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3 HEARING ON ``OVERSIGHT OF THE FEDERAL ENERGY REGULATORY

4 COMMISSION''

5 TUESDAY, MARCH 23, 2010

6 House of Representatives,

7 Subcommittee on Energy and the Environment

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 2:08 p.m., in

11 Room 2123 of the Rayburn House Office Building, Hon. Edward

12 J. Markey [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Markey, Butterfield,

14 Welch, Dingell, Baldwin, Barrow, Whitfield, Pitts, Burgess,

15 Griffith, and Barton (ex officio).

16 Staff present: John Jimison, Senior Counsel; Jeff

17 Baran, Counsel; Joel Beauvais, Counsel; Melissa Cheatham,

18 Professional Staff Member; Caitlin Haberman, Special

Assistant; Lindsay Vidal, Special Assistant; Mitchell Smiley, Special Assistant; Aaron Cutler, Minority Professional Staff; Andrea Spring, Minority Professional Staff; Mary Neumayr, Minority Counsel; and Garrett Goulding, Minority Legislative Analyst.

Mr. {Markey.} Ladies and gentlemen, we welcome you to the Subcommittee on Energy and Environment. We have had a very interesting, momentous day so far. Many of the Democratic members of our committee were down at the White House for the signing of the Health Care Bill which is why this hearing was postponed from the morning until the afternoon, and we apologize for the inconvenience that it presented to all of our witnesses and to everyone else that has a great interest in this subject. So welcome to this important hearing on Oversight of the Federal Energy Regulatory Commission or the FERC, as it is affectionately known around here.

This is the first time in over a decade that all of the FERC commissioners have testified before a House committee, all of them, together once in one place. We are glad to have you here and look forward to making this a more regular occurrence. You know, FERC kind of reminds me of Northern Iowa's basketball team. It is probably one of the least well-known teams in the Federal Government but it is right in the thick of things and can be surprisingly powerful when it needs to be.

Among FERC's many roles, there may be none more timely and important to discuss today than its frontline position in

the battle to protect America's grid. Threats to the grid from terrorists and hostile countries represent one of the single most critical national security concerns facing our country. Every one of our Nation's critical systems, water, health care, telecommunications, transportation, law enforcement, financial services depends on the grid. The commercially operated grid provides 99 percent of the electricity used to power our critical defense facilities.

This past weekend, a New York Times article reported on the work of Chinese researchers studying what type of cyber attacks could bring down the U.S. grid. That is just the latest in a wave of alarming news on this front. Over 2 years ago, the Department of Homeland Security revealed the so-called Aurora Vulnerability, through which hackers could use communications networks to physically destroy power plants. The intelligence community has made clear that the cyber systems controlling the grid are continuously probed by outside parties looking for weaknesses. FERC must be given the authority necessary to combat these growing threats.

After a subcommittee hearing, a classified briefing for members and months of discussions between my staff, the staff of the Ranking Member Upton, Ranking Member Barton and Chairman Waxman, we recently released bipartisan legislation that will give FERC the tools it needs to protect America's

grid. I am proud and pleased to report that this committee will markup that legislation tomorrow, a crucial first step in safeguarding the grid.

In addition to FERC's emerging role in defending the grid, the Commission must also be a partner in addressing the massive energy challenges facing America. FERC is developing the rules to our energy road that will help America reach its clean energy and in energy independence goals. The energy sector, long the bastion of antiquated technology and entrenched business models is finally entering the innovation age. Wind, solar and other renewable technologies are providing an ever greater share of our electricity at competitive prices and with zero carbon emissions.

Last year alone, using market incentives, customers reached peak electricity demand by the equivalent of the output of 50 power plants. As smart grid technologies continue to penetrate the market, consumers will be able to turn their heat up on the way home from work, schedule their dishwasher to run when electricity is the cheapest and fuel their vehicles using clean, low-cost, American-made electricity instead of expensive OPEC oil. At the same time, a technology revolution in production of natural gas from deep shale formations has increased America's natural gas reserves by over 30 percent, giving us nearly a century long

supply at current production rates.

Each of us these clean energy innovations brings with it significant challenges but more importantly, tremendous opportunities. FERC will be at the forefront of the effort to grapple with these challenges and seize these opportunities. We don't know yet who the starting five will be on our clean energy all-star team but if the team is going to be successful, it is going to need strong coaching and refereeing from the FERC.

I thank the commissioners for their work on these important issues to date and I look forward to hearing their views on how to best achieve our clean energy and energy security goals. That completes the opening statement of the chair.

[The prepared statement of Mr. Markey follows:]

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Mr. {Markey.} And I will turn to our ranking member, the gentleman from Kentucky, Mr. Whitfield, for his opening statement.

Mr. {Whitfield.} Mr. Chairman, thank you very much.

We look forward to this oversight hearing on the Federal Energy Regulatory Commission. I also would like to extend a warm welcome to all of the commissioners. It is seldom that we have them all here and we do look forward to working with you today on the many issues facing all of us.

I look forward to hearing also from the panel as to how they intend to ensure that all sources of generation, including coal, nuclear, renewables, natural gas have access to electricity transmission and markets. FERC obviously has broad authority over the electricity infrastructure, as well as natural gas pipelines, and must make certain that FERC is helping provide safe and reliable energy while ensuring rates are competitive and fair.

The Energy Policy Act of 2005 gave FERC new authority against energy market manipulation, including civil and criminal penalty authority. I would like to hear how FERC has bee using that authority and what its future plans on this subject are. I am also concerned that the financial services legislation which Congress is currently considering

could limit FERC authority by failing to protect FERC's jurisdiction from encroachment by the CFTC.

Obviously, there are many issues before us today dealing with making sure that our electricity grid and natural gas pipelines are safe and reliable. Our subcommittee plans to consider electric cyber security legislation tomorrow and I hope that the witnesses will expound on why they believe additional authority to protect our grid from cyber terrorists and cyber warfare is necessary.

We look forward to your testimony. Thank you again for being here and I yield back the balance of my time.

[The prepared statement of Mr. Whitfield follows:]

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Mr. {Markey.} Great, we thank the gentleman very much.

We are awaiting as well the arrival of Fred Upton from Michigan along with Mr. Barton and Mr. Waxman. There are three roll calls on the House floor and what we could do right now is we could recognize members to try to squeeze in their opening statements and then with a little bit of luck we could then recess.

Yes, excuse me, the gentlelady from Wisconsin.

Ms. {Baldwin.} I could make it even easier. I welcome our witnesses and I waive my opening statement.

[The prepared statement of Ms. Baldwin follows:]

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Mr. {Markey.} That is a gesture that is well received by the chair and we welcome all of the witnesses and we turn now and recognize the gentleman from Pennsylvania, Mr. Pitts.

