

General Counsel James Danly
Senate Energy & Natural Resources Committee Energy Subcommittee Hearing
October 3, 2017

Chairman Gardner, Ranking Member Manchin, I very much appreciate the opportunity to come today to testify. My name is James Danly, and I am the General Counsel of the Federal Energy Regulatory Commission.

Before I begin, I just want to mention that I'm coming here as a staff witness and the views that I present today are not those of the Commission as a body, or those of any individual Commissioner.

I've been asked to appear in order testify on three bills today. The first two would modify section 203 of the Federal Power Act and the third would modify section 205 of the Federal Power Act. The first two bills, as I said, modify section 203. Section 203 of the Federal Power Act subjects to the Commission's approval a number of different types of financial transactions among jurisdictional entities. These bills together seek to amend section 203 in order to establish a \$10 million cap for the merger/consolidate subsection of section 203. Right now there is no such limit.

The value of these bills is that they would both bring that merge and consolidate subsection into conformity with the remaining subsections of section 203, and they would help relieve an administrative burden on the agency and relieve regulatory burden on the jurisdictional entities that are seeking to conduct these relatively small transactions. In my view, exempting the transactions that are below this reasonable \$10 million threshold does not present any problem for market power or rate prices going forward.

The third bill, which modifies section 205, is another matter. Ordinarily when a public utility seeks to amend its tariff it has to make a filing under section 205 with a 60-day time limit. In the almost invariable course of the Commission's activity, the Commission takes action, one way or another, within that 60 days on that filing to amend the tariff. In exceptionally rare circumstances, the Commission does not act within those 60 days and the tariff filings, the tariff changes, go into effect by operation of law.

This bill seeks to alter section 205 so as to allow for parties aggrieved in the 205 proceeding to seek rehearing should they not like the outcome of the rates going into effect by operation of law. And as the subcommittee considers whether or not to adopt this legislation, I would urge it to keep in mind several points.

The first one is that even as section 205 is currently constituted, there is still redress available for aggrieved parties under section 206. Second, the legislation may not produce the intended relief that I believe the subcommittee is looking for. It may not provide, as a practical matter, the relief that I think that the bill might be thought to, and I can get into details with that, if you're interested, in questions. And lastly, I think that the language of the bill might be a little bit overbroad to accomplish that narrow goal.

So with that I just want to thank you for the chance to speak about these bills, and I look forward any questions you might have.