

Summary of Senate Energy and Natural Resources Committee Hearing on FERC Oversight

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On May 4, the Senate Energy and Natural Resources Committee held a hearing titled “Hearing to Conduct Oversight of the Federal Energy Regulatory Commission.” This alert provides a high-level summary of the discussion.

The following witnesses participated in the hearing:

Willie Phillips, Chairman, Federal Energy Regulatory Commission (FERC)

James Danly, Commissioner, FERC

Allison Clements, Commissioner, FERC

Mark Christie, Commissioner, FERC

The following lawmakers participated in the hearing:

Chair Joe Manchin (D-WV)

Ranking Member John Barrasso (R-WY)

Sen. Maria Cantwell (D-WA)

Sen. Mike Lee (R-UT)

Sen. Martin Heinrich (D-NM)

Sen. Steve Daines (R-MT)

Sen. Angus King (I-ME)

Sen. Lisa Murkowski (R-AK)

Sen. Catherine Cortez Masto (D-NV)

Sen. John Hoeven (R-ND)

Sen. Mark Kelly (D-AZ)

Sen. Bill Cassidy (R-LA)

Sen. John Hickenlooper (D-CO)

Sen. Josh Hawley (R-MO)

Member Opening Statements

Chair Manchin outlined that—while FERC is an independent agency—federal policies and guidance may impact its work. Specifically, the Chair highlighted the White House Council on Environmental Quality’s guidance on the National Environmental Policy Act (NEPA) and regarding the disclosure of climate impacts in environmental reviews. As such, he stressed that both prior administrations and the current administration have contributed to unprecedented delays in permitting as they seek to block fossil fuels. Chair Manchin acknowledged that FERC has responded to concerns and has permitted more natural gas infrastructure this year than in the prior two years. He also praised FERC’s action to ease off policy that requires all natural gas projects to endure a full environmental impact statement (EIS) rather than a briefer environmental assessment (EA). However, Chair Manchin explained that it is unclear whether the Commission will revert to its natural gas and greenhouse gas (GHG) policy statements previously issued.

Pivoting to electricity, the Chair called for the electric grid's transition to be balanced with reliability and affordability in mind. He highlighted FERC and the North American Electric Reliability Corporation's (NERC) efforts to issue extreme cold weather standards. Further, Chair Manchin argued that the grid would be decimated if the U.S. coal fleet were retired. He additionally criticized the Environmental Protection Agency (EPA) and environmental, social and governance (ESG) investors for seeking to shut down coal plants regardless of the grid's readiness. With a focus on the EPA, the Chair characterized electric vehicle (EV) mandates as radical and called on FERC to manage risks associated with prematurely retired fossil fuel production. Chair Manchin additionally expressed concern with reduced high-voltage transmission construction and urged FERC to leverage its transmission siting authority granted in the Infrastructure Investment and Jobs Act (P.L. 117-58; IJJA). Finally, the Chair acknowledged commitments he received from President Biden and Democratic leadership regarding permitting reform. Highlighting that his permitting reform bill was the only measure with bipartisan support, he expressed hope that negotiations can proceed in good faith.

Ranking Member Barrasso urged the Commission to ensure affordable, reliable and secure energy. Further, he stressed that the U.S. must produce enough energy to supply allies that may be seeking to reduce their dependence on adversarial nations. As such, he called on FERC to expedite its permitting processes and balance energy interests more effectively. Moreover, the Ranking Member argued that FERC must resist those that wish to circumvent Congress, as well as agencies that aim to block natural gas pipeline or transmission line projects. Conclusively, Ranking Member Barrasso emphasized that FERC's natural gas policy statement must be discarded.

