Written Testimony of Kevin J. McIntyre
Chairman
Federal Energy Regulatory Commission
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Chairman Murkowski, Ranking Member Cantwell, and members of the Committee:

Thank you for the opportunity to appear before you to discuss the important work of the Federal Energy Regulatory Commission (FERC). My name is Kevin McIntyre, and I am honored to serve as the Chairman of FERC, an independent agency that regulates vital aspects of our Nation's electric, natural gas, hydropower, and oil pipeline industries. Those aspects include the wholesale sale of electricity and natural gas in interstate commerce, transmission of electricity in interstate commerce, and transportation by pipeline of natural gas and oil in interstate commerce. FERC also reviews proposals to build liquefied natural gas terminals and interstate natural gas pipelines, as well as to license hydropower projects. FERC's mission is to assist consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost through appropriate regulatory and market means.

I joined FERC as Chairman in early December 2017. Prior to that, I served as co-lead of the global energy practice at the Jones Day law firm. At the firm, I had the good fortune to counsel and represent clients in nearly all energy industry sectors, largely pertaining to matters before the FERC. My distinguished colleagues that appear before you this morning reflect their own wide-ranging experience and expertise; my fellow commissioners include a former industry executive, a former state regulator, and two former senior advisors from Congress. This diversity of background is a strength for FERC, one that allows us to use our range of experiences in analyzing complex problems to reach well-informed decisions.

I would like to note briefly at the outset that, by way of guiding principles, I believe strongly in the importance of the rule of law. Any consideration of potential action by FERC, or by any governmental body, must begin with a firm understanding of the applicable legal requirements, and any action taken must satisfy those legal requirements in full. Because many situations allow for a range of lawful decisions, including some with profound policy implications, it is critical for FERC to consider all views, including those from stakeholders and the public. It is my goal to ensure FERC's actions are as open and transparent as possible.

I also believe strongly that FERC's policies and procedures should be efficient and effective to ensure we timely address issues brought to us in our service to the public, and that we should review those policies and procedures from time-to-time to ensure they best enable FERC to serve the public. To that end, and as described in more detail below, I have initiated a review of the Commission's gas pipeline certificate application program and re-initiated the review of our Public Utility Regulatory Policies Act of 1978 (PURPA) program to address issues that have arisen on these matters in the past few years. These steps are intended not only to enhance the substance of the Commission's work in these areas, but also to improve the procedures the Commission uses to perform that work.

With those principles in mind, I would like to highlight a few of the issues we have been addressing since I became Chairman and some of the steps the Commission has taken to address these issues.

Resilience of the Bulk Power System

On January 8, 2018, FERC issued an order finding that the Secretary of Energy's proposed rule on grid resilience and reliability did not satisfy the requirements of the Federal Power Act (FPA), and, therefore, we terminated that proceeding. However, recognizing that resilience of the bulk power system is an important issue that warrants further attention, FERC initiated a new proceeding to evaluate the resilience of the bulk

power system in the regions operated by RTOs and ISOs. All seven of the RTOs and ISOs submitted comments in the new proceeding and we also received over 140 comments from other interested entities and the public, including public utilities, interstate gas pipelines, nuclear entities, coal producers, environmental groups, state public service commissions, public power entities, and consumer groups.

FERC is reviewing the submissions and deciding whether additional FERC action is warranted to address grid resilience. As we review the record, we are mindful that the Commission's markets, transmission planning rules, and reliability standards should evolve as needed to address the bulk power system's continued reliability and resilience.

The Commission's oversight of electric reliability involves ensuring that the bulk power system is planned and operated so that instability, uncontrolled separation, and cascading failures do not occur because of a disturbance, equipment failure, or cybersecurity incident. Resilience could encompass a range of attributes, characteristics, and services that allow the transmission grid to withstand, adapt to, and recover from both naturally occurring and man-made disruptive events.

Protecting and promoting the resilience of the bulk power system will remain a top FERC priority during my tenure as Chairman. Resilience is not a new issue for FERC. FERC already has taken steps with regard to reliability and other matters that have helped to address the resilience of the bulk power system. However, we recognize that we must remain vigilant with respect to resilience challenges, because affordable and reliable electricity is vital to the Nation's economic and national security

In addition, we understand that the concept of resilience necessarily involves issues that extend beyond FERC's jurisdiction, such as to the distribution system. For that reason, in our January 8 order, we encouraged RTOs and ISOs and other interested entities to engage with state regulators and other stakeholders to address resilience issues at the distribution level.

Review of the Commission's Certificate Policy Statement

Under the Natural Gas Act, FERC determines whether a proposed natural gas pipeline project is required by the public convenience and necessity. FERC adopted its current policy on reviewing gas pipeline certificate applications in 1999.

Since that time, the natural gas industry has undergone significant changes. Amid such changes, we need to make sure that our gas certification process is as efficient and effective as possible so that the Commission may address certificate applications in a timely and effective manner. I believe that after 20 years we should seek to improve how we review certificate applications, including streamlining the timing of that review and the procedures we use to perform that review, while ensuring that the process is fair to all stakeholders. Therefore, after consultation with my colleagues, on April 19, 2018, FERC issued a notice of inquiry (NOI) that seeks information and stakeholder perspectives to help us explore whether, and if so how, we should revise our approach to determining whether a proposed natural gas project is or will be required by the present or future public convenience and necessity, as that standard is established in section 7 of the Natural Gas Act.

