensure just and reasonable rates without burdensome regulatory oversight.

The Commission also is responsive to industry requests to reevaluate its regulations. With respect to the natural gas industry, for example, the Commission

responded to requests to reduce the burden of certain annual natural gas reporting requirements. In Order No. 704-C, the Commission clarified the requirements for natural gas market participants to annually report information regarding physical natural gas transactions that use an index or contribute to the formation of a gas index. The Commission exempted certain transactions from natural gas index reporting requirements, particularly with reference to blanket sales certificates, finding that those transactions were burdensome to report and provided little market information. The Commission also exempted small entities that were obligated to report solely by virtue of possessing a blanket sales certificate. Thus, the Commission removed regulatory burdens on regulated entities, including small businesses.

Moreover, in 2007, the Commission undertook a ten-year review of its electric transmission open access regulations, including its landmark Order No. 888, which prohibited public utilities from using their monopoly power over transmission to restrain or prevent competition. In reviewing these regulations, the Commission conducted significant outreach to the regulated industry and other stakeholders. This effort culminated in the issuance of Order No. 890, which revisited the Commission's open access policies and amended its *pro forma* Open Access Transmission Tariff to further improve competition in wholesale markets by, among other things, increasing the ability of customers to access new generating resources and promoting efficient utilization of transmission by requiring an open, transparent, and coordinated transmission planning process.

Simplifying the Regulatory Process

The Commission also seeks out ways to help entities, particularly small ones, navigate the federal regulatory process. One example of these efforts is the Commission's encouragement of small hydropower development. In response to rising public interest in small hydropower and low-impact hydropower projects, the Commission has developed a publicly available website that provides detailed information on how to navigate the small hydropower regulatory process. Commission staff also has been hosting and will continue to host public tutorials and webinars tailored to the needs of entities intending to file applications to develop small hydropower projects. In addition, Commission staff conducted a study last year in coordination with the hydropower industry, government agencies, Native American tribes, non-governmental organizations, and the general public to evaluate the effectiveness of the Commission's integrated licensing process for hydroelectric facilities. Reflecting similar outreach, the Commission has entered into a number of memoranda of understanding with other federal agencies and state governments to reduce regulatory conflict and overlap.

The Commission and its staff also have coordinated seminars around the country on environmental review and compliance for natural gas facilities. In the past two years, over 1,000 people have attended these seminars. I believe that these seminars increase transparency, help stakeholders better understand the natural gas regulatory process, improve inter-agency coordination, and allow faster processing of applications.

The Commission recently revisited certain regulations to reduce burden on the applicants, speed up processing of the filings and improve public access to documents.

For example, in March of last year, the Commission issued a final rule to revise its Form 556, through which cogeneration and small power production facilities either self-certify qualifying facility (QF) status or apply for Commission certification of QF status.

Among other changes, the final rule reduces the burden on small entities by exempting generating facilities that are 1 MW and smaller from the need to file a Form 556 in order to be certified as a QF. This change will facilitate the development of small generating facilities. The final rule also removed the contents of Form 556 from the Commission's regulations and, in their place, provided that an applicant seeking to certify QF status of a small power production or cogeneration facility must complete, and electronically file, the Form 556 that is in effect at the time of filing. The Commission stated that this change takes advantage of newer technologies that will reduce both the filing burden for applicants and the processing burden for the Commission.

The Commission also has taken various steps to simplify the regulatory process by moving from paper to electronic formats in a number of areas. Most notably, the Commission has developed and implemented a standard electronic tariff filing system known as eTariff. Electronic filing reduces the burden on those who make filings at the Commission -- and on those who use such filings, such as regulated entities, the public, and Commission staff -- by providing faster and easier access to tariffs. The eTariff filing process has greatly improved public access to tariff filing documents by posting such filings in near real-time into the public record, and increased ten-fold the number of FERC regulated tariffs that are now available through the Commission's web site.

Similarly, the Commission is moving to automate various forms to simplify the

regulatory process. For example, section 205(f) of the Federal Power Act requires respondents to submit certain information in Form 580 to ensure the economical purchase and use of fuel and electric energy, among other purposes. In 2010, the Commission established Form 580 in an electronic pdf-fillable form and streamlined the information required by the Form.

Removing Barriers to Entry for New Business and Technologies

In addition to reviewing its regulations to reduce undue burdens, the Commission has taken several recent steps to remove barriers for entry of new business and technologies, which in turn facilitates competitive markets and can lower consumer costs. In recent years, improvements in technology have led to an increasing variety of resources being capable of contributing to reliable, efficient, and sustainable energy services. The Commission has initiated a number of recent rulemaking proceedings to ensure that regulations it developed prior to those improvements do not prevent the use of emerging technologies to provide services subject to the Commission's jurisdiction. In general, increased competition among providers of these services will tend to place downward pressure on rates for those services. I also would note that in each of these rulemakings, the Commission seeks public comment to ensure that any changes the Commission proposes are appropriately tailored to their intended purpose.

One example of this effort is that the Commission also has taken steps to remove barriers to the use of emerging technologies that are capable of responding to certain transmission system needs more quickly than the generators that have traditionally provided those services. These types of emerging technologies include batteries,

flywheels and other electric storage devices. In February of this year, the Commission proposed to revise its regulations with respect to provision in organized wholesale electric markets of regulation service. Regulation is an ancillary transmission service that protects the grid by correcting deviations in grid frequency and imbalances on transmission lines with neighboring systems. The Commission's proposed changes are intended to ensure that resources that provide faster and more accurate regulation service are compensated appropriately for their performance. Again, this proposed rule has the potential to lower costs to consumers, as increased use of fast and accurate resources should allow system operators to purchase less regulating capacity.

A variety of resources are capable of providing regulation and other ancillary transmission services but may be discouraged from doing so by certain aspects of the Commission's market-based rate policies. They may also lack of access to the information necessarily to supply those services. Therefore, the Commission is now exploring whether changes are needed to allow more resources to provide ancillary services. Just last month, the Commission issued a Notice of Inquiry that sought public comment on ways in which the Commission can facilitate competition in the provision of ancillary services from all resource types, including electric storage. The Commission also sought comment in that Notice of Inquiry on whether the Commission's accounting requirements present a barrier to development of electric storage.

The Commission also has taken a number of recent steps to remove barriers to demand response participation in organized wholesale electric markets. Pursuant to a Congressional directive, Commission staff in 2009 developed a National Assessment of

Demand Response Potential, which found that the potential for peak electricity demand reductions across the country is between 38 gigawatts and 188 gigawatts, up to 20 percent of national peak demand, depending on the penetration of advanced metering and the applicable regulatory policies. Also pursuant to a Congressional directive, Commission staff in 2010 developed a National Action Plan on Demand Response. In addition, the Commission has amended its regulations to facilitate demand response participation in organized markets. In Order No. 719, for example, the Commission amended its regulations to facilitate provision of ancillary transmission services by demand response resources that are technically capable of providing those services.

Conclusion

In sum, I support the goals of Executive Order 13563. I have directed the Commission's staff to conduct a review of the Commission's regulations with the goals of the executive order in mind. This direction is consistent with the Commission's practice, which I have described, of engaging in constant self-review to avoid red tape or unnecessary regulation that would impose undue burdens on the energy industry. I look forward to working with you to ensure that this remains the case.

I appreciate this opportunity to share my thoughts on regulatory reform and independent agencies and would be happy to answer any questions you might have.