

Testimony of General Counsel Max Minzner
House Energy & Commerce Subcommittee on Energy & Power
February 2, 2016

Thank you for inviting me to testify today. My name is Max Minzner, and I am the General Counsel of the Federal Energy Regulatory Commission. Like Ms. Miles, I am also a staff witness and my remarks today don't necessary reflect the views of the Chairman or any specific Commissioner.

I have been asked to testify today on two bills that would amend the Federal Power Act. One is a bill that would modify Section 203 of the Federal Power Act to set a minimum threshold value of \$10,000,000 on the merger or consolidation of facilities belonging to public utilities that would be required for FERC approval. And, two, H.R. 2984, a bill that would amend Section 205 of the Federal Power Act that would permit a party to seek rehearing and subsequent appellate review of any rate change filed under Section 205 that takes effect without Commission action.

The first proposed bill would amend a provision of the Federal Power Act, Section 203, that requires public utilities to seek Commission approval before engaging in a wide range of corporate transactions. In particular, this bill would change the Act so that public utilities would only need prior FERC approval to merge or consolidate facilities subject to the Commission's jurisdiction if the facilities' value is in excess of \$10 million. In other words, mergers or consolidations of facilities with a value less than that amount would not need FERC approval.

This bill would align this provision of the FPA with the other subsections of Section 203(a)(1) which regulate other transactions by public utilities, each of which already contains a \$10,000,000 *de minimis* threshold. In my view, the proposal to add the same *de minimis* threshold to Section 203(a)(1)(B) of the FPA could ease the administrative burden on Commission staff and the regulatory burden on industry without a significant negative effect on the Commission's regulatory responsibilities. Transactions below that threshold are unlikely to impose a significant negative impact on competition or the rates of utility customers.

Second, H.R. 2984 would permit rehearing and appellate review of changes to rates made under Section 205 when those rates take effect without Commission action. To change rates or other tariff provisions under Section 205, a public utility typically makes a filing with FERC, and the Commission will take action on the proposal during a sixty-day, statutory time period. In very rare cases, the Commission has not acted on that filing within the time period and the filing takes effect when the period expires.

In my view, rehearing and appellate review are not currently available when a filing submitted pursuant to section 205 of the FPA takes effect by operation of law. Appellate review is an important procedural avenue though for those who do not prevail before an administrative agency.

While review in the Court of Appeals may be challenging under this legislation because the appellate court will not be able to rely on the Commission's reasoning in the first instance, the possibility of a rehearing order and or a remand from the Court of Appeals should reduce

this difficulty and allow the Court of Appeals to effectively engage in review of the rate change.

That concludes my prepared testimony. I look forward to your questions.