

**Testimony of Anna Cochrane
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Federal Energy Regulatory Commission
Before the Energy Subcommittee
United States Senate
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Madam Chairman, and Members of the Subcommittee:

My name is Anna Cochrane, and I am Acting Director of the Federal Energy Regulatory Commission's (Commission) Office of Enforcement. Thank you for the opportunity to appear before you today to discuss energy market transparency and regulation. I appear before you today as a staff witness and do not speak for individual members of the Commission. Transparency in our nation's electric and natural gas energy markets is critically important to the Commission in fulfilling its statutory responsibilities to ensure just and reasonable wholesale rates for electric and natural gas customers. The Subcommittee's review of this important topic is a timely one.

The Commission's Efforts to Promote Transparency

The Commission has undertaken a number of initiatives to increase transparency in the nation's energy markets, including some that predate the Energy Policy Act of 2005 (EPAct 2005) by over a decade. It has used its Natural Gas Act (NGA) and Federal Power Act (FPA) authorities to collect information and require reporting of market information to improve transparency in wholesale natural gas and electric markets and in electric transmission and natural gas transportation. In addition, the Commission has used the specific Natural Gas Act transparency authority Congress granted to it in EPAct 2005 to improve transparency in natural gas markets. These efforts are discussed below.

To make electric transmission service more transparent, the Commission issued regulations in 1996 requiring public utility transmission providers to implement an Open Access Same-time Information System, or OASIS, to share information about the electric transmission system with all users of the system at the same time. Through the OASIS, transmission customers can view information regarding the availability of transmission capacity and the usage of the transmission system by other wholesale power customers. The terms and conditions of service are clearly posted on the OASIS, including the prices for each type of service offered and reserved. If the transmission provider discounts its price for a particular customer, it must announce that discount to all wholesale customers through an OASIS posting. The transmission provider also must post

the reason for denying any request for service, along with information regarding curtailments and interruptions of service to those that have confirmed reservations. These OASIS requirements were patterned on similar requirements that had been earlier implemented for interstate natural gas transportation. OASIS requirements remain an important tool to ensure that there is no undue discrimination in the provision of transmission services in interstate commerce and to help prevent the exercise of market power.

The Commission also has taken several important steps to increase the transparency of electricity and natural gas commodity prices. For example, in 2001, the Commission issued a final rule that requires all public utilities, including power marketers, to file an Electric Quarterly Report (EQR) summarizing data about their currently effective contracts and wholesale power sales made during each calendar quarter, including transaction specific information. EQR data is public and available for use on the Commission's website. EQR data is particularly useful for monitoring markets for indications that market power may be being exercised and provides an insight into pricing trends throughout the electric industry. For example, the information reported in the EQR (1) assists in corroborating or refuting evidence of market power submitted by sellers seeking market-based rate authority, (2) assists addressing on the record protests involving regional market conditions, and (3) helps determine whether sellers are complying with Commission-imposed price mitigation measures.

In addition, in 2003, the Commission issued a Policy Statement on Electric and Natural Gas Price Indices that explained the Commission's expectations of natural gas and electricity price index developers and the companies that report transaction data to them. The Policy Statement, among other things, directed the Commission's staff to continue to monitor price formation in wholesale markets, including the level of reporting to index developers and the amount of adherence to the Policy Statement standards by price index developers and by those who provide data to them. In adhering to this directive, Commission staff documented improvements in the number of companies reporting prices from back offices, adopting codes of conduct, and auditing their price reporting practices. These efforts resulted in significant progress in the amount and quality of both price reporting and the information provided to market participants by price indices.

In 2005, the Commission issued Order No. 668 which, among other things, revised its Uniform System of Accounts (USofA) to accommodate the restructuring changes that are occurring in the electric industry and to provide uniformity and transparency in accounting for and reporting of transactions and events affecting public utilities, including Regional Transmission Organizations

(RTO). These changes in accounting and financial reporting should improve cost recovery practices by providing details concerning the cost of RTO functions, and increased assurance that the costs are both legitimate and reasonable. In addition, in 2008, the Commission further enhanced the transparency of the business activities of natural gas companies and public utilities by requiring them to provide greater detail in their annual financial forms filed with the Commission. Public utility customers, state commissions, and the public now have more detailed information on wholesale sales to allow them to better assess the justness and reasonableness of interstate natural gas pipeline and electric utility rates.