Mr. {Pitts.} Thank you, Mr. Chairman, I will be brief. Thank you for holding this hearing on FERC oversight.

There are many issues I hope we explore today, including the implementation of the Energy Policy Act of 2005, market oversight, electric service security, transmission policy and cost allocation. The list is long.

As I understand it, FERC has asked Congress to work on legislation regarding cyber security which I think is of critical importance. In recent years it has become apparent that our electric grid is vulnerable to cyber attack by terrorists or other nations and as we move towards marking up a bill to protect our bulk power system, I am interested in hearing the panel's thoughts on how best to protect our grid from malicious intent.

In addition to cyber security, I think we must also focus on transmission policy here in the United States. The official report of the 2003 northeastern blackout concluded that, ``As evidenced by the absence of major transmission projects undertaken in North America over the past 10 to 15 years, utilities have found ways to increase the utilization

of their existing facilities to meet increasing demands without adding significant high-voltage equipment.'' Clearly, there is a significant need for an increase in transmission capacity and this need is amplified as we consider adding more and more renewable energy to the grid. However, my district includes some of the most pristine historic landscape in the Middle Atlantic. My district also has some of the most productive farmland in the U.S. and while I am supportive of adding more transmission capacity, I believe we do need to keep in mind the legitimate desires of localities to preserve green spaces and historic sites and the same can be said of the siting of natural gas pipelines.

Finally, I am interested in hearing the panel's thoughts on the regulation of over-the-counter derivatives. As you know, in my State of Pennsylvania, electric and natural gas companies use derivatives to hedge or lock prices of commodities they plan to use or sell in the future, and the Pennsylvania PUC has stated that mandatory, centralized clearing or exchange trading for all OTC transactions would needlessly increase expenses associated with the hedging and risk management activity, so important issues.

I look forward to hearing our witnesses and yield back.

[The prepared statement of Mr. Pitts follows:]

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Mr. {Markey.} We thank the gentleman very much.

Our time is running down here and we have 3 minutes left to go before we have to be on the floor. We will recognize the gentleman from Texas, Mr. Burgess, for an opening statement.

Dr. {Burgess.} Thank you, Mr. Chairman. I am also pleased we are having the hearing today to discuss with the full Commission the issues before the Federal Energy Regulatory Commission.

We are all well-aware of the expansion of infrastructure for electricity is critical as is the infrastructure for natural gas. In communities across this country, the electric grid is at or near capacity. With the price of oil fluctuating daily, it will likely increase again as it always does with the summer months. The demand for natural gas, a cheap and abundantly available energy source, may likewise increase.

The need for a strong infrastructure for natural gas is evident in my own backyard. My district is home to the Barnett Shale, which is one of several sources of natural gas throughout the country which thanks to new technologies and techniques in gas retrieval is providing both energy and economic opportunities in north Texas.

Beyond natural gas, Texas has been a leader in renewable energy as the leading State in wind power. Advances to the electric grid will enable increased uses of renewable energy as electricity from renewable sources is able to travel further in more advanced power lines, but we are all aware that renewable energy alone will not meet this country's needs, which is why new sources of energy from nuclear power are critical if we are serious about a cleaner energy portfolio.

I hope today's discussion will be productive in moving us toward a stronger infrastructure that will provide consistence power to every sector of our economy, and I yield back.

[The prepared statement of Dr. Burgess follows:]

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Mr. {Markey.} Great, the gentleman yields back. We thank the gentleman.

All time for opening statements by members has been completed unless Mr. Waxman or Mr. Barton shows up. And as a result, when we come back we will be recognizing you, Mr. Chairman, as the first order of business but you can expect that to occur in about 20 minutes. Okay, so with that the subcommittee stands in recess.

[Recess.]

Mr. {Markey.} So the Subcommittee on Energy and Environment is called back into order and we welcome you all again, and now we are ready for testimony from our very distinguished panel. Our first witness today is the Chairman of the Federal Energy Regulatory Commission, Jon Wellinghoff. At FERC, Mr. Wellinghoff works to open wholesale electric markets to renewable resources and promote greater efficiency in the Nation's energy infrastructure. We look forward to hearing your testimony, Mr. Wellinghoff. You may proceed.

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^STATEMENTS OF JON WELLINGHOFF, CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION; MARK SPITZER, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION; AND JOHN NORRIS, COMMISSIONER, FEDERAL ENERGY REGULATORY COMMISSION

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^STATEMENT OF JON WELLINGHOFF

} Mr. {Wellinghoff.} Thank you, Mr. Chairman.

Mr. {Markey.} Could you move that microphone in a little bit closer, please?

Mr. {Wellinghoff.} Thank you, Mr. Chairman, Ranking Member Whitfield, member of the subcommittee. I thank you for the opportunity to appear before you today to discuss the Federal Energy Regulatory Commission's work on critical energy issues now facing our Nation. I will summarize my testimony but I request that my full written remarks please be included in the record.

Mr. {Markey.} Without objection, so ordered.

Mr. {Wellinghoff.} First, I want to convey to this subcommittee that it is my privilege and honor to serve as the head of, in my opinion, one of the most extraordinary agencies in the Federal Government. We have over 1,400 dedicated, highly-skilled and extremely competent employees

who come to work with the intent of making energy delivery system in this country work better to the benefit of consumers. Those employees are focused on FERC's mission as stated in the FERC's strategic plan that I provided to Congress last fall. The Commission's mission is to assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means. Our employees work to fulfill this mission every day and I am so proud to work with them.

Fulfilling our mission involves two primary goals. First, promoting the development of safe, reliable and efficient energy infrastructure that serves the public interest, and second, overseeing rates, terms and conditions for wholesale sales and transmission of electric energy and natural gas in interstate commerce. I would like to highlight some of the steps the Commission is taking in pursuit of each of those goals.

To promote the development of safe, reliable and efficient energy infrastructure, the Commission is among other actions siting natural gas pipelines to bring new, low-cost gas supplies to markets to serve consumers' needs. Siting hydropower projects to increase energy supply in markets, reviewing transmission planning cost allocation interconnection processes for the electric grid so that new

resources of supply can be efficiently and economically delivered to markets to serve consumers. Using incentive-based rate treatments in appropriate circumstances to encourage investment in transmission infrastructure, including advanced transmission technologies and facilities designed to connect location constrained renewable energy resources to load centers. Protecting the reliability of the grid and facilitating the development of smart grid technology and standards that will increase efficiency, reliability and flexibility of the electric system.

