

M E M O R A N D U M

July 25, 2024

**From:** Akin Gump Strauss Hauer & Feld LLP  
**Re:** Summary of House Committee on Energy and Commerce Subcommittee on Energy, Climate, and Grid Security Hearing on the Fiscal Year 2025 Federal Energy Regulatory Commission Budget.

On Wednesday, July 24, 2024, the House Energy and Commerce Committee Subcommittee on Innovation, Data, and Commerce held a [hearing](#) titled, “The Fiscal Year 2025 Federal Energy Regulatory Commission Budget.”

The following witnesses testified before the Subcommittee:

- [Hon. Willie L. Phillips](#), Chairman, Federal Energy Regulatory Commission
- [Hon. Mark C. Christie](#), Commissioner, Federal Energy Regulatory Commission
- [Hon. David Rosner](#), Commissioner, Federal Energy Regulatory Commission
- [Hon. Lindsay S. See](#), Commissioner, Federal Energy Regulatory Commission
- [Hon. Judy W. Chang](#), Commissioner, Federal Energy Regulatory Commission.

The following Representatives participated in the hearing:

<b>Subcommittee Chair Jeff Duncan (R-SC)</b>	<b>Subcommittee Ranking Member Diana DeGette (D-CO)</b>
<b>Full Committee Chair Cathy McMorris Rodgers (R-WA)</b>	<b>Full Committee Ranking Member Frank Pallone (D-NJ)</b>
<b>Rep. John Curtis (R-UT)</b>	<b>Rep. Scott Peters (D-CA)</b>
<b>Rep. Brett Guthrie (R-KY)</b>	<b>Rep. Lizzie Fletcher (D-TX)</b>
<b>Rep. Morgan Griffith (R-VA)</b>	<b>Rep. Paul Tonko (D-NY)</b>
<b>Rep. Tim Walberg (R-MI)</b>	<b>Rep. Marc Veasey (D-TX)</b>
<b>Rep. Debbie Lesko (R-AZ)</b>	<b>Rep. Annie Kuster (D-NH)</b>
<b>Rep. Randy Weber (R-TX)</b>	<b>Rep. Kathy Castor (D-FL)</b>
<b>Rep. Rick Allen (R-GA)</b>	<b>Rep. John Sarbanes (D-MD)</b>
<b>Rep. Troy Balderson (R-OH)</b>	<b>Rep. Tony Cardenas (D-CA).</b>
<b>Rep. John Joyce (R-PA)</b>	

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## **Member Opening Statements**

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### **Subcommittee Chair Jeff Duncan (R-SC) Opening Statement**

- Despite positive steps forward in natural gas pipelines and LNG facilities, I am concerned the Commission is failing in other aspects. FERC is not an environmental regulator and has strayed from its responsibilities.
- There are continued alarms from NERC and others, and five regions of the country are at risk of insufficient operating reserves.
- FERC's [Order No. 1920](#) on regional transmission planning and cost allocation, would drive up costs and make the grid less reliable. With this rule, Americans will see higher rates due to costs shifted onto certain ratepayers, instead of agency actions that will raise prices without reliability or cost benefits.
- EPA's [actions](#) have revised particulate matter standards and will increase the cost of utilities, push retirement of reliable assets and increase energy costs.

### **Full Committee Ranking Member Frank Pallone (D-NJ) Opening Statement**

- The Federal Energy Regulatory Commission (FERC) issued [Order No. 888](#), bringing competition to power markets across the country while ensuring our grid remains reliable. Order Nos. [990](#) and [1000](#) aim to eliminate discrimination and increase transparency in grid planning.
- Order No. 1920 builds upon three earlier rules to increase grid planning for the long term, and the *Federal Power Act* ([16 U.S.C. §§ 791-825](#)) gives authority to FERC over electricity for interstate commerce and FERC's actions have repeatedly been upheld in the courts.
- Courts have long deferred to FERC on its rate-making authorities without relying on the [Chevron U.S.A., Inc v. Natural Resources Defense Council](#) deference that was thrown out last month.
- The basic principle of Order No. 1920 is that grid planning is essential to maintaining just and reasonable rates. Without it, consumers would be hit with higher power bills because utilities are not required to plan for the impacts of severe weather on the grid.

### **Full Committee Chair Cathy McMorris Rodgers (R-WA) Opening Statement**

- Congress established FERC as an economic regulator to ensure that electricity, natural gas and oil is delivered to the American people safely, securely and at a reasonable price.