In EPCA 2005, Congress enhanced the Commission's authority to facilitate price transparency in both the electric and natural gas markets. Such authority was given to the Commission "for the public interest, the integrity of . . . markets, fair competition," as well as for the protection of consumers. New Section 23 of the NGA and new section 220 of the FPA enhance the Commission's authority to ensure confidence in the nation's electric and natural gas markets. The Commission's market-oriented policies for the wholesale electric and natural gas industries require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the fairness of price formation, the true value of transactions is very difficult to determine. Further, price transparency makes it easier for the Commission to ensure that jurisdictional prices are "just and reasonable."

Pursuant to its new transparency authority under NGA section 23, the Commission issued Order No. 704-A to require natural gas wholesale market participants, including a number of entities that may not otherwise be subject to the Commission's traditional NGA jurisdiction to identify themselves and annually report summary information about their physical transactions that contribute to natural gas price indices. The reported information will make it possible for the Commission to assess the formation of index prices and the use of index pricing in natural gas markets. The first annual reports will be filed on May 1 for transactions that occurred during the 2008 calendar year.

Also pursuant to the NGA section 23 authority, the Commission recently revised its regulations to improve the transparency of wholesale natural gas markets in the United States, by requiring the dissemination of greater information about scheduled natural gas flows throughout the national pipeline network. The Commission has long required interstate natural gas pipelines to post on their internet web sites substantial information about their natural gas transportation business. On November 28, 2008, the Commission issued Order No. 720, in which it found that it is also necessary to obtain information from major non-interstate natural gas pipelines in order to obtain a complete picture of the

wholesale natural gas market and the supply and demand fundamentals underlying that market.

Specifically, Order No. 720 required major non-interstate pipelines to post on their publicly accessible websites daily operational information, such as scheduled volume information and design capacity for each receipt and delivery point with a design capacity greater than 15,000 MMBtu per day. Order No. 720 defined a major non-interstate pipeline as a pipeline that is not classified as a natural gas company under the Natural Gas Act and delivers on average more than 50 million MMBtu of gas annually over a three-year period. Order No. 720 also required interstate pipelines to post similar information regarding their no-notice transportation services. Order No. 720 is currently pending on rehearing. Major non-interstate pipeline companies are currently required to comply with the new rules 150 days after the issuance of an order on rehearing.

While the Commission does not regulate financial commodity market trading, activities in financial commodity markets can affect the electric and natural gas physical markets that the Commission regulates. It is therefore important that the Commission coordinate closely with the Commodity Futures Trading Commission (CFTC), which is responsible for the day-to-day regulation of commodity futures. In an effort to ensure coordination of overlapping jurisdiction between these two agencies, Congress directed in EPCA 2005 that the two Commissions execute a Memorandum of Understanding (MOU) related to information sharing. Specifically, it directed that the MOU include provisions ensuring that information requests to markets within the respective jurisdiction of each agency are properly coordinated to minimize duplicative information requests, and provisions regarding the treatment of proprietary trading information. The agencies signed an MOU shortly after enactment of EPCA 2005. Pursuant to the provisions of this MOU, the staffs of the two agencies have worked closely together to help ensure that both have the information necessary to perform their statutory functions. These efforts have contributed to more effective enforcement and oversight by our Commission over the physical energy markets.

The Commission's oversight staff within the Office of Enforcement conducts daily oversight of energy markets through regularly scheduled morning meetings, as well as research and analysis conducted throughout the day and as part of long-term projects. This research is facilitated by customized reports prepared from the information available to the oversight staff as well as information and analysis developed by third-party information providers. The oversight staff's long-term projects include developing tools to automate and enhance analysis of the information that will become available through the Commission's transparency efforts, like Order No. 704-A and Order No. 720.