In addition to overseeing rates, terms, and conditions for the Commission on Jurisdictional Services, the Commission is, among other actions, implementing Congressional policy that wholesale competition can provide benefits to consumers in all regions while respecting regional differences. Instituting improvements to organize wholesale electric markets including enabling a wider range of resources to compete thus delivering benefits to consumers, developing a national action plan on demand response that builds on the national assessment of demand response potential and will encourage the use of additional resources for the benefit of consumers, and pursuing a balanced approach to oversight and enforcement, including attention deterring market manipulation and promoting compliance with mandatory

reliability standards for the bulk power system.

Each of my fellow commissioners will briefly discuss some of these important issues. First, I want to indicate for the committee my apology, Commissioner Moeller left. He had to leave. Apparently, there is a personal issue that has to deal with his house is on fire, is what he indicated to us so he literally has an emergency, and I will do Commissioner Moeller's section with respect to hydropower and natural gas infrastructure.

Commissioner Spitzer will discuss the operation of the organized wholesale electric markets and corresponding benefits for consumers, as well as other competitive markets subject to Commission's jurisdiction. Commissioner Norris will discuss our Nation's potential for demand response and that progress being made in some organized wholesale electric markets to harness that potential.

I truly enjoy working with my fellow commissioners. They too, like our FERC staff, are dedicated to FERC's mission. The Commission's work is vital to achieving our Nation's energy goals, including the need for energy security and the availability to consumers of clean, affordable energy for our Nation's economic revitalization. My colleagues and I, and each and every FERC professional and administrative staff member are committed to our agency' mission and to

ensuring that consumers' have access to those clean, affordable, reliable energy supplies they deserve.

Thank you for the opportunity to appear before you. I will be happy to answer any questions.

[The prepared statement of Mr. Wellinghoff follows:]

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Mr. {Markey.} Thank you, Mr. Chairman, very much.

Our next witness is Commissioner Mark Spitzer. He is an experienced regulator who chaired the Arizona Corporation Commission before coming to the FERC. He has focused on expansion of natural gas infrastructure, demand-side management, and renewable energy policies.

We look forward to hearing your testimony, Mr. Spitzer. Whenever you are ready, please begin.

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^STATEMENT OF MARK SPITZER

} Mr. {Spitzer.} Thank you very much, Mr. Chairman, and after your opening remarks, I was tempted to merely say I agree but I think you want me to say something.

Mr. {Markey.} But that is a good start.

Mr. {Spitzer.} It is hard to muzzle a lawyer.

Mr. {Markey.} Yeah, I like testimony that starts that way.

Mr. {Spitzer.} Thank you. Mr. Chairman, I submitted written testimony that I will summarize.

Mr. {Markey.} And without objection, your testimony will be included in the record in its entirety as will Mr. Norris' and Mr. Moeller.

Mr. {Spitzer.} Thank you, Mr. Chairman.

FERC is endeavoring to combine the best of competitive markets with appropriate regulation so competitive market forces interact with consumer protection through appropriate regulatory oversight, and if I could illustrate. The chair alluded to my tenure in the Arizona Commission. In August, 2005, in the wake of Hurricane Katrina, the consumers of Arizona were faced with a horrendous burden when natural gas prices spiked to $15 per MMBTU so the gas distribution

companies as well as the power plants using natural gas to run electricity were first to go on the market and purchase gas that was spiked due to the shut-in of gas supply in the Gulf Coast. The Arizona consumers lacked natural gas storage. There was only one pipeline system and the consumers were greatly burdened. A price spike up to $15 has long term, negative ramifications for consumers. Well, shortly thereafter, the Energy Policy Act was signed into law and Arizona consumers as well as regulators could look to Washington, D.C. for relief.

If you consider and the members have alluded to the phenomenon of greater production of shale gas, this is a phenomenon where competition through technology was spurred and improved by regulatory support so that the markets did, in fact, work. Pipelines were constructed. Storage facilities were constructed. This country now has a much greater diversity of energy supply specifically with natural gas then existed only a few short years ago.

Similarly, FERC has endeavored to pursue fair energy markets with appropriate oversight. We have brought a small number of manipulation cases that are very important to deter those who would seek to manipulate America's energy markets. We brought enforcement proceedings, similarly to ensure that the prices are fair.

The chairman alluded to the smart grid and I think the smart grid is a wonderful opportunity to pursue demand response, energy efficiency, and as the chair alluded, go to a twenty-first century grid. We have seen the emergence of smart meters but I think that it is very important that we have smart prices to go along with those smart meters so that the ratepayers of the United States can fully derive the benefit from the smart grid.

On the area of cyber security, I would note the proposed legislation for markup with the observation that the Section 215, Federal Power Act process, is very ill-suited to deal with emerging cyber vulnerabilities. And I think that the proposed legislation should be seen as in partnership with the existing law under Section 215 to deal with reliability of the grid.

And then I guess finally, I want to thank the chairman for his efforts as well as my colleagues, Commissioner Norris and Commissioner Moeller, and since I arrived at FERC, I was also able to work with former Commissioner Kelly and former Chairman Kelleher in a way to provide for a reliable supply of energy at reasonable prices. It was truly a bipartisan and team effort, and we will work as very hard as possible to continue the efforts at FERC on behalf of the ratepayers of the United States.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Spitzer follows:]

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Mr. {Markey.} Thank you, Commissioner Spitzer, very much.

And our final witness is John Norris. He has years of experience in energy policy and regulatory affairs as a lawyer, a top official at the Department of Agriculture, and Chairman of the Iowa Utilities Board.

We thank you for joining us, Mr. Norris. Whenever you are ready, please begin.

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^STATEMENT OF JOHN NORRIS

} Mr. {Norris.} Thank you, Chairman Markey. Good afternoon and thank you, members of the committee, for inviting me here today. I have only been on the Commission for a couple of months now so I appreciate this chance to get my feet wet with the subcommittee here.

I also have consulted my colleagues yet but I like the metaphor of Northern Iowa as for FERC's role for going forward and I can--being an Iowan, I can assure you for both us and Northern Iowa, our best days are yet to come.

Mr. {Markey.} And as you know very well because we have seen each other in Iowa many times and as a former future cabinet officer in the Kennedy, Dukakis, Gore and Kerry Administrations, I have spent a lot of time in Dubuque in my life. I could very comfortably run for city councilman in Dubuque. That is where they always send the Irish guy from Boston, to Dubuque. That is where the Catholics are in Iowa and so when Boston College actually played Northern Iowa this year and got crushed, there was a very good bet from me in my pool. I mean no money exchanging hands, of course, but I did select Northern Iowa to go a lot further than I would have if again, it was another experience of Boston College going to

Iowa and learning some things about not just politics but basketball, so none of that is going to come off of your time. If we could go back to 5 minutes for the Commissioner, please again begin, welcome.

Mr. {Norris.} Thank you. We do take great pride in our Panther basketball.