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- Expanding energy within all of the above strategy will ensure Americans won't have to worry about rationing energy in the summer or winter months or having to make tough choices about whether to pay the electric bill or buy groceries for their family.
- The Biden-Harris administration has chosen to prioritize radical environmental activists at the expense of the American people, making us reliant on the Chinese Communist Party (CCP) and forcing the early retirement of our most affordable and reliable power plants.
- Transmission rules advanced along partisan lines and will raise energy prices and force some states to shoulder the cost of transmission lines with no benefits to communities, especially in rural areas.
- The Commission has slow-walked permitting for pipelines and liquefied natural gas (LNG) facilities, which affect the supply of natural gas at a time when half the nation is at elevated risk for blackouts.

## **Witness Testimony**

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### **Hon. Phillips Testimony**

- Order No. 1920 requires utilities to plan for factors that will drive tomorrow's reliability and affordability needs while requiring customers new transmission only to the extent they benefit from that infrastructure.
- [Order No. 1977](#) implements Congress's amendments to the *Federal Power Act* and Bipartisan Infrastructure Law ([P.L.117-58](#)), which clarify the Commission's limited role in siting electric transmission in a manner that respects and accommodates state's primary role in siting electric transmission.
- Those two rulemakings build on the success of [Order No. 2023](#), which took several important steps so that generating resources can interconnect to the grid in a timely and cost effective manner, including a shift to a first ready first served model and the establishment of firm study deadlines.
- FERC approved market reforms that ensure generating resources are appropriately compensated for reliability benefits provided to the system. We also have seen continued efforts to streamline the permitting process, which considers environmental impacts.

### **Hon. Christie Testimony**

- Reliability threats have severe consequences and boil down to two issues relating to supply and demand. On the supply side, we are losing dispatchable generating resources with many years of useful life remaining, retiring them in quantities that threaten our ability to

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keep the lights on. On the demand side, we are experiencing load increases unseen in the last 20 years due to rising demand in data centers and artificial intelligence (AI).

## **Hon. Rosner Testimony**

- The U.S.'s energy system is in transition and the pace of change on both the supply and demand side is unprecedented.
- FERC is committed to faithfully continuing to implement the Commission's policy of resource and fuel neutrality to allow the next generation of technologies to play their role in the energy system.
- This policy means hardening the energy system to withstand evolving threats to reliability, including weather, physical and cyber risks.

## **Hon. See Testimony**

- New technologies and generation sources are offering real promise. At the same time, many base load plant retirements are raising alarms. Demand loads from data centers, electrification and other changes heighten the stakes for what ensuring reliability needs to look like in today's market.
- With the *Chevron* Deference being overturned, I welcome the check judicial review offers in the separation of power system.
- When it comes to how I view my role as a commissioner, on the front end when it comes to making decisions as opposed to that scope of judicial review on the back end, my responsibility is to approach the law and the facts before me with a fair and open mind striving to reach the best result.
- This approach mirrors my overall philosophy in not going beyond the authority Congress has entrusted to FERC. Understanding jurisdictional limits should lead to more clarity on what matters most and especially given the many urgent issues facing the Commission and the energy sector.

## **Hon. Chang Testimony**

- My prior work experiences have instilled in me a deep appreciation and valued understanding of a reliable and resilient grid. This is even more critical today as our country experiences and anticipates rapidly growing electricity usage from manufacturing facilities and data centers plus electrification of transportation and heating.

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- FERC plays a crucial role in ensuring both reliability and affordability of our energy systems. As a commissioner, one of my priorities is to ensure a robust and reliable transmission system, including the use of advanced technologies to deliver affordable energy for all consumers.
- This is paramount to the economic growth of our nation and this is how the United States will continue to lead the world and compete on the global stage in technological innovation and infrastructure development.

## Member Questions

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### Subcommittee Chair Jeff Duncan (R-SC) Questions

- Do you think Order No. 1920 is “just and reasonable” to force residents in one state to pay for renewable electricity mandates of another state?
  - **Hon. Phillips:** We have received significant bipartisan praise from 33 state regulatory commissioners in support of the order. Costs must be allocated commensurate with the benefits, so if you do not benefit, you do not pay.
- Do you believe the *Federal Power Act* authorizes FERC to override states on regional planning cost allocation?
  - **Hon. Phillips:** Costs are roughly allocated with benefits, and nothing has changed.
- How has the order violated the *Federal Power Act*?
  - **Hon. Christie:** It will not produce just and reasonable rates under the Act, and this rule is intended to be a consumer protection statute, but it does not fulfill that role. This rule was adopted two years after the proposed rule, which gave states a more robust role than what ended up in Order No. 1920.

