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Lawmakers Should Preserve Utilities' Use of OTC Derivatives to Manage Risk, Protect Consumers, Utility Executive Says

WASHINGTON—As lawmakers seek ways to ensure the transparency and stability of financial markets, it is essential that they preserve the ability of electric and natural gas companies to use over-the-counter (OTC) energy derivatives and similar financial instruments for legitimate business purposes, an electric utility official said today.

“Utilities, independent electricity generators, renewable energy providers, and other market participants rely on these products and markets to manage wholesale electricity and natural gas price risk,” said FPL Group executive vice president and former Federal Energy Regulatory Commission Chairman Joseph T. Kelliher. “By prudently managing our risk we are better able to keep rates stable and affordable for our consumers.”

Kelliher, speaking on behalf of the Edison Electric Institute and the Electric Power Supply Association, made his remarks during a Senate Energy and Natural Resources Committee hearing on financial transmission rights (FTRs) and other electricity market mechanisms. His testimony focused on the importance to utilities of OTC derivatives and the need for a specific end-user exemption from any mandate that OTC transactions clear or trade on exchanges regulated by the Commodity Futures Trading Commission (CFTC).

Kelliher also urged the committee to support legislation to clarify that electricity products and services provided under a FERC-approved tariff, such as financial transmission rights (FTRs), be exempt from duplicative regulation by the CFTC. At the same time, he warned that, unless properly crafted, market oversight legislation could interfere with wholesale electricity markets under FERC’s jurisdiction that are managed and overseen by RTOs and ISOs and the market under the Public Utility Commission of Texas’ jurisdiction in the case of the Electric Reliability Council of Texas (ERCOT).

“This could create a duplicative, overlapping and potentially conflicting regulatory regime with both FERC and the CFTC imposing regulatory requirements and overseeing transactions,” he warned. “ It could shift regulatory jurisdiction from a consumer protection and reliability agency with expertise in electricity markets—an agency dedicated to assuring just and reasonable prices—to a financial regulatory agency with no such background or duty.”

Such legislation, he said, would create tremendous regulatory uncertainty and introduce regulatory and business risk in an area where there is now stability. As a result, consumers would see higher prices for electricity and natural gas and greater price volatility.

Kelliher said that while the administration has called upon Congress to enact major financial reform legislation because of the dramatic failures experienced in financial markets and failed government oversight of those markets, those failures simply were not present in electricity and natural gas markets regulated by FERC.

“We believe that Congress should strike the proper balance in its regulatory reform efforts by establishing energy market oversight rules that allow for prudent use of OTC risk management products, while also providing regulators with the tools needed to protect consumers against market manipulation and systemic risk,” he said.

Read the full testimony [here](#).

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The [Electric Power Supply Association \(EPSA\)](#) is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for nearly 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving global power markets. EPSA seeks to bring the benefits of competition to all power customers.

The [Edison Electric Institute \(EEI\)](#) is the association of U.S. shareholder-owned electric companies. Our members serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. We also have more than 65 International electric companies as Affiliate members, and more than 170 industry suppliers and related organizations as Associate members.