Well, let me just give an overview of my written comments which largely pertain to the demand side of resources and demand response. If there is one most important takeaway from those comments, it is that our best energy outlook for the future includes an efficient mix of both demand-side resources and supply-side resources. By providing a level playing field and the opportunity for the demand-side of resources to participate on a comparable basis to traditional supply-side resources, we could make a positive difference for our markets and our consumers by allowing innovation, ingenuity and competition, and customer choice to foster competition.

Let me briefly review what has evolved so far. The Commission has allowed demand response resources to be used to comply with certain reliability standards and has required that such resources be considered as a solution in utilities transmission planning processes. In the organized markets, the Commission has gone further, requiring ISOs and RTOs to

accept bids from demand response resources in their ancillary services markets and enable aggregators to bid demand response on behalf of retail customers, and we are beginning to see results. The most recent Commission survey results for demand response showed a total potential peak load reduction across the Nation of 35 gigawatts, which is up 26 percent from the 2006 Commission survey results, and represents approximately five percent of the total forecasted U.S. peak demand for the summer of 2008, but there still remains a tremendous untapped reservoir. Last summer's national assessment of demand response potential projected through 2019 that the potential for peak electricity demand reductions across the country is up to 188 gigawatts or up to 20 percent of our national peak demand.

So where will the changes occur? Well, existing reliability and market rules and structures were developed around the needs and operating characteristics of traditional generation resources. There is not always consensus as to how and whether specific rules and structures should be modified to create a level playing field for demand response resources, but my expectation is that as we gain additional experience, the Commission will continue to modify and shape demand response policies. Just last week, the Commission issued a notice of proposed rulemaking to address

compensation of demand response resources. The notice proposes and seeks comment on requiring RTOs and ISOs in which demand response resources participate at a resource to pay demand response providers the market price for energy for reducing consumption below their expected levels.

In June of this year, the Commission will issue the National Action Plan for Demand Response which will identify communication strategies, technical assistance to States and tools necessary to achieve the potential identified in that assessment. FERC also remains engaged with the States in the demand response collaborative. We are mindful that States have a large role in shaping the policies that affect demand response participation in electricity markets and we continue to work closely with our State colleagues on the FERC demand response collaborative to ensure that our efforts are coordinated and achieve the greatest impact.

There are remaining barriers such as the measurement and verification of demand response that are yet to be finalized or agreed upon. The rules and software that the system operators use in organized markets to schedule and dispatch resources were developed around the needs and operating characteristics of traditional generation resources, and may pose a barrier to a demand response in other resources, and the market rules and business practices are yet unclear as to

how they are to apply to demand response. The Commission is analyzing these and other issues and if appropriate, may conduct one or more rulemakings to help further eliminate barriers to a demand response.

Thanks again for the opportunity to be here. I look forward to meeting the challenges of diversifying our electricity market in the future and I think the Commission is well-positioned to help lead the country in that effort.

[The prepared statement of Mr. Norris follows:]

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Mr. {Markey.} Thank you, Commissioner Norris, very much.

Can I just very briefly, Mr. Chairman, in terms of Commissioner Moeller's testimony, should I make a unanimous consent request that that be included in the record in its entirety?

Mr. {Wellinghoff.} Please, we would appreciate that.

Mr. {Markey.} Okay, without objection, so ordered.

[The prepared statement of Mr. Moeller follows:]

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Mr. {Markey.} So the chair will now recognize himself for a round of questions.

As you know, tomorrow this subcommittee will markup legislation giving FERC new authorities to protect the U.S. electric grid against attack. How serious in your view is the threat to the grid from cyber and other threats, and how serious are the consequences if we don't protect the grid from those threats?

Mr. {Wellinghoff.} Mr. Chairman, in my opinion, the threat is extremely serious. I know that members of this committee have had classified briefings with respect to the issues that we are facing. I believe that it is critical that we address this threat as quickly as possible. It is something that FERC has been concerned about for a number of years and I know has been working with Congress to try to get a piece of legislation together that would do the job of actually the threats and I believe the legislation that you have, I haven't seen the latest draft. I have seen some earlier drafts but I believe that it really does fully look at not only threats but vulnerabilities as well which I think is important. I understand that there may be some issues that DOD still has that would like to discuss with you but other than that from what I have seen so far, I think that

the legislation will provide FERC the tools that we need to ensure that cyber security is not an issue for this country with respect to the grid.

Mr. {Markey.} Thank you, Mr. Chairman.

Now, there are some industry stakeholders who take the view that although there may be a need for new Federal authority to react to a grid security emergency, that the current system of industry standard-setting through the NERC is adequate to defend the grid against attack by terrorists or of hostile nation states. What in your view are the limitations in the current system and why should we give the FERC the authority to establish interim requirements if you determine that NERC standards haven't addressed a critical weakness to attack?

Mr. {Wellinghoff.} Mr. Chairman, currently under the NERC-FERC reliability process, we have I believe it is eight cyber security standards that we have approved but those standards came to us through a process where FERC takes to its stakeholder group these proposals. The proposals are discussed over a period of time. They are voted upon and then they are ultimately submitted to us. That process, I believe, is not expeditious enough to deal with threats certainly, where we have an immediate threat that is identified by the President or really to deal with

vulnerabilities in a really effective manner. Number one, we still don't have a process where we can provide information to the utilities on a confidential basis which is a real gap, I believe, because we certainly don't want the fixes to get out to the opposition with respect to these cyber security threats. And we also don't have the ability to immediately send out a fix to the proper entities who need to be identified when we determine that there is a threat that exists. So I believe that that the current process has allowed us to go so far but as far as we have gone it doesn't take us all the way that we need to go to close off the threat.

Mr. {Markey.} Let me ask one final question on this round and this is for any of the commissioners. There have been concerns that a recent FERC decision could negatively impact deployment of renewable energy. As I understand it, the decision involving the Kansas Utility Westar could disadvantage renewal energy projects because they would be forced to pay for the variability of their power generation. Are there options that we could pursue to include additional factors in calculating the cost of this variability? As I understand it, wind and solar variability goes down considerably if the grid is able to dispatch generation more quickly and schedule generators more frequently, Mr.

Chairman.

Mr. {Wellinghoff.} Mr. Chairman, the Westar decision is currently pending rehearing so I can't discuss the decision specifically but I can talk in general terms about your question. Are there other ways we can look at how to allocate these costs relative to I believe it is regulation service for the grid that under that particular decision is being, wind is being asked to pay some portion of. I think we really do need to examine how those costs are allocated and look at very carefully how loads are involved in posing those costs on the grid versus how resources like wind are. So I am very open with respect to the rehearing as to what we might be able to look at there but again I can't talk specifically about the particular case given it is pending for rehearing.

Mr. {Markey.} Okay, Commissioner Spitzer.

