**Written Testimony of Bernard L. McNamee**
**Commissioner, Federal Energy Regulatory Commission**
**Before the Subcommittee on Energy**
**House Energy and Commerce Committee**
**June 12, 2019**

Chairman Rush, Ranking Member Upton, and members of the Committee. Thank you for inviting me and my fellow Commissioners at FERC to appear before you.

You have heard from my fellow Commissioners about a number of items that are important to the Commission, the energy industry, consumers, and the Nation. Each area of activity that the Commission oversees is important, but I will touch on a few in particular.

**LNG Export Facilities**

In 2017, the United States became a net exporter of natural gas for the first time in almost 60 years.[1] And FERC plays a role in this pursuant section 3 of the Natural Gas Act (NGA) and the National Environmental Policy Act (NEPA).

After two years in which no new LNG project was approved, the Commission has now approved—in a three month period—four LNG export projects[2], with a total estimated export capacity of 8 Bcf per day.

I am happy that I was able to play a part in finding a compromise to approve those four projects. By looking at the law and the facts, I think we can work to find solutions that benefit the American people.

I also note that the Commission has ten LNG export applications pending before it, and four LNG export facility proposals are in the pre-filing process.

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[1] The United States became a net exporter of natural gas in 2017. The United States Energy Information Administration (EIA) projects that, for the first time since the 1950s, the United States will export more energy than it imports by 2020 as increases in crude oil, natural gas, and natural gas liquids production outpace growth in U.S. energy consumption. EIA, The United States is Expected to Export More Energy Than It Imports by 2020 (Jan. 29, 2019), https://www.eia.gov/todayinenergy/detail.php?id=38152 (EIA January 2019)

[2] *Freeport LNG Development, L.P.*, 167 FERC ¶ 61,155 (2019); *Port Arthur LNG, LLC*, 167 FERC ¶ 61,052 (2019); *Driftwood LNG LLC*, 167 FERC ¶ 61,054 (2019); *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (2019).

## Natural Gas

Since 2009, the Unites States has been the world's top producer of natural gas.[3] This natural gas is transported across the United States using over 300,000 miles of interstate natural gas pipeline. In 2018, over 13 billion cubic feet per day and 689 miles of Commission-jurisdictional pipeline capacity entered service and the Commission authorized 44 new projects, representing 9.3 Bcf/d and 676 miles of new pipeline capacity.

Notice of Inquiry on Certification of New Pipeline Infrastructure Facilities

Pursuant to Section 7 of the Natural Gas Act, the Commission reviews applications for construction and operation of interstate natural gas pipelines. Though the Commission has no jurisdiction over pipeline safety or security, FERC review ensures that applicants certify that they will comply with Department of Transportation safety standards.

In April 2018, the Commission issued a notice of inquiry seeking stakeholder input on whether changes should be made to how the Commission considers applications to build new natural gas pipelines and infrastructure. The Commission specifically asked about: (1) its methodology for determining whether there is a need for a proposed project, including the Commission's consideration of precedent agreements and contracts for service as evidence of project need; (2) its consideration of the potential exercise of eminent domain and of landowner interests relating to a proposed project; (3) its environmental impact analysis; and (4) specific changes it could consider implementing to improve the efficiency and effectiveness of its processes. In response, the Commission received nearly 3,000 comments. Of those, 2,300 are form letters and 700 are unique. My colleagues, our staffs and staff of the Commission program offices are working through these comments.

Tax Cuts and 501-G

Last July, in recognition of Congress' passage of the Tax Cuts and Jobs Act of 2017,[4] the Commission issued Order No. 849 to determine whether natural gas pipelines rates should be adjusted to reflect the corporate tax reduction in order for the rates to remain just and reasonable. Order No. 849 required jurisdictional natural gas companies to file abbreviated cost and revenue studies and provided those companies the opportunity to voluntarily reduce their pipeline rates or explain why no rate reductions are necessary. The Commission then uses the cost and revenue studies and the additional filings to determine whether to initiate an NGA section 5 investigation into the justness and reasonableness of a natural gas company's rates and to potentially bring rate relief to its customers.

The Commission has completed 91 percent of its review of jurisdictional natural gas pipelines filings in response to Order No. 849. The Commission's action has led to the filing of

[3] EIA, United State Remains the World's Top Producer of Petroleum and Natural Gas Hydrocarbons (May 21, 2018) https://www.eia.gov/todayinenergy/detail.php?id=36292.

[4] Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. 115-97 (lowering corporate tax rate from 35 percent to 21 percent).

21 rate settlements between pipelines and their shippers and 11 rate reduction filings. The Commission has also initiated six NGA section 5 show cause proceedings.

**Oil**

In 2018, United States' crude oil production set a record high of 11 million barrels per day, more than doubling oil production in ten years and making the United States the world's largest producer of crude oil.[5] And, growth is expected to continue.[6]

Pursuant to the Interstate Commerce Act, the Commission is responsible for regulating rates and practices of oil pipeline companies engaged in interstate transportation of oil and natural gas liquid products. While the Commission does not regulate oil production, infrastructure, or exports, the Commission plays an important role in ensuring that rates are just and reasonable and that infrastructure can be financed through its regulation of rates of oil pipelines.