### Subcommittee Ranking Member Diana DeGette (D-CO) Questions

- How do states not pay for the renewable mandates of another state under Order No. 1920?
  - **Hon. Phillips:** Costs must be allocated commensurate with the benefits to our consumers, and that is the foundation of our cost causation rule in the order.
- How will the transmission siting rule and regional planning rule support the reliability and security of our power grid?
  - **Hon. Phillips:** There are drivers putting pressure on our system, such as AI, data centers, quantum computing and the return of industrial manufacturing. By building out the transmission we know we will need, we must identify solutions to address these problems. If we do not, we will face a reliability problem.

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- Why is addressing cost-sharing in the manner of Order No. 1920 so crucial to the future of our grid?
  - **Hon. Phillips:** If we do nothing, costs will continue to go up on its own. Under Order No. 1920, FERC is planning for the long term and doing what we know the reality on the ground requires.
- How can interregional transmission enhance electrical reliability and make power more affordable?
  - **Hon. Rosner:** Interregional transmission is a key solution to reliability challenges, but we also need generation on those lines.
- Can you magnify on those interregional transmission comments and explain what steps might be necessary to improve it?
  - **Hon. Chang:** Our current regulation and the process used by many grid operators limits the way interregional transmission is being developed.

## Full Committee Chair Cathy McMorris Rodgers (R-WA) Questions

- Do you agree with the nation's grid operators who say that causes our state renewable mandates, bans on natural gas, lack of pipeline capacity and new Environmental Protection Agency (EPA) regulations that will close power plants?
  - **Hon. Phillips:** I share their concerns about the reliability challenges.
- What steps have you taken to improve communication and coordination between FERC and the EPA?
  - **Hon. Phillips:** Last fall, we had a technical conference and invited the EPA and utility leadership, who provided feedback that we submitted to the EPA. This led to the EPA changing its final rule to include a reliability emergency off-ramp based on feedback from FERC.
- Are you concerned about new EPA regulations and their impact on closing power plants across the country?
  - **Hon. Phillips:** We are always concerned about reliability, and our feedback was incorporated into their regulations.
- What is FERC doing to prioritize the re-licensing of existing hydropower facilities?
  - **Hon. Phillips:** Almost one-third of our hydropower facilities nationwide will be up for re-licensing between now and 2030. FERC is hiring, but we are getting prepared to address this need.

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- What specific actions do you believe Congress can take to simplify the process and ensure reasonable timeframes for decisions?
  - **Hon. Phillips:** I have made streamlining a priority, and timelines have come down.

## Full Committee Ranking Member Frank Pallone (D-NJ) Questions

- What is FERC's authority to issue Order No. 1920?
  - **Hon. Phillips:** Under the *Federal Power Act*, the Commission has jurisdiction over electric transmission rates, interstate rates and the practices that affect those rates. Order No. 1920 concerns long-term regional planning and cost allocation, and those practices impact transmission rates.
- Is there reason to suspect Order No. 1920 would be on a different legal footing from Order No. 1000?
  - **Hon. Phillips:** No.
- Why is it so important to FERC's core responsibilities that it remains independent?
  - **Hon. Phillips:** It is a part of our trust relationship with the public.
- How does gas reliability impact electric reliability? Should Congress enact legislation to mandate reliability standards for gas?
  - **Hon. Phillips:** We treat the gas and electric sides as separate, but in reality they are increasingly interdependent upon each other. We have Electric Reliability Organization (ERO) for the electric side. We don't have a reliability organization that is required to maintain the reliability of our gas side. I believe that is a gap in our reliability regime. And I believe that there should be some agency responsible for that gap.

## Rep. Brett Guthrie (R-KY) Questions

- How can FERC address the challenges of electricity needs?
  - **Hon. Christie:** The states decide which generating units get built and which units are retired. FERC's role is to raise the alarm in terms of reliability problems, regulate the North American Electric Reliability Corporation (NERC) and look at how those markets are affecting prices and reliability.
- Given the recent *Chevron* decision, where might there be opportunities for Congress to be more explicit in legislating and affecting your authorities?

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- **Hon. See:** When Congress wants an agency to exercise its expertise and discretion, it needs to make statutes clear in order for the courts to respect it.

## Rep. Scott Peters (D-CA) Questions

- Does FERC need to wait for the results of a NERC study on the benefits of interregional transmission on reliability to move forward on a potential rulemaking on interregional transmission or minimum transferred requirements?
  - **Hon. Phillips:** No, and we are not waiting. NERC will deliver their study at the end of the year and pick it up from there to the end.
- Could a rulemaking on minimum transfer requirements reduce customer costs and improve reliability and how would that work?
  - **Hon. Phillips:** I agree with the benefits of interregional and it is the next step on our transmission reform journey. FERC plans to determine a best course of action to address it.