Mr. {Spitzer.} Thank you, Mr. Chairman, and again without discussing the specific Westar case, as is the case in many regulatory environments, we need to balance competing interests and the overarching goal is just and reasonable rates. If you look at the Commission's generator interconnection rules and the changes thereto to accommodate wind that took place in 2005, the Commission has shown a great willingness to incorporate and integrate wind. If you

look at our Notice of Inquiry regarding variable resources, we have striven greatly to increase not just wind but solar and other resources into the grid in a way that preserves reliability and minimizes costs to ratepayers. So in many cases, these costs are about balancing efforts to integrate variable resources into the grid and at the same time justly assign the costs of integrating those resources in a fair manner, and that is as you know often complex but I don't think you can extrapolate one particular case to either hostility to wind or hostility to the ratepayers who are varying the cost of integrating wind.

Mr. {Markey.} Okay, great, thank you, Commissioner Spitzer.

The chair recognizes the gentleman from Kentucky, Mr. Whitfield.

Mr. {Whitfield.} Thank you very much and thank you all so much for your testimony.

Either one of you can answer this question. When the Fourth Circuit Court of Appeals in the Piedmont case ruled that FERC did not have the authority for new transmission facilities location, that you do not have that authority which was given to you under the Energy Policy Act, I know a number of organizations did appeal the decision, the American Wind Energy Association, Edison Electric Institution and so

forth, appealed to the U.S. Supreme Court. Evidently, the Obama Administration filed a brief on FERC's behalf telling the Supreme Court that it should not take the case and review the Fourth Circuit decision. When we hear almost every day a need to expand the grid, to modernize the grid, I was curious how would FERC or the Administration make a decision and not to appeal that decision?

Mr. {Wellinghoff.} That was an interesting discussion in the solicitor's office and as I understand it, first of all, it is the solicitor in the Administration who makes the decision and not FERC.

Mr. {Whitfield.} Okay, so FERC was really not consulted?

Mr. {Wellinghoff.} No, we were consulted and I want to tell you the nature of that consultation. We were consulted. In fact, the solicitor, as I understand it, agreed with it substantively that we were correct in our initial decision that the Fourth Circuit was incorrect, and I still believe we are correct. However, it was my understanding that the solicitor decided not to take it up to the Supreme Court or not to ask for cert to the Supreme Court on procedural grounds in that there was no conflicts in the circuits. It was only the Fourth Circuit that made the decision so therefore we only had one circuit decision so they didn't

feel that it was a significant enough case to take up. That was not our call. It was the solicitor's call.

Mr. {Whitfield.} Mr. Spitzer.

Mr. {Spitzer.} Thank you, Congressman. So there is no mistake, my opinion is that the Fourth Circuit decision was wrong. I would like a dissenting opinion.

Mr. {Whitfield.} Okay.

Mr. {Spitzer.} Sometimes lawyers lose cases and it was we lost two to one.

Mr. {Whitfield.} Right.

Mr. {Spitzer.} One of the issues was whether the case was in fact ripe and this gets into the unique nature of the case before the First Circuit, Fourth Circuit.

Mr. {Whitfield.} Right.

Mr. {Spitzer.} It was on a power line for which the application had not yet been filed at FERC and so one of the views of the Supreme Court does not like taking cases if they are not ripe for adjudication and given the fact that there was no actual power line case filed at FERC, there was a real question as to procedurally whether it was correct to seek certuari to the Supreme Court. Secondly, as the chairman noted, oftentimes you look for conflicts between Circuit Courts of Appeal to have a case go up to the Supreme Court.

Mr. {Whitfield.} Right.

Mr. {Spitzer.} So I think it is one of those unique factual circumstances but doesn't gainsay that the final rule that FERC voted not that was basically reversed by the Fourth Circuit was adopted by either FERC and I think we believe that the Fourth Circuit was incorrectly decided. In the Piedmont case, the only question is what is the best procedural mechanism to pursue reversal, either in the courts or with Congressional clarification?

Mr. {Whitfield.} Right, so you all feel quite strongly that your legal team does believe that under the Energy Policy Act that FERC does have backstop siting authority?

Mr. {Spitzer.} Yes, sir.

Mr. {Wellinghoff.} Yes.

Mr. {Whitfield.} Okay, thank you very much.

I note in, Mr. Wellinghoff, your testimony, I believe it was your testimony you talked about a strategic plan to explore as appropriate and implementing market reforms that will allow renewable energy resources to compete fairly in Commission jurisdictional markets. When do you expect that study or that strategic plan to be completed?

Mr. {Wellinghoff.} Excuse me. The strategic plan is completed. We have started to implement different aspects of that strategic plan including looking at variable renewable resources. We just issued an NLI, Notice of Investigation,

in January on that issue asking for comments as to the barriers of integrating into the system. The problem we have with these variable resources, both wind and solar, is that you are not completely able to forecast when you are going to have them into the system and because of that variability, you have to look at how you are going to operate the grid in a way to ensure reliability because we are charged with reliability on the grid. So we are very interested in determining how we can have larger and larger amounts and there are a lot of areas in the country, one of them being the northwest, for example, Bonneville's area. Another one being the south central portion of the country, Oklahoma-Kansas area where larger and larger amounts of wind are coming onto the system because they are developing them there and they apparently are economic and so they are coming onto the grid and as doing such, we need to ensure that they do it in a reliable fashion. So we want to make sure that this integration is done in a way that will protect this.

Mr. {Whitfield.} Just one follow-up if I could, Mr. Chairman.

In the Notice of Inquiry, you are asking for public input. When do you expect that period will end for public input?

Mr. {Wellinghoff.} I think it is the end of March.

Mr. {Whitfield.} Thank you.

Mr. {Butterfield.} [Presiding] Thank you, Mr. Chairman. All right, the gentleman's time has expired.

The gentleman from Michigan, the chair emeritus of this committee.

Mr. {Dingell.} Thank you, Mr. Chairman.

I have a splendid opening statement which I ask to be inserted in the record.

Mr. {Butterfield.} Without objection.

[The prepared statement of Mr. Dingell follows:]

********** COMMITTEE INSERT **********

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Mr. {Dingell.} Gentlemen of the Commission, is the Commission or any members of the Commission asking to have the Federal Power Act amended on this matter, yes or no?

Mr. {Wellinghoff.} Excuse me, Congressman Dingell, on the matter of cyber security?

Mr. {Dingell.} Yes, are you seeking to have any amendments made to the Commission or rather to the Federal Power Act?

Mr. {Wellinghoff.} Yes, we have supported legislation on cyber security that would require.

Mr. {Dingell.} Would you please submit those amendments to the committee so that we could see what they are, please?

Mr. {Wellinghoff.} We would be happy to do that.