Specifically, in the NOI, we sought input on ways to improve the certification process. We also sought input on whether, and if so how, we should adjust the following: (1) our methodology for determining whether there is a need for a proposed project, including consideration of precedent agreements and contracts for service—that is, contractual commitments by market participants to use the proposed pipeline's capacity—as evidence of such need; (2) our consideration of the potential exercise of eminent domain and of landowner interests related to a proposed project; and (3) our evaluation of a proposed project's environmental impact. Comments on the NOI are due July 25, 2018.

Review of FERC Policies under PURPA

I also would like to mention that I recently directed FERC staff to re-initiate our review of FERC's policies under PURPA. A lot has changed in the energy industry since PURPA was enacted, and FERC initiated a review of its policies under PURPA review a few years ago. I understand that legislation has been introduced in both the Senate and the House to change certain aspects of PURPA. At FERC, I expect that our review will build on the record that the Commission already developed on this matter and will allow for additional robust stakeholder input. Interested stakeholders have raised good questions about whether FERC's PURPA program is serving the public the best that it can. My expectation is that any policy changes that we make at FERC will result in real improvement to how FERC addresses these issues and will make our PURPA program more effective and efficient in dealing with these issues. Commissioner Chatterjee will discuss issues related to PURPA in more detail in his testimony.

Interplay of FERC and State Authority

Another issue of great importance to FERC is the interplay of federal and state responsibilities. Driven largely by the ongoing evolution of wholesale energy markets and the expansion of state policies and programs seeking to shape the mix of resources that serve energy needs within the states, we are facing new questions about how to apply the longstanding dividing lines between FERC's jurisdiction and that of the states.

Although reasonable people can differ on the details and nuances of these issues and how they have developed, I want to make clear that, from my own personal perspective, the Nation's consumers are best served by a firm reliance on competitive markets and, more broadly, market principles across the board. At the same time, however, I respect states' authority to make resource decisions that are within their jurisdiction. FERC, for its part, has statutory obligations relevant to this issue—FERC's mandate to ensure the justness and reasonableness of rates, terms, and conditions applicable to services subject to FERC's jurisdiction. The thoughtful input that we

receive from state officials and wide-ranging stakeholders is essential to our development of just and reasonable solutions.

This federal-state issue arises in many contexts. Indeed, in the past three years the U.S. Supreme Court issued three decisions that address different aspects of this subject: *Oneok, Inc. v. Learjet, Inc., FERC v. Elec. Power Supply Ass'n,* and *Hughes v. Talen Energy Marketing LLC*. Also, in late May, the U.S. Department of Justice (DOJ), after consulting with FERC, filed a brief in the 7th Circuit expressing the view that the Illinois Zero Emissions Credit (ZEC) program, which provides direct compensation to nuclear power plants as compensation for their lack of greenhouse gas emissions, is not preempted by the FPA. That DOJ brief explains that the Illinois program does not warrant preemption because it does not require participation in FERC-jurisdictional wholesale auctions as a precondition to receive ZECs and instead is targeted at an attribute of generation resources over which Illinois has regulatory authority. The brief also explains that if FERC were to determine that the Illinois program has an effect on wholesale rates that renders those rates unjust and reasonable, then FERC could address that concern under its statutory authority rather than as a matter of constitutional preemption. I expect these issues to continue to arise and that the Commission will respond to the issue as appropriate.

Hydroelectric Relicensing

Hydroelectric resources have long played an important role in helping to meet the country's energy needs and I believe that hydropower should continue to play this role. Recognizing the importance of hydroelectric resources to meet our energy needs, over the past few years the Commission has taken steps to improve and streamline the licensing process for hydroelectric facilities. For example, late last year FERC issued a new policy on establishing license terms for original and new licenses for hydropower projects located at non-federal dams—that is, for hydro projects within FERC's jurisdiction. I believe that this action provides more certainty for stakeholders regarding FERC's

regulatory process, reduces regulatory burden, and increases administrative efficiency for all stakeholders. In addition, under Executive Order 13807 (Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects), FERC staff is developing the implementation plan for the One Federal Decision process. As part of this effort, FERC staff is looking at areas to improve communication and coordination with other agencies and project applicants and to provide for concurrent reviews of applications to streamline the process for hydroelectric applications. Finally, to address Executive Orders 13777 (Enforcing the Regulatory Reform Agenda) and 13783 (Promoting Energy Independence and Economic Growth), FERC staff conducted a comprehensive review of FERC's regulations, policies, and practices to determine where the licensing process can be streamlined without the need for legislative action. We also solicited input from industry on areas for improvement. FERC staff is evaluating those reviews. I also understand that there is pending legislation to improve the hydroelectric licensing process. There is always room for improvement and I will continue to work with FERC staff and my colleagues to improve the hydroelectric licensing process.

