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House Committee on Energy and Commerce
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Mr. Chairman, members of the subcommittee, the draft bill before you today touches on a number of issues of current concern, including reliability, resilience, security, and the role of renewable energy and demand-side resources in the nation's electricity grid. These are important issues, and they deserve careful, bi-partisan consideration. Accordingly, we appreciate this opportunity to share our thoughts about the draft bill.

The issues you are reviewing today arise against a background of sweeping change in the nation's electricity markets. For example, the retirement of a number of old, (principally coal-fired) generating units; the accelerating pace of new renewable energy generation (the fastest-growing segment of new capacity); the substitution of low-cost and suddenly bountiful supplies of natural gas for coal in electricity generation; and of course the burgeoning emergence of new technologies and capital investment that are enabling electricity storage, micro-grids, efficiency, demand response, and distributed energy resources – all of these are driving enormous change in the nation's electricity system. Most of those changes, it should be emphasized, are being driven by market forces.

At the same time, there are some troubling new challenges confronting the nation's electricity grid, including most notably those from cyber- and physical attacks. Congressional attention to ensure that the system remains secure in the face of these disturbing new threats, and that it embodies maximum resilience in minimizing and recovering from them, is certainly welcome.

The goals of any legislation affecting the electric utility sector should be greater grid security, resilience, reliability, and environmental and customer benefits. All of those goals can be achieved -- provided we encourage further innovation and investment in the grid -- without sacrificing environmental standards.

There is no disagreement that reliability must continue to be an indispensable goal of grid management, but it would be wrong to assume – and to suggest in legislation – that progress on environmental goals cannot be balanced with the need for a reliable grid.

One of the most effective ways to achieve that balance is to build flexibility and diversity into the grid. Conversely, achieving environmental, reliability, and the other goals will be hindered by any measures that straitjacket rather than enhance the grid's increasing agility.

That is the risk represented by section 1202 of the draft requiring the preparation by FERC and NERC of an "independent regulatory analysis" for any proposed rule that "may impact" an electric utility generating unit or units, and the provision of an assessment of electric reliability and resource adequacy as part of the final rule.

Simply stated, this appears to be an over-reaction to fears about the rapid changes underway in the electric utility industry, and to pending new obligations under EPA's Clean Power Plan.

Those fears are groundless.

As EPA Administrator McCarthy has noted, "in the 40-year history of the Clean Air Act, EPA rules have never caused the lights to go out."

Consider that from 2011 through the end of this year, some 36.1 gigawatts of baseload power have been retired, with no discernible adverse impact on reliability. At the same time, new power plants, more renewable capacity, transmission upgrades, and numerous demand-side energy resources have added to the diversity and reliability of the grid.

Meanwhile, over the past five years, more than 2,300 circuit miles of new transmission addition were constructed annually. And the Federal Energy Regulatory Commission (FERC) is predicting a "high probability" of nearly 10,000 circuit miles of new transmission by January 2017.

This remarkable adjustment by the electricity sector to changing market conditions and regulatory expectations demonstrates a fundamental point: that the industry – working together with state commissions, regional transmission organizations and independent system operators – can meet the nation's need for reliability.

Moreover, the role contemplated for FERC appears inconsistent with the way FERC sees its job. In a May 15, 2015 letter from all the commissioners to EPA, the commissioners summarize their role in assuring reliability:

> …[I]t is important to note that the Commission's role on reliability is defined by Congress, and generally consists of approving proposed reliability standards for the Bulk Power System, if they meet the statutory criteria, and then enforcing or overseeing enforcement of those standards… But reliability also depends on factors beyond the Commission's jurisdiction, such as state authority over local distribution and integrated resource planning…. The Commission also lacks specific statutory authority to require a public utility to build a new power plant or new transmission line. *The Commission is not seeking to alter this balance…*" [emphasis added]

The commissioners' letter is a reminder that planning for and delivering grid reliability – including the consideration of potential impacts from proposed new environmental rules -- is secured through the interaction of multiple parties, including those at the regional and state level and those actively engaged in markets.

In section 1202, the bill upsets this balance of interests by elevating the role of the Federal Energy Regulatory Commission and the North American Energy Reliability

Corporation (NERC) in major environmental rulemaking. For environmental rulemaking agencies, such as the Environmental Protection Agency (EPA), it is critically important to receive the input of multiple stakeholders about grid reliability. As the FERC commissioners make clear in their letter, a thorough assessment of the impacts of, for example, EPA's proposed Clean Power Plan, requires the input of diverse perspectives and expertise.

We have a similar concern with elevating the role of NERC in federal agencies' environmental rulemaking – an enhanced role for which it is not well-suited.

The fact is that NERC has been overly pessimistic about the ability of industry and regulators to adjust to changing conditions, including environmental rulemakings. For example --

- In 2011, NERC issued its Long-Term Reliability Assessment, which looked at the Mercury and Air Toxics Standards, the Cross State Air Pollution Rule, the Clean Water Act Cooling Water Intake Structures rule, and the Coal Combustion Residuals rule. NERC raised numerous reliability concerns about these protections, which the EPA noted at the time were flawed and exaggerated. None of NERC's concerns have manifested during implementation of these standards.

- In a 2011 companion study, NERC issued its Potential Impacts of Future Environmental Regulations about the Mercury and Air Toxics Standards (MATS) and a number of other regulations. NERC again raised reliability concerns, none of which have occurred in practice.