Mr. {Dingell.} Is this the Commission or just individual members of the Commission?

Mr. {Wellinghoff.} The Commission has submitted.

Mr. {Dingell.} By what vote, sir?

Mr. {Wellinghoff.} Excuse me?

Mr. {Dingell.} By what vote, in other words?

Mr. {Wellinghoff.} We haven't.

Mr. {Dingell.} This is the request of the Commission or is this just individual commissioners who are seeking it?

Mr. {Wellinghoff.} The Commission doesn't typically

vote with respect to proposals of legislation. We usually respond to requests from committees for more information and that comes from the Commission.

Mr. {Dingell.} All right, would you please submit it to us and with a statement including whether this is the Commission's suggestion to the committee or whether it is that of individual Commissioners?

Now, next question, what, let us see, the Commission, I want to address the question of siting, transmission siting authority. Has the Commission decided who it is that should pay for new lines? In other words, is it going to be the originator of the power, the transmission company, the ultimate recipients and customers? Who will be the person who pays for these new lines and how will the allocation of these costs and benefits be decided according to the rules of the Commission?

Mr. {Wellinghoff.} Congressman Dingell, currently it depends on how the line is built. If it is built by a merchant then the merchant will pay for the line. If it is built by a developer who wishes to allocate costs more broadly, then it depends upon the region, and different regions do it differently. Certain RTOs have certain allocations.

Mr. {Dingell.} So you are not going to have a standard

approach to this?

Mr. {Wellinghoff.} There currently is not a standard approach.

Mr. {Dingell.} If I understand you correctly, you are telling me you have different rules for different States or different regions?

Mr. {Wellinghoff.} That is correct.

Mr. {Dingell.} How is that to be justified?

Mr. {Wellinghoff.} Each region decides they believe that methodology is appropriate for their region. They come to FERC, we look at it and review it, and determine whether or not it is appropriate for them and in those instances we then make a final determination but we do try to look at regional differences and there certainly are differences with respect to regions and how those costs may or should be allocated. They may be different in PGM.

Mr. {Dingell.} Well, I am going to submit a letter on this. We are consuming time that I don't have for this because we only have 5 minutes.

Now, what evidence is there that FERC needs backstop authority as granted in the Interview Policy Act of 2005? Is there broad consensus that the States are not capable of siting new transmission lines or that the States are acting in any way in bad faith? Is there a consensus that the

consumers are suffering because these States are unwilling or unable to site new lines?

Mr. {Wellinghoff.} The 2005 Act provides backstop siting authority in the instance of a congested corridor designated by DOE.

Mr. {Dingell.} Well, I understand you have got backup authority. Do you feel it is necessary to use that backup authority and if so, where, when and why?

Mr. {Wellinghoff.} I believe that in those instances where we have location-constrained resources that are needed to get the load by a long transmission line over multiple States or regions to the extent that a particular.

Mr. {Dingell.} Have you ever used this authority, this backup authority or have you left the matter to the States?

Mr. {Wellinghoff.} Currently, the backup authority is only for congestion corridors designated by DOE which are in very limited areas of the country.

Mr. {Dingell.} So you have not used it yet?

Mr. {Wellinghoff.} We have not used it yet.

Mr. {Dingell.} Do you have any plans to use it and if so, where, when and why?

Mr. {Wellinghoff.} We do not have any current plans to use it.

Mr. {Dingell.} Do you think that it is necessary to use

it for any particular reason at this time?

Mr. {Wellinghoff.} Not at this time.

Mr. {Dingell.} Okay, well, I know my time has expired, Mr. Chairman. I thank you for your courtesy.

Mr. {Butterfield.} I thank the gentleman.

The gentleman from Alabama.

Mr. {Griffith.} Thank you, Mr. Chairman.

Along those same lines and this is a comment. Is there a possibility because of the diversity not only of our power generation but also of our geography here in the States, is there any possibility that this is complicated enough that we might consider before any regulation that would be one size fits all, that we could do a pilot program or a couple of pilot programs that would take a particular geography and see how the integration and the reliability impact of integrating these large amounts of renewable energy into the grid, how we might do that on a pilot program before we decide that it is good for everyone? Is that unreasonable?

Mr. {Wellinghoff.} Congressman Griffith, I don't think it is unreasonable. In fact, I think it is going on right now. We have a great pilot going on in a place called Texas. Texas right now is integrating in 8,000 megawatts of wind and they are going to go to 18,000 megawatts of wind. They have just developed a $5 billion transmission upgrade to do that.

I just had some conversations with Chairman Smitherman, the chairman of the Texas Public Utilities Commission on that matter so I think we have a great incubator there of a pilot going on. We also I think have it going on in the different RTOs, as well, in California, in the Midwest, in SPP. They all have varying amounts of renewable energy that they are integrating in their systems there and so they are all sort of different pilots going on right now and I think it is good idea to have that happening.

Mr. {Griffith.} The sharing of costs of transmission and who is responsible for it from the maintenance to the charging of it, how is that, do you think, that is going to be decided?

Mr. {Wellinghoff.} The sharing the cost of transmission, I hope, is initially and primarily decided by the regions and the States. And again, it is something that I hope can be worked out on that regional State level. It is largely being done that way now within the RTOs. They are working out various proposals. I know though for example in MISO, the Midwest ISO, there is two different groups. One being the State commissioners primarily and another group being the transmission owners that have different ideas of how to allocate costs and they haven't come together yet. I think they are, as I understand it, may be coming to FERC

ultimately to have us resolve for them which would be the most appropriate way to do it but my preference would be to have the States and the regions work it out on their own.

Mr. {Griffith.} My concern, of course, in my district is I am Tennessee Valley Authority. What impact do these proposed or suggested regulations do you think would have on that particular utility?

Mr. {Wellinghoff.} I don't believe they would have an impact directly. I believe that the TVA determines how to allocate their costs within their own region.

Mr. {Griffith.} Thank you.

Thank you, Mr. Chairman.

Mr. {Butterfield.} Thank you.

At this time, the chair recognizes the gentlelady from Wisconsin.

Ms. {Baldwin.} Thank you, Mr. Chairman.

Chairman Wellinghoff, welcome.

Mr. {Wellinghoff.} Thank you.

Ms. {Baldwin.} As you, I think, noted in your testimony and I am sorry, I saw it in the written testimony. I am sorry I missed your oral testimony today but FERC has convened several technical conferences around the country asking for input and comment on matters relating to transmission planning, coordination and cost allocation. And

I have been hearing some observers recently speculate that these activities should leave little doubt that FERC intends to set down concrete rules of cost allocation for transmission projects. And so I am wondering if you can confirm whether there is a cost allocation rulemaking in the works and if so, what details can you provide us?

