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Introduction

Mr. Chairman and members of the Committee, thank you for the invitation to be with you today. It's been a few years since I have had the pleasure of testifying before you, but the topic I am here to speak to you about is a familiar one in terms of my previous appearances: electric transmission infrastructure.

I will begin by emphasizing the importance of transmission as an integral part of the electricity delivery system in our country. Properly planned and constructed, the high voltage transmission system facilitates numerous consumer benefits, from reliability and resilience, to access to more affordable and clean sources of generation. Transmission is an important tool in our present and emerging grid. In my opinion, most plausible future scenarios include continued transmission expansion.

The legislation the Committee is here to discuss today also takes place in the context of the push for renewable generation. The nation has seen tremendous growth in renewables in recent years. That growth has been driven by numerous factors: declining costs for renewables, favored tax and subsidy treatment, state laws and policies that mandate higher levels of renewables and/or carbon emission reductions, consumer demands for a greener resource mix, and energy company investors pressing for corporate ES&G results.

In my own professional career, I've had the opportunity to view the topic from a number of different angles, including as a state regulator, overseeing the permitting of approximately 1,400 MW of renewable generation and hundreds of miles of electric transmission in my home state of North Dakota, and later as a FERC Commissioner, attempting to deal with thorny issues related to allocating costs for interstate transmission projects, and bulk electric system reliability – just to name a few. That is all a long way of saying I hope I can offer the Committee a balanced perspective as you debate your pending legislation.

When it comes to delivering electricity in a reliable, affordable, environmentally sustainable way, I urge the Committee to follow these principles:

- Bottom-up, not top-down
- Respect regional differences

I will explain each of these principles in a bit more detail.

Bottom-up, not top-down

Any efforts at regional and interregional planning and cost allocation for electric transmission should reflect the plans that are developed first at the local and state levels – they should not be an imposition of a pre-determined federal "solution" that may not meet the needs of end-use consumers, and their states. Put another way, transmission and generation projects exist to support customers. Customers don't exist to support transmission and generation projects. This is more than a matter of respecting the choices of states and local communities – this is also good policy in terms of successfully shepherding major projects through completion. One of the more successful interstate transmission expansion efforts of the last twenty years was the Midcontinent Independent System Operator (MISO) Multi-Value Project (MVP) suite of transmission projects that entailed more than $5 billion in investments throughout the Midwest. It's an effort I am well-acquainted with because I was a Midwestern state regulator during its development and approval – including investment in my own state. It is important to stress this effort was the result of bottom-up planning – it wasn't the result of the federal government drawing lines on a map to tell states where transmission lines needed to go. It began with governors, energy companies and state energy leaders creating momentum to support transmission projects that served multiple needs throughout a broad region of the country. Pulling it together – including the cost allocation and recovery pieces – was not without its challenges – including before federal courts. But the fact that it did work is a testament to how these efforts can succeed using existing law. State buy-in to serve local needs garners acceptance of projects. It is also worth highlighting that these projects were brought to fruition in a pre-FERC Order No. 1000 world. And though Order No. 1000 was intended, in part, to use federal processes to spur MVP-like projects nationwide – it has largely not accomplished in this mission. This should be instructive to Congress. What works is bottom-up, not top-down.

Respect regional differences

There is no one-size-fits-all when it comes to generating and transmitting electricity in the United States. This is a large country with diverse natural resource bases and different regional supply and demand characteristics. Decisions about how to serve customers arise from vastly different geography, historical contexts, and resource mixes. Some regions are wind rich. Some have a favorable solar profile. Some have hydro generation availability. Some depend on nuclear power. Some states might be interested in pursuing other technologies like carbon capture or future-gen hydrogen projects. This diversity should caution against the federal government adopting policies that assume all regions need to meet their needs in the same way. A transmission solution *might* be the most environmentally friendly way to reliably and economically serve consumers in one state or region. But in another state or region, those goals might be better met by accessing generation closer to load. In a similar way, different market structures have developed based on the characteristics of each region. Take, for example, organized wholesale markets. At present ISO/RTO membership is voluntary. Many states have chosen to allow their utilities to join an ISO/RTO, and some states have utilities in multiple ISOs/RTOs. Others have determined their electricity customers are better served by different structures This has meant that ISOs/RTOs have to demonstrate their value proposition to states

and utilities. If they aren't responsive, don't provide the resource mix the states want, or if they become too costly and burdensome, participants can (as one federal judge noted) "vote with their feet."

