Testimony

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The vitality of the nation's electric power industry is critical to the national economy. Since the passage of the 1992 Energy Policy Act, the Federal Energy Regulatory Commission (FERC), together with our sister state commissions, has come to play an increasingly important role in managing the transition from a world of traditional monopoly regulation to one more governed by market forces.

Prior to my appointment to the FERC two weeks ago, I was Chairman of the Public Utility Commission of Texas. Due to the wholly intrastate nature of the grid of the Electric Reliability Council of Texas (ERCOT), one of the nation's three electrical interconnections, my colleagues on the Texas Commission and I had a role overseeing the development of the wholesale markets in ERCOT that is very similar to the role FERC plays overseeing the wholesale markets utilities in the other two interconnections. (Utilities within ERCOT serve 85 percent of customers in Texas; the other 15 percent of customers are served by FERC-jurisdictional utilities.) In addition, like other state commissions, we also regulated the retail rates and services of all investor-owned utilities serving Texas customers.

The lessons I have drawn from my six years on the Texas Commission are basic: Deregulation won't work without competition. And competition won't work without sufficient infrastructure and balanced market rules.

In implementing Congress' 1992 mandate to open up wholesale electric markets, the FERC must focus first on the sufficiency of infrastructure and on the market rules governing a competitive market. Infrastructure is a broad concept, encompassing both power generation plants (large and small), demand-side resources and the power delivery grid. Oversight of the infrastructure is a shared state-federal responsibility. Development and enforcement of market rules is primarily a FERC responsibility, but it, too, involves state commissions.

Maintenance of sufficient infrastructure and oversight of the market is an ongoing job. In Texas, the market has been opened in stages. First, in 1995, the Texas Legislature and Governor Bush fully opened the electric generation market to non-utility companies. In 1996, the Texas Commission mandated the nation's first Independent System Operator (ISO) to alleviate market power concerns with transmission facility ownership by competitors in the generation market. In 1997 and 1998, the Texas Commission adopted standard rules and tariffs to speed development of generation (both large and small-scale) and transmission. In 1999, the Texas Legislature and Governor Bush directed the Texas Commission to open the retail sales markets to competition by January 1, 2002. Immediately following passage of the 1999 legislation, we focused on adapting the ERCOT wholesale market structure to one accommodating competitive retail sales, as well as establishing the parameters for retail competition. In 2000, the Texas Commission established a Market Oversight Division within the agency to serve as a market cop for the future opened market. Having the full span of activity under one regulatory roof gave Texas the comfort that its transition to a fully competitive market will be beneficial for its citizens.

From that Texas experience, I feel it is absolutely crucial that the FERC be a trusted and capable partner with our sister state commissions as they move to a more competitive model. No state will venture into a competitive future if it does not believe that its market opening efforts will be backed up by its federal partner. Vigilant, and collaborative, oversight of the various regional power markets is the most significant role the FERC will play in coming years.

First, as noted above, the basic ingredients for competition have to be in place: sufficient supply-side and demand-side resources and a robust delivery infrastructure. State and federal regulators have a role to play in ensuring that the right business incentives are in place to stimulate continued development of these resources. Balanced market rules are the other basic ingredient for competition. In Texas, we encouraged interested parties from all aspects of the industry to develop ERCOT's market rules. The Texas Commission then reviewed those protocols with the assistance of outside experts to ensure they best satisfied the public interest. With some modifications, those market rules were approved earlier this year. The FERC has played a similar role in development of various regional market structures and rules.

Second, once the basic ingredients are in place, and rovided they remain in place, regulators move into an oversight role. As with other major commodity markets, it is necessary that regulators be active and visible, reviewing daily transactional data, auditing market players for compliance with market rules, responding swiftly promptly to complaints. Where necessary, oversight may require that market rules be amended. This should be approached cautiously, as participants will have made investment decisions based on previous rules. All of these oversight responsibilities require regulatory commissions to develop new skill sets and revamp decisionmaking processes.

Attracting and retaining a high quality professional market oversight staff must be a top priority of the FERC. I can think of few positions in federal government where so much is at stake and where professional skills are so badly needed. During my term at FERC, one of my chief priorities will be to work with my colleagues to strengthen our existing market oversight professional staff and recruit high-caliber experts (both permanent staff and outside experts) for our team. The nation’s electric customers deserve nothing but our best effort in this.

Finally, a word about enforcement tools for violation of the market rules. Administrative fines are generally more effective as reputation tarnishers than they are in deterring undesired, but profitable, behavior. On the other end, permanent certificate revocation is an economic death penalty. In between, however, the FERC has some potentially effective tools to use in its oversight of the electric markets. The revocation of market-based pricing, but not of the entire marketing certificate, is such a tool. Similarly, shorter term certificate revocation may be effective. With additional statutory authority, the FERC could also enhance administrative fines with punitive sanctions. Where markets are concerned, the watchdog’s bite needs to match his bark.

I look forward to working together with my colleagues and with you to ensure that the FERC performs its energy market oversight duties consistent with the vision of Congress.

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