

Commissioner Phillip Moeller

House Energy and Commerce Committee Subcommittee on Oversight and Investigations
Hearing on Executive Order 13563, "Improving Regulation and Regulatory Review"

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Thank you Mr. Chairman, Ranking Member DeGette, members of the committee. I appreciate the chance to be before you today to talk about these important issues. I welcome your oversight, and I will summarize my written comments but with a brief history of how our regulation has evolved at the Commission, and then give you three examples of where we kind of struggle with balancing the need to ensure that our services are provided safely at fair and just rates but also making sure that we are protecting and not unduly burdening the entities that we regulate.

The Federal Power Commission, our predecessor, really came into its own after the passage of the 1935 Federal Power Act and the 1938 Natural Gas Act. As regulators then, the Commission was highly regulating these entities because they were monopoly providers of services that were deemed essential.

But over the decades, and particularly in the last 25 years, regulation has evolved so that more competitive forces can provide consumers with, frankly, lower prices and better service. This came through two landmark orders on the natural gas side, 436 and 636, which restructured the pipelines, and then on the electric side Orders 888 and Order 2000 that set up regional markets and allowed for open access of the transmission systems.

Again these have had great benefits for consumers, but our responsibility as regulators in monitoring these markets has increased substantially since then.

There are three areas where we particularly spend time, the first of which I'll say is the reliability area, of assuring the reliability of the bulk power system. Now the origins of this issue came from the 1965 Northeast Blackout, and a voluntary set of regulations came about after that. But as time went on, particularly in the late 1990s, it was clear that a mandatory system was going to be necessary, some kind of a cop on the interstate electric highway.

Although there was legislation in the late 90s, eventually it took the 2003 Blackout and the 2005 Energy Policy Act before you as Congress directed us to create a national electric reliability organization with eight regional entities. And in the meantime, we've adopted 101 national standards, 11 regional standards, and we've had a very active enforcement process on those standards.

In fact, we've had 7,000 violations to date, since they became mandatory in June 2007. And frankly we are struggling with it – our role, the role of NERC, the role of regional entities – because we have a backlog of violations; they are up to about 3,200.

I think the good news, though, is that through our direction to NERC they are working to make sure there is a better streamlined process so that we can eliminate the backlog and, essentially, share the best practices amongst the entities we regulate on the bulk power system.

A second area is related to that, and that is with our new powers of enforcement that you gave us in the 2005 energy act. Partly emanating from the Western crisis in 2000 and 2001, you gave us the kind of major league enforcement authority that few agencies have. We can fine entities up to \$1 million per day, per violation.

Initially when we put out some of our rulings with some significant fines, there was some criticism from the industry that we lacked transparency in the process and lacked priorities. I'm happy to say that our Office of Enforcement, under the urging of several of us on the Commission, has opened up that system so that we are a much more transparent system now. We adopted annual priorities in terms of enforcement, adopted guidelines based on the U.S. Sentencing Commission, and essentially have processes and policies in place that allow anyone under investigation to know at certain times that they are, and give them the certain rights that other agencies give them.

So we are making progress there.

The third area I'd note, because I come from the Pacific Northwest, is the hydropower system. We regulate 2,500 hydropower dams throughout the nation, and some have complained that the process of licensing or more often relicensing is both costly and time consuming. That much is true, but I don't think much of that can be put on FERC.

I think actually the laws themselves that govern the process of relicensing are worth looking at if this is something that inspires you because we actually, I think, do a good job under the current system of setting timetables. But often the resource agencies don't have any consequence to missing the timetables involved.

In the meantime though, I think we've tried as an agency to develop small hydropower systems through MOUs with various states that are interested. We've tried to open up the process to stakeholders and developers that are interested in small hydropower development, and we've come up with a pilot licensing process for the new hydrokinetic technologies of in-stream power, ocean power and tidal power. Again in a way, through our regulations, to try and encourage an industry to move forward.

Finally, I'll send a compliment to our colleagues at the Federal Trade Commission. They've been active in some of our rulemakings, and their perspectives are always very valuable.

Thank you for the opportunity to testify, and I look forward to answering any questions.