One of the benefits of a bottom-up planning process that respects regional differences is that it provides a forum to assess the competing interests of various stakeholder groups. It is important to note; this sort of analysis necessarily takes place at the state and local level – and it directs regional and interregional efforts, as opposed to the other way around. Why? Because federal regulators have little expertise as it relates to the end-use customer relationship. Retail billing, service offerings, resource mixes, indeed, everything that takes place at the customer-utility nexus is a state or locally regulated activity. These regulatory authorities work hard to ensure average retail customers – families and small businesses – have access to affordable, reliable, increasing clean sources of electricity. These decisions are made in open regulatory proceedings that afford multiple interveners an opportunity to make their case through a fully developed and litigated record. If a party disagrees with a decision, those orders can be challenged in court. Congress should ensure that changes made in federal law preserve the ability for states and localities to protect average customers. Federal policies that impose unavoidable costs may tie the hands of state and local regulators seeking to implement policies that may better serve their customers.

With that as a backdrop, I will briefly review and provide my thoughts on several sections of the pending legislation.

Section 211 "National Policy on Transmission"

The most impactful parts of this section relate to loosening the standards applied by federal regulators – specifically FERC – when assessing how to allocate costs for transmission projects. Under long-standing principles adopted by regulators and as defined by federal courts, cost recovery for rate regulated investments is to be assigned to cost causers and investment beneficiaries. While courts have not required a dollar-for-dollar accounting of these interconnection and upgrade costs – reasonable attempts must be made to quantify them and to allocate them equitably. It is not an easy task to allocate costs over such a grid – where beneficiaries may shift over time, but as with the MISO MVP projects noted earlier – FERC has successfully found ways to ensure costs are shared equitably, even when assigning them broadly.

This language would seem to broaden these established standards, by doing at least two things:

1. Making it easier to socialize these costs across a larger pool of customers – in ways that may not be legally sustainable under current precedent.
2. Giving projects associated with one resource class, renewables, preferential treatment in cost allocation.

I suspect supporters of the bill will say, "Exactly! Cut the Gordian Knot of cost allocation for renewables lines by uplifting their costs to more broadly." While there is a certain pragmatic appeal to this solution, when taken in conjunction with other proposed changes in the legislation, the implication of this policy may have collateral effects on existing regulatory structures.

Section 212 – Review of the effectiveness of policies and incentives to encourage deployment of advanced transmission technologies

The analytical deep dive required by this section seems appropriate given the breadth of advanced technologies that may be deployed to the benefit of consumers, reliability, resilience and the environment. FERC's expertise is well suited to provide this sort of analysis and report.

Section 213 – Siting of Interstate Transmission Facilities

This section appears to be an attempt to breathe new life into the federal "backstop" siting authority that was enacted in the Energy Policy Act of 2005, and has subsequently had limited effect due to court rulings. I will first note that I was probably a bit of an outlier in the state regulatory community when this provision was first enacted. At the time, I think it fair to say many state officials were suspicious of the federal government intervening in an area of infrastructure siting that was previously exclusively reserved to the states. However, I personally believed given the carefully crafted language that limited federal siting to certain situations, the new law was incrementally helpful to ensuring that a single jurisdictional entity could not unilaterally block a critical line needed for a large region of the country.

This new section 213, however, is much broader. I would suggest this legislation is not really "backstop" siting. It should more appropriately be considered simply federal siting of certain transmission lines. Section 213 expands projects eligible for federal siting beyond critical congestion projects, to include any corridor deemed to "improve the integration of renewable energy resources." This is to say – a vast array of lines could theoretically become federally sited projects since, by definition, many lines help improve integration of renewables in some way. While states would be given a first shot at siting such lines – the states' authority would be illusory. Under the provisions of Section 213, if a state denies a transmission line, takes longer than one year to approve it, or even requires public interest modifications the developer considers too expensive, then the line can become a federally sited project. Section 213 effectively tells states and localities, "you can site a transmission line for renewables, within a small federally designated corridor, any way you want…as long as the answer is yes." Congress should understand this is not a minor change – it is taking intensely local decisions about major, often controversial, infrastructure projects and transferring authority from those closest to your constituents, and delegating it to a Washington, DC based agency.

I would note there is some irony in this. Ask any state official, transmission owner or project developer in the Western United States what one of the biggest hurdles to transmission development is, and they will tell you it is often not state and local permitting agencies, it is the threat of triggering federal permitting reviews through the crossing of federal lands. Furthermore, given indications from the Biden Administration that it may seek additional levels of scrutiny in NEPA reviews generally, this provision may not be an elixir to add speed and certainty to the siting of large transmission projects.

