

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

January 26, 2017

President Donald J. Trump
White House

Dear Mr. President,

I resign my appointment from the Federal Energy Regulatory Commission effective as of Friday, February 3, 2017. It has been an honor to serve on the Commission since August 4, 2014 and to have been the Chairman from April 15, 2015 to January 23, 2017. I am proud of what we have accomplished on behalf of the American people over the past 21 months in furthering FERC's mission of providing efficient, reliable, and sustainable energy to consumers.

It has been the greatest honor and privilege of my professional life to lead the dedicated and talented career staff at FERC, and I deeply appreciate their hard work and service to the United States. They are truly the best. I am also grateful for my colleagues on the Commission. When we succeed, we succeed because of our joint efforts, and my colleagues share in these accomplishments as much as I do. And I recognize that as Chairman I benefited from and built on the initiatives and successes of my predecessors. We always stand on the shoulders of those who precede us.

The last few years have brought dramatic change to the energy space. The shale revolution and an abundance of low-priced natural gas, technological innovation, the expanded use of renewable energy, increased energy efficiency and flat load growth, state and federal public policy, and consumer choice have been drivers for change. As Chairman, I have sought to help consumers realize the benefits from this change, while assisting the wholesale markets and industry in adapting to the change and maintaining just and reasonable rates and reliability. This has meant relying upon the core statutory authorities that Congress has given FERC over markets, reliability, and infrastructure. In addition, I have recognized that FERC's greatest asset as an agency is its staff, and I have worked hard to strengthen our human capital, internal processes, and analytic capabilities, while providing greater transparency to the public.

Accomplishments within FERC

I am pleased to report that FERC is one of the best agencies in government with strong leadership and engaged staff who are passionate about the agency's mission and who are recognized for their service on behalf of the American people. I have encouraged inclusiveness, greater transparency into the work of FERC, and the use of data-driven analytics in our market oversight and policymaking. The following accomplishments have occurred within FERC:

Fostering a fair, inclusive, and engaged workplace dedicated to FERC's mission. Based on the Federal Employee Viewpoint Survey, we are one of the best places to work in government. We moved up in the rankings from 2015 to 2016, and we are now the fourth highest rated mid-sized agency (out of 27), with especially high scores for employee engagement, job satisfaction, and effective leadership.

Providing consensus-driven, bipartisan leadership. In 2015, the Commission issued 1,243 orders. Of those orders, only 36 had a dissent. In other words, the Commission was unanimous in 97 percent of its orders. Of the 36 orders with a dissent, only two involved matters where there was a split between the three Democrats on one side and the two Republicans on the other. Similarly, in 2016, the Commission issued 1,178 orders, with only 20 dissents. The unanimity rate was over 98 percent. Of the 20 dissents, only three involved matters where there was a split between the Democrats and the one Republican on the Commission at the time.

Furthering innovation in the use of analytics and data-driven market oversight and policymaking. The Commission has obtained critical market data, hired staff with strong quantitative skills to analyze the data, and used the resulting analytics for enhanced market oversight and surveillance and for more informed decision making on a wide variety of policy issues. This work is occurring in the Office of Enforcement, the Office of Energy Policy and Innovation, the Office of Energy Market Regulation, and the Office of Electric Reliability.

Empowering staff and increasing access to senior leadership at the Commission. I established two cross-office review teams comprised of mid-level staff and asked them to examine our internal processes for drafting orders and staff retention issues, and to make recommendations on how we could do better as an agency. The teams presented their findings and recommendations to senior leadership at the Commission, which sparked a discussion among senior staff and the adoption of many of the recommendations. I also held recurring informal meetings with staff from each office at the Commission – “Coffee with the Chairman” – so that they could share their perspectives on life at FERC with me.

Breaking down silos between offices at the Commission and providing opportunities for professional development for staff. I started a pilot program that allows staff to rotate among program offices so as to give them broader exposure to FERC's work and developed opportunities for staff to do details outside of FERC at other federal agencies, Congress, or with international energy regulators.