Witness Testimony

Hon. Phillips explained that the Commission has broad jurisdiction and that, by exercising its authority, FERC can ensure the reliable, affordable and sustainable production of energy. Moreover, he detailed his three priorities as the FERC Chairman, including reliability, electric transmission and environmental justice (EJ). Regarding reliability, Hon. Phillips noted that the U.S. faces challenges with cyber and physical threats to the grid, as well as the impact of extreme weather. He highlighted that NERC developed enhanced reliability standards, approved winter preparedness measures, and established a system of incentives to reward cybersecurity investments. Pivoting to electric transmission, Hon. Phillips stressed that connecting resources is the key to unlocking energy security measures included in the Inflation Reduction Act (P.L. 117-169; IRA). He additionally noted the Commission's work on various rulemaking regarding interconnection queue reform, regional transmission planning and backstop siting authority. With a focus on EJ, Hon. Phillips highlighted that FERC hosted its first-ever roundtable on EJ, equity and infrastructure. Conclusively, Hon. Phillips acknowledged that the U.S. needs energy infrastructure of all kinds.

Hon. Danly stressed that the U.S. is facing a looming reliability crisis within the electric markets as a result of state and federal subsidies. Specifically, he argued that FERC has allowed markets to fall prey to subsidies and public policies that have catalyzed advancements of intermittent renewable sources in the electric system. Hon. Danly highlighted that subsidies can be so lucrative that renewables may enter into capacity auctions for zero dollars, resulting in market-wide price suppression. As such, he detailed that subsidies deprive other generators of necessary revenue, which ultimately forces them into early retirement despite their ability to keep electric systems stable. Concerning vertically integrated states, he outlined that utilities must rely on market signals, which may be subject to distortion. Hon. Danly highlighted an instance in which FERC issued a rule to reset market prices after an auction had occurred.

Hon. Clements detailed that the electric grid faces several challenges as a result of outdated infrastructure, a shifting resource mix and extreme weather events—all of which are exacerbated by Russia's war in Ukraine, inflation and cyber and physical threats. To provide the most consumer benefits at the lowest cost, Hon. Clements praised FERC's regional planning proposal. She noted that the proposal provides states a seat at the

table and requires long-term planning across various scenarios. She additionally highlighted the Commission's interconnection proposal to address the overwhelmed and broken process that often delays projects. Hon. Clements additionally noted NERC's cold weather reliability standards. The Commissioner stressed that grid-enhancing technologies may serve as a low-cost solution to bolster the grid. Moreover, she explained that the implementation of market rule changes and partnerships with state regulators will maintain reasonable costs for customers while reducing risk to the grid. She concluded by calling on the Commission to finalize the aforementioned proposed rules.

Hon. Christie echoed concerns about grid reliability. He identified that the core of the reliability issue centers on the retirement of dispatchable, reliable energy sources at an expedited pace. Moreover, Hon. Christie stressed that the threat is not the addition of renewable energy sources, but rather the subtraction of dispatchable resources such as coal and gas. He highlighted that PJM—a regional transmission organization (RTO)—announced that it may lose up to 40 gigawatts of generating resources over the next few years. However, he underscored that each unit in the queue combined cannot cover PJM's projected loss. Further, Hon. Christie explained that such early retirements are the result of market design. He additionally expressed concern with the U.S.'s failure to build infrastructure to transport gas units.

Member Questions

Chair Manchin queried about the partisan split among a four-person FERC. **Hon. Phillips, Hon. Dally, Hon. Clements and Hon. Christie** all agreed that the four-person makeup of FERC has not hindered the Commission's ability to fulfill its statutory obligations. **Chair Manchin** pressed about the impact of subsidies. **Hon. Dally** explained that the more dispatchable resources are displaced due to economic realities, the more difficult it is to rely on intermittent energy.