**Electricity Markets**

The transformation of the electric grid through markets and competition has been amazing. Two-thirds of the nation's electricity load is served in RTO/ISO regions. Congress and FERC should be proud of this achievement. Because of competition, new energy resources can participate in the market and customers are benefitting.

But there are also legitimate concerns and frustrations about the details of the electric markets. These include debates about the role of different resources; capacity markets; price formation; environmental goals; state energy policy goals; federal policy goals; market manipulation; affordability—and, of course the one overarching goal—ensuring that the lights turn on when the switch is flipped.

There are a number of other important issues that are confronting the Commission and the electric industry: Public Utility Regulatory Policies Act (PURPA), Order No. 1000, distributed energy resource aggregation, hydroelectric projects, Return on Equity (ROE) calculation, transmission incentives, and specific tariff changes in electricity markets. Each of these is important and deserves our attention as FERC Commissioners.

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[5] EIA, This Week in Petroleum (Feb. 21, 2019), https://www.eia.gov/petroleum/weekly/archive/2019/190221/includes/analysis_print.php; EIA, U.S. Monthly Crude Oil Production Exceeds 11 Million Barrels per Day in August (Nov. 1, 2018), https://www.eia.gov/todayinenergy/detail.php?id=37416.

[6] EIA, U.S. Petroleum Product Exports Set Record High in 2018 (Apr. 23, 2019), https://www.eia.gov/todayinenergy/detail.php?id=39192. EIA recently forecasted that United States' crude oil production will average 12.4 million barrels per day in 2019 and 13.2 million barrels per day in 2020. Furthermore, United States' exports of total petroleum products set a record high in 2018, reaching an annual average of 5.6 million barrels per day.

**Electric Storage**

On May 16, 2019, the Commission issued its decision denying rehearing on Order No. 841—the electric energy storage resources order from February 2018. As some of you may be aware, I issued a partial concurrence and dissent to the order denying rehearing.

First of all, I believe electric energy storage resources (ESRs) have the potential to transform the electricity industry. ESRs will allow the electric transmission system to take full advantage of periods of high generation from intermittent resources, such as wind and solar, and use that energy in times when those resources are not available but energy is needed.

Within the correct regulatory and policy framework, storage can unlock significant economic and market efficiency benefits that have to date eluded the electric industry, its regulators, and—most importantly—consumers.

So although I was not on the Commission when Order No. 841 was approved, I support its efforts to promote the participation of ESRs in the wholesale markets.

But in response to Order No. 841, a number of entities requested the Commission to reconsider its decision. These groups included the National Association of Regulatory Utility Commissioners (NARUC); a group consisting of American Municipal Power, Inc. (AMP), the American Public Power Association (APPA) and the National Rural Electric Cooperative Association (NRECA); Edison Electric Institute (EEI); and the Transmission Access Policy Study Group (TAPS). These requests focused on two arguments:

- First, that the Commission exceeded its authority and jurisdiction by requiring states to allow ESRs to connect to distribution facilities; and
- Second, that, at a minimum, the states should have been allowed to opt-out of the requirement to permit ERSs to use the distribution facilities so as to access the wholesale markets.

Considering all the arguments in the proceeding, I concluded that the Commission exceeded its statutory jurisdiction over functions and assets reserved by the Federal Power Act (FPA) to the states.

As a creature of statute, the Commission has only that authority Congress has conferred upon it. As relevant here, the FPA—under section 201 (b)(1)—grants the Commission jurisdiction to regulate electricity in two areas: (i) “transmission of electric energy in interstate commerce,” and (ii) “the sale of electric energy at wholesale in interstate commerce.”[7]

[7] 16 U.S.C. § 824(b)(1)

The FPA, however, is explicit in stating that the Commission does not have jurisdiction "over facilities used for the generation of electric energy or over facilities used in local distribution. . . ."[8] These subjects are reserved to the states.

But, Order No. 841 mandates that ESRs be permitted to use distribution facilities so that they may access the wholesale electric market. There is no doubt that the participation of ESRs behind-the-meter or on the distribution lines can "affect wholesale rates," but in order to "affect" wholesale rates such ESRs must first have access to the wholesale market, and they can only do so by using distribution facilities. In my view, the FPA does not provide the Commission with the authority to require that distribution facilities permit ESRs to use those facilities to access wholesale markets.

Importantly, Order No. 841 places the burden on local distribution utilities and their regulators—frequently called the state public utility commissions (PUCs)—to implement safety and reliability investments. In my view, FERC does not have the authority to commandeer the states to implement federal policy in this manner.

Next, even if FERC does have the authority to exercise jurisdiction in this matter, the Commission should have provided the states an opportunity to opt-out. In my view, the Commission should have embraced "cooperative federalism" by permitting the states to choose whether to allow behind-the-meter and distribution-connected ESRs to participate in the wholesale markets. The Commission's order placed new burdens on state PUCs to ensure the safety and reliability of the distribution system so as to accommodate ESRs that want to participate in the wholesale electric market and did so without even providing the states the opportunity to opt-out. Again, in my view, this was not appropriate.

**Conclusion**

Thank you for the opportunity to testify before you. I look forward to answering your questions.

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[8] *Id.*