Creating a more diverse, inclusive workplace. This has included the appointment of the first woman and Hispanic Chief Judge of the Office of Administrative Law Judges, four of five new judge appointments being filled with women (two of whom are African American), a new Employee Resource Group for Americans of Middle Eastern and North African Heritage, and the first LGBT Pride Event at FERC.

Delivering greater transparency to the public on what FERC does and how the public can participate in our processes. FERC has issued online videos explaining its work and processes, podcasts on a variety of FERC-related topics, handouts and infographics on its processes for reviewing proposed infrastructure projects, and well received primers on the energy markets and reliability.

Developing a rehearings branch in the Office of General Counsel that has eliminated a backlog in rehearing orders and resulted in the more timely resolution of matters on rehearing.

Markets

On markets, we promoted competition, efficiency, and transparency, while furthering consumer protection and the integrity of the markets. We won landmark cases in the Supreme Court that upheld FERC's authority over the wholesale markets. And we took steps to ensure just and reasonable rates for shippers on oil and gas pipelines. The accomplishments here include the following:

Improving price formation in the RTO/ISO markets, with more efficient and transparent pricing that sends better investment signals and rewards flexible resources that more accurately follow dispatch instructions. This has resulted in four rulemakings that involve shortage pricing and settlement intervals, raising offer price caps, recognizing the value of fast start resources, and improving uplift allocation and making it more transparent. We have also allowed the sale of primary frequency response at market-based rates.

Winning two cases in the Supreme Court that recognize FERC's authority over the wholesale markets: *FERC v. EPSA*, 136 S. Ct. 760 (2016) (upholding FERC's authority to allow demand response to participate in the wholesale electric market); and *Hughes v. Talen Energy Marketing*, 136 S. Ct. 1288 (2016) (pre-empting attempts by state to set wholesale electricity rates).

Encouraging the growth of competitive markets across the U.S., with SPP integrating into the Upper Great Plains Region and doubling in size, an Energy Imbalance Market developing in the West, and the creation of the Mountain West Transmission Group. In short, the "March of Markets"

continues, driven by the benefits to consumers of greater competition, lower costs, operational efficiency, transparency, and reliability.

Protecting consumers and ensuring integrity of the wholesale gas and electricity markets. We have developed a highly effective enforcement program that relies on an innovative market oversight and surveillance program that has become the benchmark among international energy regulators. FERC's enforcement efforts have resulted in significant settlements that have recovered hundreds of millions of dollars for consumers and helped ensure the integrity of the markets.

Facilitating the interconnection of new resources to the grid by requiring new resources to have primary frequency response capability, making conforming changes to the large and small generator interconnection agreements, requiring new non-synchronous generators to provide reactive power support, and improving ride-through capability of small generating facilities during frequency and voltage disturbances. We have also issued a proposed rulemaking to streamline the interconnection process and provide more certainty and transparency to interconnection customers.

Examining market power mitigation and merger reviews. In the price formation proceeding, we reviewed the mitigation rules in RTO/ISO markets to ensure that attempts to exercise market power are identified and mitigated. We also issued a Notice of Inquiry in September 2016 to examine how the Commission analyzes market power in merger reviews and the market-based rate program under the Commission's FPA section 203 and 205 authority.

Ensuring just and reasonable rates for shippers on oil and gas pipelines. We issued a new index rate for oil pipelines, as well as an advanced notice of proposed rulemaking to explore potential changes to the oil pipeline rate index methodology and to enhance transparency of financial data reported by oil pipelines. We continue to monitor gas pipeline rates and have brought complaints under section 5 of the Natural Gas Act to ensure that rates remain just and reasonable.