Ranking Member Barrasso questioned the necessity of natural gas, nuclear, coal and hydropower in stabilizing the grid. **Hon. Dally** detailed that there are basic attributes that large generators possess and that—when the load changes—the frequency and voltage shift. He concluded that the greater spinning mass of larger generators allows systems to ride through with more stability than when relying on intermittent resources. **Ranking Member Barrasso** inquired about the consequences of the Biden administration's electrification policies. **Hon. Christie** explained that increased electrification among industries increases demand on the grid and stressed that supply must accordingly keep pace. **Ranking Member Barrasso** asked how FERC contributes to low additions of interstate natural gas pipelines. **Hon. Dally** argued that FERC bears all the responsibility for reduced interstate natural gas pipelines. He highlighted the Commission's slow processing of section 7 applications and regulatory uncertainty created a chilling effect on natural gas investments. **Hon. Clements** stressed that FERC utilizes a case-by-case approach for section 7 and section 3 applications. **Ranking Member Barrasso** queried if delayed natural gas pipeline projects undermine efforts to bring wind and solar facilities to the grid and **Hon. Phillips** responded in the affirmative. Moreover, he emphasized that FERC must be resource neutral.

Referencing the Energy Consumer Protection Act ([S. 4679](#)), **Sen. Cantwell** asked if energy markets should be free of manipulation and, if manipulated, whether gains should be returned to consumers. **Hon. Phillips, Hon. Dally, Hon. Clements and Hon. Christie** responded in the affirmative.

Sen. Lee inquired if Congress should allocate the cost of large transmission lines to customers in states that do not benefit from the project. **Hon. Christie** explained that, if a transmission line is pursued due to public policy-related decisions, that state whose policies require the project should assume its cost. **Sen. Lee** questioned how FERC can bring certainty to natural gas investment. **Hon. Dally** outlined that FERC must make its rate decisions as clear as possible. Moreover, he added that, if tariffs are approved, FERC must enforce its terms.

Characterizing the policy as anti-competitive and burdensome to transmission line projects, **Sen. Heinrich** queried if FERC is considering plans to reinstate additional federal rights of first refusal for regional planned facilities. **Hon. Phillips** explained that limited circumstances for the federal right of first refusal are aspects of the Commission's proposed rule on regional transmission planning. Moreover, he stressed that he is open to changes to the proposed regulation. **Sen. Heinrich** pressed if FERC will take action regarding interregional planning and cost allocation and **Hon. Phillips** responded affirmatively. He additionally highlighted that FERC held a forum on cost containment. **Sen. Heinrich** inquired if FERC is pursuing standardized planning methodologies for transmission projects and **Hon. Phillips** explained that cost allocation is on the table and noted that the Commission will consider states' perspectives within the proposal. **Sen. Heinrich** asked about the role of reconductoring transmission lines and grid-enhancing technologies. **Hon. Phillips** expressed support for such technologies and stressed that they must be integrated into FERC's planning process.

Chair Manchin noted that transmission provisions were the most difficult to address when negotiating permitting reform. Referencing the Lower Energy Costs Act ([H.R. 1](#)), **Chair Manchin** stressed that permitting reform measures must include transmission-related language.

Sen. Cassidy queried if solar panels can sufficiently store energy in the instance of power outages. **Hon. Christie** explained that such storage would be adequate for only a handful of hours and may be useful for times of peak energy use. **Sen. Cassidy** asked about FERC's efforts to alter procurement auction rules to lower prices. **Hon. Danly** reiterated that FERC allowed PJM to reset auction results due to idiosyncratically high prices. **Hon. Phillips** explained that an error occurred during the auction. **Hon. Danly** argued that high prices are not an error, but rather are the result of scarcity.

Sen. King expressed hope that FERC will support smart grid enhancements. **Hon. Phillips** reaffirmed that grid-enhancing technologies are essential to plan for the future. **Sen. King** pressed about the interconnection queue. **Hon. Phillips** noted that the Commission is pursuing several proposals to address the interconnection queue. Further, he detailed that FERC is considering transitioning from a first-come, first-serve strategy to a cluster approach. **Sen. King** asked if FERC has the authority to enforce such a system and **Hon. Phillips** responded affirmatively. **Sen. King** inquired if FERC is satisfied with utilities' cyber safety standards. **Hon. Phillips** emphasized that FERC must continue its work to strengthen cyber security standards. **Sen. King** questioned the Commission's cybersecurity verification efforts. **Hon. Clements** noted that verification efforts are occurring and highlighted that government agencies have collaborated to address evolving threats.