- In 2000, NERC drafted a review of EPA's nitrogen oxide emissions standards for eastern power plants, knows as the NOx SIP Call. Yet again, NERC predicted a number of reliability concerns that did not occur after the rule was implemented.

None of this is to say that NERC is always wrong or that its views should be ignored. To the contrary, NERC plays an important role by giving voice to a conservative, "worst-case" outlook as part of a mix of organizations with unique perspectives and responsibilities on reliability. But its views should be balanced with those of others, not elevated in the rulemaking process.

Perhaps a stronger case could be made for section 1202 if environmental agencies were failing adequately to consider the reliability impacts of their rulemakings, but there is no evidence of that.

For example, in its Mercury and Air Toxics (MATS) rule, which went into effect last month, EPA offered plant operators an opportunity to request an additional year to comply. In fact, the agency offered another year beyond that in situations in which reliability might be adversely affected.

That is precisely the kind of flexibility the FERC commissioners endorsed in their May 15th letter to EPA regarding the Clean Power Plan. It supports environmental

rulemaking in ways that allow industry and regulators time to meet their responsibilities to customers and to the grid. Of course, the Clean Power Plan is vastly more flexible than MATS, with a number of built- in reliability safety valves, and thus specific solutions will likely differ under EPA's final rule.

I would like to turn now to a brief discussion of the other sections of the draft bill.

Section 1201 includes what amounts to an "opt-out" for parties found to be in violation of any federal state, or local environmental law or regulation while operating under an emergency order. Again, there seems to be little, if any, need for such provisions.

DOE has issued fewer than 10 must-run orders and only once has such an order resulted in a claimed conflict with environmental requirements. That instance resulted in a fine for the company – Mirant -- after the Virginia Department of Environmental Quality found that the plant in question could have operated in a manner that was in compliance with both DOE's order and EPA's requirements.

That example illustrates a potential hazard inherent in Section 1201, namely that it will provide a perverse incentive for utilities to slow their compliance activities, hoping or planning to seek protection via the hold-harmless opportunities the bill would provide.

Sections 1204, 1205 and 1206 establish some potentially worthwhile approaches to addressing critical electric infrastructure emergencies and the loss of critically damaged large power transformers, as well as the need to identify "cyber-secure" technologies.

Section 1207 usefully directs state commissions to consider requiring electric utilities to with their jurisdictions to develop plans to "increase the utilization of resiliency-related technologies. The section provides explicit recognition of the role of advanced grid technologies, distributed resources, and back-up resiliency components and technologies.

It also calls on state commissions to consider authorizing cost recovery for the expanded use of advanced energy analytics technology – including, laudably, for customer engagement programs "and other benefits to ratepayers."

Unfortunately, Section 1207 then veers off course. It requires state commissions to consider the adoption or modification of policies "to ensure that each such electric utility incorporates sufficient baseload generation into its integrated resource plan to assure the reliable availability of electric energy over a 10-year planning period."

The section goes on to provide potentially damaging guidance and criteria as to how such policies should be designed.

By putting an emphasis on baseload generation, and listing "reliability attributes," the section marginalizes the rapidly growing role of renewable generation, storage, and demand-side resources. For example, it calls for "fuel certainty" "without risk of interruption, and for the possession of "adequate fuel onsite," generation during

emergencies and severe weather, as well as "essential reliability services -- all for at least 30 days.

It is hard to imagine any baseload generating asset that cannot, at one time or another, be rendered unable to produce electricity, even if it meets a number of these criteria.

If the goal of the section is to prod state commissions into doing better planning for emergencies and for severe weather, why not include in such planning activities all potential generating assets, as well as renewable energy infrastructure and demand-side measures? Why distort the state plans in favor of an increasingly outdated and narrow view of the resources that are ever-more available on the grid? This section can be beneficial if it is changed to reflect a broader view of the tools that emergency planners at the state level can bring to bear.

Section 1208 makes a similar mistake. It directs FERC to direct every RTO and ISO that operates a capacity (or similar) market to demonstrate and certify that their markets meet specific structural criteria. Those criteria echo some of the same themes as those in Section 1207.

One especially troubling provision in Section 1208 is the capacity market design feature linking several criteria (such as on-site fuel, multiple fuel sources, etc.) to a burdensome reliability requirement: that generation must be available "on a continuous basis for an extended period of time for each day over a period of not less than 30 days." Such a requirement is likely to discourage competition and innovation, while putting ratepayers at risk of higher costs.

As in Section 1207, these criteria suffer from the same bias in favor of traditional baseload generation and against a broader set of resources that are increasingly important to capacity markets – and therefore to reliability. Capacity markets should be agile, diverse, and increasingly innovative. Requiring the application of market design criteria that effectively discourage the inclusion of such characteristics in capacity markets is counterproductive to reliability and likely to add more cost to their operations.

Again, Environmental Defense Fund believes that there are some worthwhile elements to this draft, especially regarding planning for emergencies and for physical and cyber-attacks on the grid.

We also believe that modifying the draft to remove the unneeded and counterproductive role defined for FERC and NERC in Section 1202 would be a major improvement as well. Similarly, we urge modifications to Sections 1201 and 1208 to address the concerns identified above. Lastly, we would urge the subcommittee to think about state planning in ways that embrace all the resources that can support reliability, not just those associated with traditional baseload assets and approaches.

Thank you again for this opportunity to appear before you today to discuss these important issues.