Mr. {Wellinghoff.} We are currently reviewing, as I understand it, several thousand pages of comments on those workshops that you referred to regarding cost allocation and planning. When we complete that review, we will consider a rulemaking with respect to cost allocation and I am certain that that rulemaking will be informed also by other proceedings like the filing that we expect from the Midwest ISO and their cost allocation proposals. So it is possible that we would move to rulemaking. I can't tell you today that it is a certainty but we are looking at those comments and considering that in conjunction with the other filings that are coming in on cost allocation because we are getting sort of a disparate request with respect to cost allocation from different parts of the country, and it would be good to look at them in sort of a unified whole not saying one size fits all because I really don't believe in that per se. I think you do have to account for regional differences on the one hand but it may be good to set down some sort of general

principles with respect to cost allocation. And I would like to see that go forward but again what will ultimately come out of it will be up to a vote of the Commission.

Ms. {Baldwin.} What light could you shed on the timeframe for making that decision of whether you are going to move forward with a rulemaking?

Mr. {Wellinghoff.} I think we should know where we are going to be in 6 months.

Ms. {Baldwin.} Okay.

Mr. {Wellinghoff.} It shouldn't be that long. I mean if a rulemaking comes out and I can't tell you when exactly it would come out but it would be my hope at least that we would have enough analysis done on the comments and have a good enough idea from the filings from places like MISO as to what some of the alternative proposals are to look within a 6-month timeframe to whether or not we want to do a rulemaking.

Ms. {Baldwin.} Okay, last year the Seventh Circuit Court of Appeals struck down a FERC-approved tariff to distribute costs through a postage stamp rate in the PJM RTO, and I wonder if you can tell me what steps the Commission has taken in response to this case?

Mr. {Wellinghoff.} Excuse me, I am sorry. I just had to get a little update there. The case is pending before the

Commission right now, the remand to us, but we did ask parties in the case to submit additional evidence to us because basically the Seventh Circuit asked us to do some cost benefit analysis with respect to the way that we spread those costs in that allocation, and so we are asking for information from the critical parties in the case to ensure that we had adequate evidence to be able to go back to the Seventh Circuit and show them and demonstrate to them that our allocation methodology was appropriate.

Ms. {Baldwin.} So in light of the fact that you are taking in additional evidence, do you believe that the Commission has the authority to approve a tariff that includes some level of broad cost-sharing for large transmission projects?

Mr. {Wellinghoff.} Yes, I believe we do if we do it under the Seventh Circuit principles and I think they laid it out that we don't have to be exactly precise in how we look at the cost allocation but we do have to show how the costs and benefits were considered, and I believe we can develop sufficient evidence in the record to do that.

Ms. {Baldwin.} Okay, as you may be aware, on March 16 of this year, NARUC sent a letter to Senators Reid, McConnell, Bingaman and Murkowski expressing some concerns that any dramatic shift by Congress in the current balance

between State and Federal jurisdiction over transmission line permitting and cost allocation will undermine significantly the just initiated interconnection-wide transmission planning efforts and produce gridlock. And I would ask, by the way, unanimous consent, Mr. Chairman, that that letter be inserted in the record of our proceedings today.

[The information follows:]

********** COMMITTEE INSERT **********

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Ms. {Baldwin.} That same letter goes on to say that they, and this is NARUC, remain unconvinced that additional Federal authority over transmission is needed. I give you as an aside, in Wisconsin since 2001, the total value of transmission construction and upgrades that are in-service or currently approved by our State's public service commission for future construction is approximately $2.7 billion. The letter adds that taking action now to disrupt the existing planning process actually contradicts the Congressional intent of the ARRA, the American Recovery and Reinvestment Act, which directed the Department of Energy to give the States $27 million to coordinate transmission planning efforts across the country's three grids, the Eastern Interconnection, the Western Interconnection and the Electric Reliability Council of Texas. Each of the 40 States in the Eastern Interconnection are participating in the Eastern Interconnection States Planning Council. Are you supportive, Mr. Chairman, of the platform that has been created by the American Recovery and Reinvestment Act for States and stakeholder cooperation and information-sharing? And what is FERC going to do to support these ongoing efforts?

Mr. {Wellinghoff.} We are very supportive of that provision of that Act. In fact, we were sure to get FERC

inserted in that so we could be advisors to DOE with respect to that particular planning process, and so we have people who are participating in both the Eastern and Western Interconnect, the planning processes. We are making our FERC staff available to those two entities to ensure that if they need technical information support, we will be happy to provide that to them, and I don't see that activity as any way inconsistent with the provision in the Bingaman Bill, for example, in the Senate that provides FERC with backstop siting authority and also some clarification of our cost allocation authority. I believe that planning process can and should and will go forward, and it will go forward with FERC's full support.

Ms. {Baldwin.} Okay, thank you, Mr. Chairman. I see that my time has expired.

Mr. {Butterfield.} I thank the gentlelady.

The gentleman from Vermont, Mr. Welch.

Mr. {Welch.} Thank you, Mr. Chairman.

I have some questions following up on Dr. Griffith. There are some of us who believe that we really need much more of an energy boost from FERC to protect consumers in the planning process of these transmission lines. And, be specific, in Vermont there is going to be very significant cost allocations and there is a sense among our utilities

that we have very little control and very little advocacy to make certain that the planning is done on a least integrated cost basis. Mr. Chairman, my understanding is that the RTOs do have an obligation to implement principle number five and that approach would be least cost integrated resource planning. Is that your understanding as well, Mr. Wellinghoff?

Mr. {Wellinghoff.} Yes, the RTOs are a very interesting entity.

Mr. {Welch.} No, answer my question. I mean I know they are interesting.

Mr. {Wellinghoff.} I am intending to.

Mr. {Welch.} Okay, good.

Mr. {Wellinghoff.} They are voluntary entities that are formed by the transmission owners in the region and as a part of that voluntary operating and cooperation agreement, those owners decide to what extent planning is part of a integrated least cost plan so it would be up to the stakeholders in each RTO to determine specifically what aspects of planning they will do and whether that planning goes to the point of an integrated resource plan.

Mr. {Welch.} So then you don't see FERC as having some responsibility to make certain that they do the least cost integrated planning?

Mr. {Wellinghoff.} FERC is responsible for ensuring that rates are just and reasonable.

Mr. {Welch.} Yeah, but that is built upon a major cost foundation in the transmission system.

Mr. {Wellinghoff.} And we are also responsible for ensuring that costs in the interstate transmission system are prudently incurred.

Mr. {Welch.} All right, let me tell you how I am translating this, okay.

Mr. {Wellinghoff.} Sure.