In addition to maintaining an oversight staff, the Commission requires all RTOs and Independent System Operators (ISOs) to maintain a market monitoring function to analyze the state of the markets and refer to the Commission any suspected market violations. In October 2008, the Commission took action through Order No. 719 to enhance the independence of the market monitors and extend the scope of reporting required of the market monitors. The Commission's independence reforms included requiring the market monitors to report to the RTO or ISO board of directors rather than to management and requiring the RTOs and ISOs to provide the market monitors with adequate resources and full access to market information. The Commission's reporting reforms required production of a quarterly report that broadened the scope of recipients of market data produced by the market monitors, and shortened the lag time for release of bid and offer data.

In addition to the formal reporting required of the RTO and ISO market monitors, Commission oversight staff have almost daily contact with the market monitors to discuss issues identified during the oversight staff's market monitor activities. In addition to routine contacts with the RTO and ISO market monitors, the Commission's oversight staff have several structured interactions with the market monitors including semi-annual meetings with all of the market monitors and regularly scheduled monthly meetings between the Commission staff and individual market monitors.

Finally, it is important to note that the information collected by the Commission is analyzed and, when appropriate, is shared with the public. The staff does this by posting material on the oversight section of the FERC website and making presentations at open Commission meetings and other public conferences. The information posted on the oversight website includes a monthly "snapshot" report that provides information about market outcomes during the previous month. The Commission staff use the "snapshot" report as the basis for monthly conversations about energy markets with state regulatory officials. During these calls, state regulatory officials often share their insights into factors influencing their local energy markets. In addition, the oversight staff publishes an annual State of the Markets report that summarizes major events in natural gas and electricity markets during the previous year. The oversight staff present the findings from its State of the Market report, as well as its Winter and Summer Assessments, at open Commission meetings.

Potential Improvements to the Commission's Ability to Protect Customers

In addition to the role of transparency in energy markets to help ensure just and reasonable rates for wholesale sales and transmission of electric energy and wholesale sales and transportation of natural gas, there are other tools the Commission uses to help monitor markets and protect customers. Among those

are the market rules the Commission approves or establishes under its FPA section 205 and 206 authority for organized electric markets administered by ISOs and RTOs and the implementation of the Commission's new market manipulation authority granted by Congress in EPAct 2005. In this regard, there are certain additional legislative changes that could further facilitate the Commission's ability to protect against market manipulation and more timely ensure that market rules contained in FERC tariffs do not cause unexpected harm to the marketplace. If Congress determined it appropriate to provide the Commission with such authorities, it is likely that they would be used only in rare circumstances, if at all. However, their statutory existence would have a deterrent effect.

First, Congress could give the Commission "cease and desist" authority under both the FPA and NGA. The Commission could use this authority if it determines that a market participant's behavior was ongoing and significantly harming the public interest. While the Commission currently has the ability to seek United States District Court injunctive relief, direct cease and desist authority would expand the Commission's enforcement tool box to match those of the SEC and the CFTC.

Second, Congress could consider giving the Commission authority that would allow it to prevent the dissipation of assets by a company under investigation for violating market manipulation rules under the FPA or NGA. If the Commission had the authority to freeze assets, it could prevent a company from frustrating the Commission's ability to order disgorgement or restitution after determining that there was a violation of the anti-manipulation rule. The SEC and the CFTC have comparable authority.

Third, Congress could consider giving the Commission authority, in emergency circumstances, to temporarily modify or suspend market rules on file at the Commission under the FPA if those market rules were unexpectedly allowing market power to be exercised or causing other serious problems in the organized markets. This could be followed by normal FPA procedures for long-term changes to the market rules.

Conclusion

In summary, transparency in energy markets is important to ensure just and reasonable rates under the FPA and NGA and to protect customers. Much has been done by the Commission to increase transparency in wholesale electric and natural gas markets, especially over the last few years, and the Commission will continue to be vigilant in this area. In addition to transparency, there are other regulatory tools that could be used by the Commission to help ensure that customers are protected. For example, Congressional action to give the

Commission cease and desist authority for violations of the FPA and NGA, and the ability to freeze assets of entities that violate the market manipulation rules, would give the Commission the same enforcement tools that both the SEC and the CFTC have long possessed. In addition, authority to temporarily suspend market rules on file under the FPA when necessary to protect against potential abuse of market power could be useful.

Thank you again for giving me the opportunity to appear before you today. I would be happy to answer any questions you may have.