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Opening Statement of Rep. Henry A. Waxman Chairman, Committee on Energy and Commerce “Impacts of H.R. 3795, the Over-The-Counter Derivatives Act of 2009, on Energy Markets” Subcommittee on Energy and Environment December 2, 2009

Today, we’re examining whether the derivatives reform legislation reported last month from the House Agriculture Committee could disrupt the Federal Energy Regulatory Commission’s (FERC) current regulation of critical regional electricity markets.

This pending legislation is intended to bring greater transparency and accountability to derivatives markets. I absolutely support that goal. However, the bill’s broad definition of “swaps” is so inclusive that it threatens to displace comprehensive FERC regulation over regional electricity market products. The bill could be read to assign exclusive and mandatory authority over those products to the Commodity Futures Trading Commission (CFTC).

In 2000 and 2001, California experienced a severe energy crisis. Blackouts caused economic chaos, and energy prices in the state skyrocketed. Californians were victimized by unscrupulous traders in bulk power and transmission rights. FERC was, at the time, soundly asleep and unresponsive to the alarms that were raised.

In the wake of the California energy crisis, Congress amended the Federal Power Act to give FERC authority to prevent and punish fraud and market manipulation. If the legislation reported out of the Agriculture Committee is not adjusted to preserve the authority of FERC, it could undermine authorities that Congress gave FERC in the aftermath of the California energy crisis to investigate and penalize market manipulation.

Since the California energy crisis, FERC has strengthened its monitoring and enforcement practices. No one, including the CFTC or the sponsors of H.R. 3795, has suggested to us that the current regulatory regime to prevent market manipulation or abuse in FERC’s organized regional markets is “broken.” So we need to ensure that efforts to strengthen derivatives regulation don’t unintentionally weaken existing regulation.

Before H.R. 3795 is considered on the House floor, members need to understand how it would affect the organized regional markets FERC has created and comprehensively regulated pursuant to detailed tariffs. These markets only exist because FERC created them. The products traded in these markets are directly linked to the physical limits of the transmission system and are not traded on broad exchanges. We need to make sure that the legislation doesn't unintentionally displace FERC as the regulator of the markets FERC has created.

This hearing is an opportunity to learn what impacts this proposed legislation may have on these critical markets and what changes to the legislation may be appropriate. I appreciate the expert witnesses here to help us understand its implications. Our committee has a tradition of acting only on the basis of a thorough understanding of the issues before it, and I believe we can help to improve H.R. 3795 before it is voted upon.