Sen. Hawley queried about the Spire Pipeline in St. Louis. **Hon. Phillips** noted that FERC handles pipeline certification on a case-by-case basis. **Sen. Hawley** questioned how the Commission is reducing energy prices for rural co-ops. **Hon. Phillips** explained that FERC's aforementioned reforms will address affordability. **Sen. Hawley** queried about **Hon. Clements'** participation in a briefing for the Energy Foundation's donors. **Hon. Clements** stressed that the meeting convened for a straightforward discussion about FERC's priorities and noted that she maintains an open-door policy.

Sen. Cortez Masto inquired about FERC's efforts to address grid resilience. **Hon. Phillips** outlined that FERC tasked NERC to develop recommendations regarding winter storm impacts, which he noted should be released this summer. **Sen. Cortez Masto** specifically pressed about grid reliability across the West. **Hon. Clements** noted that state regulators in the West are working to identify how to best protect customers. **Hon. Clements** also noted that Western entities have the opportunity to utilize best practices developed from RTOs on the East Coast.

Highlighting his anticipated, comprehensive hydropower licensing reform package, **Sen. Daines** inquired if FERC is interested in expanding hydropower licensing. **Hon. Phillips** characterized hydropower as critical and assured that FERC has pursued relevant reform to expedite hydropower licensing. **Hon. Christie** outlined FERC's various

responsibilities regarding hydropower projects and explained that such licensing is time-consuming as the Commission has several interests to weigh equally. As such, **Hon. Christie** called for the delegation of FERC's hydropower-related duties to expedite licensing processes. **Sen. Daines** queried about the inclusion of tribal consultations when considering projects and **Hon. Phillips** underscored the importance of conferring with tribal stakeholders. Referencing his bill to amend the Water Resources Reform and Development Act of 2014 to improve provisions relating to the development of hydropower at Corps of Engineers facilities ([S. 4540](#)), **Sen. Daines** questioned if powering non-powered dams where safe and economically reasonable is a valid way to boost hydropower capacity and **Hon. Danly** responded affirmatively. **Sen. Daines** conclusively requested that his upcoming hydropower bill be included in permitting reform discussions.

Sen. Hickenlooper asked about local transmission control without sufficient oversight. **Hon. Christie** explained that—between FERC formula rate recovery and efforts to strip state regulators of their authority—it is financially rewarding to build local transmission projects. **Hon. Clements** noted that the Commission is working to develop mechanisms to address such issues. **Hon. Danly** additionally detailed that, as FERC establishes more mechanisms to plan transmission projects, stronger incentives are created. **Hon. Phillips** urged for greater transparency in local transmission project processes.

Sen. Murkowski asked how to ensure access to hydropower for small and rural communities. **Hon. Phillips** explained that FERC must streamline the hydropower process. **Sen. Murkowski** expressed concern with delays resulting from the Commission's licensing amendment application and **Hon. Phillips** committed to working with the Senator to address her concerns.

Sen. Kelly requested a status update on the implementation of the IJJA's demand response provisions. **Hon. Phillips** expressed agreement that demand response is a vital tool. He additionally highlighted that FERC implemented [Order 2222](#) to open the market to demand response technologies.

Sen. Hoeven questioned specific policies that accelerate the retirement of dispatchable resources. **Hon. Christie** outlined that financial incentives are driving out coal and gas and stressed that the issue lies within rate designs. **Sen. Hoeven** highlighted carbon capture and sequestration efforts and noted that wiping out dispatchable resource plants would result in a loss of baseload power. **Hon. Phillips** expressed concern with the pace of retirement for the generators the system relies on. **Hon. Danly** emphasized that state and federal incentives are exacerbating retirement rates.

Chair Manchin inquired if it is possible to eliminate coal and maintain a reliable system. **Hon. Phillips** argued that eliminating coal would hinder grid reliability. **Hon. Danly**, **Hon. Clements** and **Hon. Christie** agreed that coal cannot presently be replaced.

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