## Rep. Morgan Griffith (R-VA) Questions

- What is your advice on the cost to allocation for electric transmission lines referenced in your previous comments and Order No. 1920?
  - **Hon. Christie:** Order No. 1000 allowed separate cost allocation for public policy projects, but Order No. 1920 combined them with reliability projects, mandating a unified cost allocation formula. This rule spreads the costs and benefits of public policy projects across multiple states, requiring policymakers and regulators to comply regardless of their agreement.

## Rep. Lizzie Fletcher (D-TX) Questions

- What else do you need Congress to provide?
  - **Hon. Phillips:** To the extent Congress asks us to do something new, I want them to be clear because FERC is one of the most litigated agencies in all of government.
- When does FERC plan to publish the external guidance for the Emergency Action Plans (EAP) infrastructure proceedings?
  - **Hon. Phillips:** Environmental justice was one of my priorities, and we established a working group focused on environmental justice. We are working on outward-facing public guidance on it.



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## Rep. Tim Walberg (R-MI) Questions

- Will the costs of carbon-capture facilities and associated infrastructure be borne by taxpayers?
  - **Hon. Rosner:** There's strength in diversity and if we did not have all the resources on the system running, we would have had greater problems than we had.
  - **Hon. See:** We are looking at it closely.
  - **Hon. Chang:** I am beginning to look at the potential implications of the rules.
- Do you believe it is just and reasonable, and not discriminatory or preferential, for ratepayers to bear the transmission rates that will be required because of this forced generation shift?
  - **Hon. Rosner:** We need everything we have today and some new things. When we build new things, we need to make sure that we are building the least cost set of resources and that we are compensating those resources in response to the services they provide.
  - **Hon. See:** I am looking very closely at costs when it comes to the commission's authority for a just and reasonable rate.
  - **Hon. Chang:** I take the economics of these energy systems, including generation and transmission, very seriously. As resources shift, we need to look at the platform and the network needed to support the population.

## Rep. Paul Tonko (D-NY) Questions

- Why was it important that Order No. 1920 requires grid planners to consider alternatives to new transmission?
  - **Hon. Phillips:** In No. 1920, we require grid planners to consider grid-enhancing technologies, as they provide more reliability and lower costs. Replacing the wires within an existing transmission facility can save up to 60% of efficiency.

## Rep. Randy Weber (R-TX) Questions

- How is FERC coordinating with other agencies to reduce the regulatory overlap? Would you support my proposal for FERC, Pipeline and Hazardous Materials Safety Administration (PHMSA) and the U.S. Coast Guard to produce interagency agreements to address duplicative and conflicting agency requirements?

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- **Hon. Phillips:** We have been focused on bringing down timelines. There are opportunities for improvement, and I would be able to provide technical assistance with your legislation.
- Does the U.S. have a fundamental interest to advance needed infrastructure to match our country's abundant natural gas supply with international demand?
  - **All witnesses:** Yes.

### Rep. Annie Kuster (D-NH) Questions

- Do you agree that hydropower and pump storage is a key part of our clean energy system?
  - **All witnesses:** Yes.
- Should Congress work to ensure that the relicensing process is not driving reliable, dispatchable clean energy projects offline?
  - **All witnesses:** Yes.
- Do you think it's prudent for Congress to empower FERC to work with agencies and stakeholders in the relicensing process to resolve inconsistent or conflicting licensing terms?
  - **All witnesses:** Yes.
- Should Congress do more to ensure that tribal consent is in the FERC hydropower licensing process?
  - **Hon. Phillips:** When we issued that rejection, it was consistent with what we have done with other federal land managers for over a decade. We can still have our applicants come back with a full application.
- Should FERC consider ways to make it easier for obsolete facilities to make end-of-life decisions?
  - **Hon. Phillips:** We have a decreasing number of these requests regarding small hydro, but we should still find ways to streamline our processes.
- Does the lack of refund authorities from the [Natural Gas Act](#) ('NGA'; 15 U.S.C. ch. 15B § 717) when companies are caught overcharging impact the energy rates Americans pay? If Congress granted FERC the authority to issue refunds, would FERC exercise this authority to protect consumers and keep prices reasonable?
  - **Hon. Phillips:** We defer to Congress on what to do regarding refunds.