Mr. {Welch.} My utilities in Vermont work pretty hard to try to keep the cost to ratepayers down and the ISO New England does not perceive, as I understand it, they don't perceive that it is charged with doing least cost integrated resource planning but just transmission planning. And absent a very clear sense of direction from FERC, that is the way they are going to do it to the detriment of the consumers.

Mr. {Wellinghoff.} Again, it is my understanding that the RTOs can make that decision internally. I don't believe that FERC has the authority to dictate to the RTOs in that regard. In fact, we have had a California case that has indicated.

Mr. {Welch.} Okay, let me just stop and I am not arguing with you. I just want to understand this because

maybe we need some legislative authority.

Mr. {Wellinghoff.} Sure.

Mr. {Welch.} Either the ISOs have to do least integrated resource planning or they don’t. Their perception as I understand it right now is that all they have to do is transmission planning and is it your testimony today that FERC doesn't have a point of view on that?

Mr. {Wellinghoff.} No, it is my testimony today that FERC doesn't have the authority to order them to do that. My point of view and I authored the least cost utility planning statute in the State of Nevada so I am very familiar with the process is that everybody should be doing least cost utility planning.

Mr. {Welch.} Okay, would it be your advice to this committee that you need enabling legislation to permit you to make certain that that least cost integrated planning is done? Would that help you do your job?

Mr. {Wellinghoff.} I would be happy to have that authority.

Mr. {Welch.} All right, would you be willing to give me some draft language that would be helpful to you to help the consumers?

Mr. {Wellinghoff.} I would be happy to do that.

Mr. {Welch.} All right, thank you.

I yield back.

Mr. {Butterfield.} I thank the gentleman.

We have just received word that we have got three votes coming up very shortly. Any of the members on either side of the aisle wish to ask any additional questions?

I have one for my close.

Commissioner Spitzer, your testimony discussed the revolution in natural gas production from shales. Much of this new production will come from the Marcellus Shale located in an area that has not traditionally been a major gas producing area. What is it going to require in terms of new pipeline infrastructure to get all of this new gas to market?

Mr. {Spitzer.} Thank you, Mr. Chairman. There have already been some discussions of open seasons for shale to come from Pennsylvania, western Pennsylvania into the eastern markets to reduce the high prices of the eastern markets. They have not yet filed certificates to my knowledge with the FERC and if and when those certificates are filed, they will be handled in a way that is consistent with FERC's authority under the Natural Gas Act. So it is while we recognize that shales have been produced in various parts of the country including the Marcellus, it is also recognized that there needs to be some pipeline capacity to get that gas into the

consuming markets and that is under longstanding Federal law siting resides with the FERC.

Mr. {Butterfield.} All right.

The ranking member has returned. The chair recognizes the gentleman from Kentucky.

Mr. {Whitfield.} Thank you and thank you all again for being here today.

As you know or maybe you don't know but I do represent a State that produces a lot of coal, and we all understand that there are environmental concerns with coal and, Mr. Wellinghoff, I know you had made a statement at one point in time that we probably wouldn't need any more nuclear power plants or coal plants, and I know that subsequent to that you, you know, clarified that statement. But when I read a lot of documents today we talk about renewable energy and we know that a lot of States have renewable energy mandates and in the Cap and Trade Bill that came out of the House there is a renewable energy mandate and of course the Senate has not acted yet. And I am not any kind of legal expert on the intricacies of FERC but in your opinion, would it be discriminatory in any way to adopt a policy providing incentives or give an advantage to one source of energy production over another?

Mr. {Wellinghoff.} From a Congressional standpoint or a

FERC standpoint? FERC standpoint. We under our statute are required to ensure that rates are just and reasonable, and that there is no undue discrimination, and we uphold that policy. I believe that we have in fact in all our initiatives ensured that there is not undue discrimination with respect to any resource on the grid and that is my goal, and I think it is, I don't want to speak for my fellow commissioners but I think it is their goal as well. So to the extent that coal or nuclear is developed and is wishing to integrate to the grid, we certainly would do whatever we could to ensure that there is a fair and open transparent policy to do that. You just have to appreciate that over the 3-and-a-half years that I have been at FERC, we have seen mostly wind come onto the grid and that has been the thing that we have had to worry about. Last year, as a matter of fact, in this country we had 9,900 megawatts of wind come onto the grid and it has been a huge challenge. And it has been a challenge as I indicated from the standpoint of ensuring grid reliability, integration in a way that we can make sure the grid is stable, and that because we have the variable resources coming into the grid, ensuring that that grid is going to operate to the reliability and benefit of the consumers. So it may seem that we have emphasized to some degree renewable resources but certainly to the extent

that coal and nuclear is eventually built in this country, the open transmission processes for integration will serve those resources as well.

Mr. {Whitfield.} Okay, Mr. Spitzer, would you?

Mr. {Spitzer.} Thank you. I think it might be helpful, Mr. Chairman and Congressman, in response to briefly read the last paragraph of my statement which is, ``As a proponent of competitive markets, I believe the Commission must continue to focus on enhancing competition in wholesale electric and interstate natural gas markets. The Commission must continue in its role as an independent wholesale energy regulator by developing rules and policies that allow all types of resources and infrastructure to compete fairly. Just as we should not adopt rules or policies that ignore the laws of supply and demand, we should not adopt rules or policies that ignore any type of energy resource or infrastructure. Likewise, our rules and policies should not favor one type of resource or infrastructure over another. If we are to achieve the two primary goals of the strategic plan laid out by Chairman Wellinghoff, that the Commission's role should be to establish rules and policies that ensure that all types of resources whether they are natural gas, oil, hydro, nuclear, wind, solar or demand resources have a full and fair opportunity to compete for the ultimate benefit of

consumers.'' So that would reflect my and I believe the Commission's standpoint.

Mr. {Whitfield.} Now, yeah, I understand what you were saying and the fact that I didn't see coal in there was on demand resources.

Mr. {Spitzer.} I apologize.

Mr. {Whitfield.} But anyway, I know what you mean and, Mr. Norris, what would be your reply?

Mr. {Norris.} Let me echo what the chairman and Commissioner Spitzer said and that is I think we create all fuel sources fairly and equally, and leave it to this body to tell us how we evaluate cost and if the other costs associated with fuel sources be it internal or external costs, that becomes a factor I think in how we move forward but that is our job that to fulfill what you tell us to do in that regard. Barring that, I think we are trying not to be the choosers or pickers of fuel but make sure they are treated fairly.

Mr. {Butterfield.} I thank the gentleman.

All right, will there be any further questions from either side?

All right, let me on behalf of the chairman and the full committee thank you, gentlemen, for your testimony today. It has been very informative and your comments are part of the

record. This will conclude the hearing for this afternoon. Thank you.

[Whereupon, at 3:47 p.m. the Subcommittee was adjourned.]