

Sen. Jeff Bingaman: So we do have our first panel here. The Honorable John Wellinghoff, who's chairman of the Federal Regulatory Commission, and the Honorable Gary Gensler, who's chairman of the Commodity Futures Trading Commission. We welcome you both and appreciate your coming.

Chairman Wellinghoff, why don't you go ahead, and then Chairman Gensler?

Chairman Wellinghoff: Thank you, Chairman Bingaman and Ranking Member Murkowski, and Senator Corker. Thank you for the opportunity to appear here today.

In the interest of time, Mr. Chairman, I would request that my prepared written statement be entered into the record, and I will summarize my testimony.

Sen. Bingaman: We will include every witness' full statement in the record, and we will appreciate if you can make the main points that you think we need to understand.

Chairman Wellinghoff: My testimony will address the energy markets regulated by FERC, and how they may be affected by current or proposed laws focused on financial derivatives. I'll explain why consumers could face higher energy costs if FERC's role and authority in these markets is reduced by laws addressing financial derivatives.

The Commodity Futures Trading Commission regulates certain financial derivatives under existing law, and would regulate additional financial derivatives under HR 4173, the Wall Street Reform and Consumer Protection Act of 2009.

FERC and the CFTC have different missions. FERC is a rate regulator and ensures that rates charged to energy customers are just and reasonable. FERC also approves and enforces electric reliability standards. The CFTC seeks to ensure that markets generally operate fairly and orderly, but has neither the authority nor the expertise to ensure reasonableness of rates or oversee reliability of energy supplies.

Shifting jurisdiction over energy markets from FERC to the CFTC would impair FERC's ability to protect energy consumers from unreasonable energy rates, an especially important consideration during our economic times.

Similarly, expanding the CFTC's authority in FERC-regulated markets could limit FERC's ability to police against market manipulation in energy markets. In fiscal year 2009, FERC's efforts against market manipulation and other types of violations led to \$38 million in civil penalties and \$38 million in disgorgement. The scope of future efforts by FERC could be narrowed under the provisions such as those in HR 4173.

Also, uncertainty about regulatory authority and rules in energy markets could chill investment or increase the cost of capital investments, ultimately harming consumers.

This uncertainty could also slow investments in green energy, such as renewable resources.

The impetus for legislation on derivatives is the financial turmoil caused by certain unregulated financial derivatives and other factors. The FERC-regulated markets did not cause these problems.

Thus, whatever decisions Congress makes for currently unregulated financial derivatives should not apply to the energy markets regulated comprehensively by FERC. Any amendments to the Commodity Exchange Act should preserve FERC's exclusive oversight of rates, terms and conditions for energy transportation and wholesale sales, and prevent dual regulation of energy markets by FERC and the CFTC.

Alternatively, FERC's jurisdiction can be maintained through appropriate amendments to the Federal Power Act and the Natural Gas Act. Either way, legislation on financial derivatives should not impair FERC's ability to ensure that consumers have a dependable supply of energy at just and reasonable rates.

Any appropriate improvements to the rules for FERC-regulated markets can be made by FERC and do not require a shift in authority to another agency. For example, two months ago FERC proposed to require several actions to strengthen credit rules in RTO and ISO markets. The proposed actions include reducing or eliminating the use of unsecured credit in those markets and shortening the time allowed for posting of additional collateral. In a separate action, the commission asked for comments on whether to require comprehensive reporting of resales of FTRs in secondary markets.

So while I and others continue to seek improvement in these markets, I see no problem in these markets that would be solved by reducing FERC's authority in the energy markets. No regulatory failure has occurred that would warrant such a major shift in oversight of these markets. These markets are vital in meeting the energy needs of millions of Americans and nothing has been identified that warrants the uncertainty of inserting a new regulator and a new regulatory regime.

The potential harm from taking regulation of the energy markets away from FERC would be substantial. Investment and infrastructure needed to both maintain reliability and to develop clean renewable energy resources could be impeded. Consumer protection could be impaired and the benefits to consumers from viable competitive energy markets could be compromised.

In short, the current system of FERC oversight and comprehensive regulation of electric and gas markets is working well. Changing that system will not enhance benefits to consumers, but only put them in jeopardy.

Thank you for holding this important hearing and for inviting me to speak here today and I would be happy to answer questions after the other panels come up. Thank you, Mr.

Chairman.