### Rep. John Curtis (R-UT) Questions

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- What are your thoughts on co-locating a small nuclear reactor next to a data center? Do you have any thoughts on when it is good or bad and how we can make it work?
  - **Hon. Christie:** I do have thoughts, but we have a pending case coming out of PJM and I do not want to be seen as prejudging it.
- What are your thoughts on grid-enhancing technology?
  - **Hon. Phillips:** We require our transmission providers to consider grid-enhancing technologies, like advanced reconductoring, both in the interconnection process and in the planning phase for new transmission.
  - **Hon. Christie:** Grid-enhancing technologies have tremendous potential.

#### **Rep. Rick Allen (R-GA) Questions**

- Should public service commissions that highly value reliable services of energy and vertically integrated markets be concerned about forced retirements and the ability of utilities to provide firm generation?
  - **Hon. Christie:** They should be, and they are.

#### **Rep. Kathy Castor (D-FL) Questions**

- What else are you doing to improve interconnection times and alleviate the backlog?
  - **Hon. Phillips:** We are focused on interconnection. Order No. 2023 was a great first step, but we have more work to do. We are going to have a workshop in September, focusing on automation using AI and other ways to continue to bring unacceptable wait times down.
- Have you been giving thought to identifying queue management best practices such as advanced computing, automation and standardized study criteria?
  - **Hon. Rosner:** I think about all these ways to unlock more efficiency, and if we could do more than less, I would be interested in pursuing that.

#### **Rep. Troy Balderson (R-OH) Questions**

- Would you agree with the assessment that our baseload generation is retiring too quickly, power demand is rising at historic levels and that we need more natural gas transportation infrastructure?
  - **Hon. See:** Yes.

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- **Hon. Christie:** When PJM Interconnection peaked in the heat wave, 46% of the generation in PJM used to meet that peak was gas. The EPA Power Plant Rule will make it virtually impossible to build combined cycle plants.
- Can you discuss what FERC's existing natural gas generation is being developed by the EPA?
  - **Hon. Christie:** The EPA Power Plant Rule will force the retirement of virtually the rest of the entire coal fleet. 20% of what PJM was doing last week was coal. If you evaporate that, you do not allow the construction of new combined cycle gas. You will not be able to keep the lights on.

## Rep. John Joyce (R-PA) Questions

- What is FERC doing to ensure that the U.S. can facilitate load growth either by tapping into the power grid or co-locating at plant sites?
  - **Hon. Phillips:** We have a pending matter, so we cannot talk about the issue of co-location. The best thing we can do to address the need regarding data centers, AI and quantum computing is to plan for it in the long term.
- What actions can FERC take now within its current authority to address this resource adequacy issue? What additional powers would you like to see Congress grant to better address the anticipated shortage of dispatchable generation in PJM and other regions?
  - **Hon. Christie:** PJM is losing dispatchable resources at an unsustainable rate, primarily coal and gas. We are the regulator of NERC, which includes raising the alarm on resource adequacy shortfalls. We do not have the authority to order the construction of a single generating unit in America, because the states do that.

## Rep. Tony Cardenas (D-CA) Questions

- How is FERC making sure its rules are legally durable, environmentally sound and meeting the obligations outlined in the *National Environmental Policy Act* ('NEPA'; [P.L. 91-190](#)) and Natural Gas Act (NGA)?
  - **Hon. Phillips:** FERC is required to consider environmental impacts on the communities, and we have created a working group to address this.

## Rep. Debbie Lesko (R-AZ) Questions

- What new authorities does FERC need to make sure that the right type of new baseload power generation is built for data centers and semiconductor plants?

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- **Hon. Phillips:** FERC is resources neutral but we support an all of the above approach when it comes to resource adequacy that can provide baseload power.
- What policy changes are occurring at FERC after *Chevron* was overturned?
  - **Hon. Christie:** The effect will be over time as we have cases that get appealed. If FERC is within its statutory authority, I do not think the ruling will have any effect. It will only matter when FERC is pushing the envelope.
- How is FERC coordinating with the EPA to address the premature retirements of fossil generation generators that are creating significant reliability issues in the U.S., if they are?
  - **Hon. Christie:** We are not, because the EPA proceeded with their rule. Now we and other utility regulators must manage the negative consequences of reliability.

## Rep. Marc Veasey (D-TX) Questions

- How can Congress ensure access to increasing loads?
  - **Hon. Phillips:** Load growth will provide jobs and power the future of our economy. It is not just about data centers, although we add a new data center about every three days. For many of these communities, this is a good thing. We have to plan for it, and we can, and we will with No. 1920.
- How are you evaluating the positive impacts of natural gas infrastructure projects on local communities while factoring in greenhouse gas emissions and other environmental issues?
  - **Hon. Rosner:** Timely infrastructure approvals are a priority for me. My approach will be to follow the statute, and the relevant statute is the NGA.

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