Cybersecurity

In 2005, Congress gave FERC new authority to review, approve, and enforce reliability standards for the bulk power system, including cybersecurity and physical security standards. Since that time, the Commission has issued 10 mandatory reliability standards addressing cybersecurity of the grid. FERC also has issued a mandatory standard regarding the physical security of the bulk power system.

I appreciate the work of the North American Electric Reliability Corporation (NERC), the stakeholders, and FERC's staff on developing, implementing and enforcing the mandatory cybersecurity standards. Those standards establish a solid defense to cybersecurity threats. However, I also understand that cyber threats to the bulk power system are ever changing and that a standard implemented today may not address a threat

developed and deployed tomorrow. While FERC must continue its work under section 215 of the FPA to improve those mandatory reliability standards, there are other steps that NERC and the industry can take short of developing a mandatory reliability standard, such as the development of voluntary best practices, which may allow industry to more nimbly address or respond to these evolving threats. FERC staff has worked with industry to help identify and disseminate voluntary best practices. I also note that in recent years Commission staff has increased its interaction with its sister agencies, such as the U.S. Department of Homeland Security (DHS) and Department of Energy (DOE), who is identified as the Sector Specific Agency for the Energy Sector, to share information and assist on cybersecurity issues. For example, FERC staff has increased its involvement with DHS's National Cybersecurity and Communications Integration Center and DOE's Cybersecurity Risk Information Sharing Program. FERC staff also has increased its involvement in the Electricity Information Sharing and Analysis Center. I expect these activities to continue, along with the ongoing development of mandatory cybersecurity standards under section 215 of the FPA, to address threats to the bulk power system.

LNG Terminals

The production of natural gas in the nation has increased dramatically in the past decade or so, largely due to technological advancements. One result of that increased production has been an increase in the number of domestic gas producers seeking access to the global gas markets. For FERC, that has meant a rapid and sizeable increase in the number of entities filing applications seeking authorizations to construct facilities to export liquefied natural gas (LNG). By way of example, in 2007 there were *four* LNG applications pending with the Commission. This year, the Commission has *fourteen* pending LNG applications. I also should note that it has not just been the number of applications that has increased, but the size and complexity of the projects has also increased. In addition, the number of construction inspections the Commission must perform has increased due to the ongoing build-out of LNG infrastructure.

FERC has taken concrete steps to address this rapid increase in its LNG work. For example, FERC has hired private contractors to increase the size of its workforce working on these projects. Further, FERC is: (i) seeking to hire additional engineering staff to examine LNG applications; (ii) exploring the reallocation of Commission resources to bring more resources to LNG application reviews; (iii) identifying additional opportunities for direct and third-party contracting assistance; (iv) working with other federal agencies, such as DOE and the Department of Transportation, to improve coordination with the hope of expediting the completion of those entities' roles in the process; and (v) examining FERC's own internal processes to identify potential efficiencies.

CEII

Shortly after September 11, 2001, the Commission developed procedures to control access to, and distribution of, certain critical energy infrastructure information (CEII). At that time, the Commission removed documents from its public files and eLibrary database that were likely to contain detailed specifications about critical infrastructure and required entities seeking such information to specifically request it from the Commission. The Commission determined that it was important to have a process for individuals with a legitimate need to access such information. In 2015, Congress passed the Fixing America's Surface Transportation Act (FAST Act), which required the Commission to revise its CEII regulations to further control, but also encourage, sharing of CEII. The FAST Act also required the Commission to adopt sanctions for unlawful disclosure of CEII.

FERC revised its regulations in 2016 to implement those new FAST Act provisions. Under the regulations, FERC determines whether a requestor is legitimate and whether it has a valid need for access to CEII. FERC's regulations establish that a requestor who needs CEII to participate in a Commission proceeding has a valid need for the information. However, if a requestor's need for the information is not readily

apparent, he would be subject to additional scrutiny and be required to provide additional information to receive access to CEII. If the Commission discloses the CEII to the requestor, the requestor must adhere to a non-disclosure agreement that, among other things, prohibits the requestor from further disclosure of the CEII. In addition, FERC's regulations make clear that any unlawful disclosure of CEII is prohibited. The Commission takes its information disclosure procedures seriously, including its modified CEII procedures. As the FAST Act indicated, the FERC should both control dissemination in certain circumstances, but encourage it in other circumstances. I believe that by enacting its revised regulations, FERC took steps to strike that balance appropriately.

Other Issues before FERC

There is a host of other important issues to which FERC is devoting its attention. My fellow Commissioners are addressing a number of these matters in their testimony. Commissioner LaFleur addresses the wholesale electric markets and FERC's continuing commitment to facilitating the development of needed electric transmission facilities. Commissioner Chatterjee addresses applicability of PURPA in an environment notably different from the time of its enactment, as well as FERC's responsibilities with respect to the reliability of the bulk power system. Commissioner Powelson addresses cybersecurity challenges related to infrastructure over which FERC has a regulatory responsibility, as well as changes and challenges to the electric transmission grid. Finally, Commissioner Glick addresses the potential of several emerging technologies, including electric storage and the aggregation of distributed energy resources.

I thank you again for inviting all of us to appear before you today. I look forward to answering your questions.