

Written Testimony of James P. Danly
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Before the Committee on Energy & Natural Resources
United States Senate
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Chairman Manchin, Ranking Member Barrasso, and Members of the Committee:

Thank you for the opportunity to share my thoughts about how FERC is grappling with the many challenges of regulating a dynamic and complicated energy sector. In my opening remarks, I would like to take a moment to highlight the three subjects within the Commission's jurisdiction about which I am most concerned.

The first subject is the Commission's authority over natural gas pipeline infrastructure under section 7 of the Natural Gas Act (NGA). The interstate transportation and sale of natural gas is, by Congressional enactment, affected with a public interest. As the Supreme Court put it, the purpose animating the NGA is "the orderly development of plentiful supplies of . . . natural gas at reasonable prices." As we witnessed last winter in Texas, reliable—affordable—supplies of natural gas are vital for the health, well-being, and prosperity of the American people.

I am concerned that a number of recent Commission actions have created such profound uncertainty throughout the natural gas pipeline industry that it is becoming increasingly difficult for the companies that build and operate natural gas pipelines to secure financing or rationally allocate capital.

In one decision (*Weymouth*), FERC called into doubt nearly a century of unquestioned precedent by apparently re-opening a finalized pipeline certificate, subjecting to potential re-litigation the FERC approval that allowed the construction and operation of natural gas infrastructure that had already been placed in service. The absolute finality of an issued pipeline certificate that has survived the gauntlet of FERC's administrative processes and the inevitable challenges in court is necessary for the viability of the pipeline industry. It takes hundreds of millions of dollars to build and operate a natural gas pipeline. If the validity and terms of FERC's approvals are now subject to re-litigation, no rational person would assume the risk of building or financing such enormous projects—at least not without a hefty risk premium priced in.

FERC has also upended years of practice regarding the significance of greenhouse gas emissions. In *Northern Natural Gas Company*, the Commission announced a standardless "eyeball test" for determining the line between *de minimis* and significant levels of carbon emissions. This uncertainty about how emissions will be evaluated has been compounded by hints the Commission has dropped in both its Certificate Policy Statement proceeding and its *Weymouth* decision, that future certificates may be conditioned on some unspecified form of "mitigation," but the Commission has not announced a framework for how such mitigation will be determined or what form it might take. Pipeline companies now have no idea how the Commission will assess their project's emissions or what additional costs the Commission may seek to impose.

The pipeline companies can also see that certificate applications for a number of major projects have been repeatedly delayed as the Commission has announced that instead of issuing the shorter, more abbreviated Environmental Assessments (a number of which had been completed *last* year), Commission staff—under the supervision of the Chairman—announced that the Commission would prepare full Environmental Impact Statements—adding significantly to the time those applications will spend sitting before the Commission.

You will likely hear that these more robust Environmental Impact Statements were required in order to ensure the legal durability of the ultimate orders. I do not see how that can be true. Among the projects that have been delayed, two have had their Final Environmental Impact Statements issued—and they reach the same conclusion that the Environmental Assessments did: that FERC staff is unable to assess the project’s impact on climate change. The Commission should have done what it had done (and successfully defended in court) for years—issue the Environmental Assessment and respond to comments in our orders. Instead, these projects have been significantly delayed in order to prepare Environmental Impact Statements that amount to little more than a paperwork exercise.

The uncertainty caused by these delays has a profound impact on the business decisions that pipeline companies must make. Last week, Eastern Gas Transmission and Storage, Inc. withdrew an application for a section 7 certificate which it filed nearly six months ago, requesting permission to build minor upgrades to three compressor stations in Pennsylvania and Virginia. It did so because, in their words, “despite [the project’s] limited scope, the Commission has not taken action to prepare an Environmental Assessment.”

Unless and until Congress changes the law, FERC is obligated to issue section 7 certificates for projects that are in the public convenience and necessity. I am concerned that, given the climate of uncertainty that the Commission has created and the inevitable chilling of investment that our actions have caused, there will be far fewer applications for the pipeline infrastructure we need to keep Americans warm in the winter and to ensure the stability of the electric system.

My second concern relates to the Commission’s obligation to ensure that electric transmission rates are just and reasonable under the Federal Power Act (FPA). There is presently a great deal of enthusiasm to build out the transmission system to bridge the great distances between intermittent generating resources in relatively rural areas to where power can be consumed in more urban locations. While the cost of the intermittent power may be low, I am concerned that the cost of transmission may prove to be extremely high. Ratepayers bear the all-in cost for generation and transmission.

Given the current scope of what some proponents seem to have in mind, I am concerned that the only means by which to finance transmission at this scale will be to socialize the costs as broadly as possible. This will stretch the principles of cost causation that govern how transmission costs may be allocated among ratepayers. Under longstanding judicial precedent, the costs that may be passed on to the ratepayer must be roughly commensurate with the benefits the ratepayer receives. FERC recently issued an Advanced Notice of Proposed Rulemaking, to

gather information on these issues from the public. As my colleagues and I review the comments in that docket, we must bear in mind that the costs of transmission are ultimately born by the ratepayers. The economic benefits of bringing low-cost power from intermittent generators will ultimately prove illusory if the ratepayers' all-in bills end up being higher because of exorbitant transmission charges.

Finally, I want to bring to the committee's attention my concerns about a particular aspect of reliability—the importance of resource adequacy to protect against grid disruptions. Resource adequacy is the assurance that there is sufficient generation, of the right type and in the right quantity, to ensure system stability. Resource adequacy is fundamental to keeping the lights on. FERC's jurisdictional markets play a critical role in ensuring reliability and resource adequacy. Before the establishment of Independent System Operators (ISO) and Regional Transmission Organizations (RTO), planning to ensure resource adequacy was the responsibility of local utilities overseen by the states. However, a number of our ISOs and RTOs have assumed that responsibility from the states and have been designed to encourage resource adequacy through market mechanisms. I believe in the value of markets, and our ISOs and RTOs have delivered immense benefits to ratepayers. For markets to function correctly, however, they must be designed correctly. The markets must produce price signals that effectively create incentives for the entry of new resources and the retention of pre-existing resources of the correct type and in the correct quantity. FERC must remain vigilant and continue to police our markets to ensure that they compensate generation sufficiently to ensure resource adequacy and guard against the price-distorting effects of market power.

Again, thank you for the opportunity to address the Committee. I look forward to your questions.