Building institutional relationships with key international energy regulators, including agreements with the European Union (Directorate General for Energy and the Agency for Cooperation of Energy Regulators), Japan's Electricity and Gas Market Surveillance Commission, Mexico, and Brazil. Cooperation with Mexico is particularly important given the increasing interconnectedness of our energy systems. Information sharing with international energy regulators is helpful given the convergence of market design around the world and the similarity of challenges we are facing. We can learn much from one another.

Reliability

One of the Commission's core statutory responsibilities is to protect the reliability of the grid. As threats evolve and new issues arise, FERC must be prepared to meet those challenges, whether the challenges involve cybersecurity or the growing use of gas for electric generation. The following accomplishments have occurred during my tenure as Chairman:

Strengthening the cybersecurity of the grid. The Commission has adopted Version 6 of the Critical Infrastructure Protection Standards and required development of a reliability standard that addresses supply chain risk management. We have also facilitated the sharing of classified information with state regulators. And we have promoted the adoption of best practice by providing voluntary architectural reviews of the control systems of electric and gas utilities.

Enhancing gas-electric coordination. In 2016, for the first time more electricity was produced from gas than from coal. Given the increased importance of gas to the electric industry, FERC has worked hard to enhance gas-electric coordination. We have issued a rule to better align the gas day with the RTO/ISO day ahead market and to offer increased gas scheduling opportunities for the electric industry and other shippers.

Protecting against geomagnetic disturbances (GMD). We approved a second reliability standard to protect against GMD, requiring a vulnerability assessment based on a benchmark one-in-a-100 year event and the development, if necessary, of a corrective action plan. The standard also directs NERC to do further research, recognizing that our understanding of the science is still evolving.

Securing Critical Energy/Electric Infrastructure Information (CEII) under the Fixing America's Surface Transportation Act (FAST Act). We issued regulations to implement FERC-related provisions of the FAST Act and added processes to designate, protect, and share CEII, the unauthorized disclosure of which is prohibited and subject to sanctions.

Infrastructure

As an economic regulator, FERC recognizes the value of infrastructure in making markets more efficient, promoting competition, and enhancing reliability and resiliency. During my chairmanship, FERC has used its statutory authorities to enable the development of infrastructure:

Promoting the development of electric transmission through the use of incentives to allow for a higher return on equity, while fostering competition on projects under Order No. 1000 in order to benefit consumers. Four of the six organized markets have now awarded competitive transmission projects.

Removing barriers to entry for new resources and innovation by issuing a rulemaking that facilitates the participation of energy storage and distributed energy resources in the RTO/ISO markets. We have also clarified Commission precedent to allow energy storage to provide multiple services while receiving cost-based rate recovery. This allows for a fuller recognition of the unique benefits that energy storage can provide.

Licensing hydropower projects and streamlining the licensing process. In 2015, we issued 28 hydropower licenses representing 2,749 megawatts of capacity. In 2016, we issued 18 licenses representing 1,743 megawatts of capacity. We also entered into an MOU with the Army Corps of Engineers to facilitate development of hydropower at Corps dams, and issued a Notice of Inquiry to examine our policy for establishing the length of hydropower licenses.

Certificating 14.5 Bcf/day of new gas pipeline capacity for 2015 and 17.6 Bcf/day of new gas pipeline capacity and over 1,000 miles of pipeline for 2016, which is the greatest amount of new capacity since 2007. The Commission also authorized two LNG facilities in 2015 and five in 2016.

Providing regulatory certainty with respect to new oil pipeline capacity. We granted 22 Petitions for Declaratory Order in 2015 with respect to rates, terms, and conditions of service representing 2,555,000 bbl/day of capacity, and 14 Petitions for Declaratory Order in 2016 representing 1,636,222 bbl/day of capacity.

I will always be grateful to President Obama for being given the opportunity to serve on the Commission. It has been the honor of a lifetime. FERC is a gem of an agency, and its work touches the life of every single American, 24/7, 365 days out of the year. You and my successors at FERC have my best wishes as you build on the progress we have achieved to date and work to address the energy challenges of the future.

Sincerely,



Norman C. Bay