Section 214 – Nontransmission Alternatives

The contemplation of nontransmission alternatives is an important part of the analysis utilities and states have long conducted as part of their planning efforts to serve customers – so this may duplicate some of what is already happening at the state level. Nonetheless, my question with regard to this new language is related to whether this is a top-down imposition on what is, inherently, a bottom-up planning matter. Demand response and energy efficiency are by their nature retail activities, i.e. state jurisdictional. I understand the new language to allow recovery of certain costs for these state overseen activities in federal interstate transmission rates. The challenge here would be ensuring that the costs for these retail programs are not simply imposed on states that may have different ideas about how their utilities should best serve customers.

Section 215 – Office of Transmission

The new FERC Office of Transmission would be established to oversee the new authority granted to FERC given the new responsibilities assigned to it.

Sections 216/217 – Regional and Interregional Planning

These sections appear to be an attempt to have FERC review and reassess many of the core planning provisions of Order No.1000. I have previously testified before this Committee, in an earlier Congress, on Order No. 1000 and why I believe it has not lived up to its promise, so I will not repeat that testimony here. I think it is fair for FERC to consider why the regulation has not accomplished what it intended, though, candidly, I harbor reservations about some of the ideas that have been discussed as ways to reform the order.

Section 218 – Transmission Siting Assistance Program

While well-intentioned, I would note that the lengthy conditions attached to the federal money will likely limit the amount of state participation in this program. Specifically, it appears state regulatory authorities would need to accede to, as a condition of accepting the specified grants, a host of restrictions that may be at odds with the individual state siting laws that each regulatory authority is compelled to implement. These include things like state legal standards of review, timelines, laws regarding sharing of information in litigated/regulatory proceedings, submission to binding arbitration contrary to state law, etc. Otherwise helpful grants may go unused since I suspect few state regulatory authorities – which often act in a quasi-judicial role – will be able to waive their own state siting laws in return for federal grant dollars. If Congress wishes this provision to be more widely used, my advice would be to eliminate the strings that are attached to the money.

Tying It All Together

Taken together, these sections – especially when combined with the closely related section 220 (mandating Regional Transmission Organizations, and establishing a federal "right to clean energy") – do cause me concern.

My primary concern is that these provisions may empower federal regulators to tip the balance of the Federal Power Act in such a way that it becomes federal decision makers imposing their

preferred solutions on states and utilities, rather than them playing a supportive role in building upon the decisions made at the retail level. Doing so could risk some of the very clean energy investments that have already been made, since these federal solutions may conflict and work at cross purposes with public policies enacted at the state level. If this is not the intention of the Committee, my suggestion would be to clearly say so in the bill itself.

Finally, I would recommend stripping from legislation language that mandates RTOs/ISOs and establishing a so-called "right to clean energy." At best, these provisions will create a flashpoint in the state-federal jurisdictional relationship, creating years of regulatory uncertainty and litigation. This is time and effort better spent on the shared goal of protecting consumers during this time of grid transformation. At worst, the provisions risk undermining the progress many states are already making in reducing carbon emissions – especially in relation to preservation of things like nuclear generation, while also undermining retail regulation and integrated resource planning processes that are designed to protect average consumers' access to affordable, reliable, increasingly clean sources of energy.

While I believe RTOs do certain things well, they were not designed to promote one particular resource over another, and they are not a cure-all for procuring clean energy. The DNA of RTOs is built around price signals and non-discrimination between resources. As such, an RTO mandate may not only not be the answer, it could be detrimental to clean energy investments already being made in certain regions of the country. This conundrum is at the heart of the present multiple crises in existing RTOs related to price formation challenges and states that are unhappy with the generation resource mixes that are being procured. Indeed, this legislation would mandate RTOs, at the very time that several states are exploring whether they should leave aspects of RTOs. It raises the question, if RTOs equate to more clean energy, then why are several states that want more carbon-free energy so upset with the very RTO market structure this legislation would mandate?

Regarding the establishment of a federal "right to clean energy," the language would likely create a scenario where large corporate energy purchasers are able to use their buying power to directly procure one particular source of generation (intermittent renewables) at preferential rates, while shifting the costs of maintaining 24/7 reliability to all other customers. Different sources of generation are built for different reasons. And while every resource has its place, renewables, by and large, have lower capacity values than most traditional dispatchable resources. Responsible state regulation is designed to accommodate all these factors – the need for both energy and capacity resources to meet customer needs. Creating a special class of resources that are unburdened by state laws and rules designed to minimize cost shifting and promote reliability would undermine those key consumer protections.

Mr. Chairman and Committee Members, this concludes my prepared testimony. I would be happy to answer any questions you may have.