June 19, 2018

The Honorable Fred Upton
Chairman, Subcommittee on Energy
U.S. House of Representatives Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Upton,

Thank you for the invitation to testify before your Committee on May 10, 2018, at the hearing entitled, "Examining the State of Electric Transmission Infrastructure: Investment, Planning, Construction and Alternatives."

Enclosed are my responses to the questions for the record that were provided to me earlier this month.

Please do not hesitate to contact me if I may be of further assistance.

Sincerely,

/s/ Tony Clark

Senior Advisor
Wilkinson Barker Knauer LLP

The Hon. Fred Upton

1. *In your testimony, you said that transmission incentives may be ripe for review. As you know, the Energy Policy Act of 2005 directed FERC to create a program to award certain transmission rate incentives to transmission projects that qualified under the regime known as Order 679.*

   a. *What type of review do you think FERC should conduct on transmission incentive policy?*

      Five years after Order No. 679, FERC undertook a Notice of Inquiry that resulted in the 2012 Policy Statement that provided further guidance regarding the Commission's implementation of Order No. 679. It has now been over five years since the 2012 Policy Statement and there has been significant industry, regulatory and legal activity in the transmission space. I would suggest that given the number of transmission items sitting squarely before the Commission, including various court remands, now may be an opportune time to look at FERC transmission policy (including ROE policy and incentives) holistically. A Notice of Inquiry could be one vehicle for the Commission to begin that sort of dialogue, but the Commission has a number of regulatory tools to initiate a conversation on these matters.

   b. *Is there anything Congress should do to amend the Federal Power Act?*

      I do not have any suggestions for specific Congressional action in this regard.

2. *As you know, the regulatory process for settling disputes over the appropriate base rate of return on equity for transmission was thrown into question by a D.C. Circuit decision more than a year ago. To date, this issue has yet to be addressed by FERC on remand.*

   a. *With no regulatory certainty with regard to FERC's overall ROE policy, how is this affecting transmission development and financing.*

      There are a number of outstanding court remands that are being watched by the transmission industry. These include the D.C. Circuit Court opinion you reference, as well as a separate decision from California related to the Commission's incentive ROE adder routinely granted to utilities for joining Regional Transmission Organizations. Both transmission owners and transmission customers are very much interested in the outcome of these proceedings given the regulatory uncertainty that exists during their pendency.

   b. *Do you see a chilling effect on investment at a time when the nation needs new transmission infrastructure?*

      As a general matter, regulatory certainty in such matters lends itself to timely decision making with regard to capital outlays. Conversely, long-term uncertainty lends itself to indecision.

The Hon. Gregg Harper

1. *The Committee has concerns that FERC's current application of the discounted cash flow (DCF) methodology for transmission ratemaking is not having the intended effect to attract capital and deploy critical new transmission infrastructure.*

   a. *Would you agree that DCF, as currently utilized by the Commission, is underperforming with respect to achieving these objectives? If so, why do you believe this is the case?*

      In 2014, the Commission released Order No. 531, which adopted a two-step DCF methodology similar to that used by FERC when establishing natural gas pipeline rates. Included in Order No. 531, was a Commission determination to select the midpoint of the upper half of the zone of reasonableness for setting base rates, due to unusual capital market conditions. FERC, however, was not successful in defending Order No. 531 before the D.C. Circuit Court of Appeals, so the current and future status of the DCF methodology's performance is the subject of much uncertainty.

   b. *Do you believe FERC's current application of the two-step DCF model should be reevaluated? Should the Commission review the assumptions and data inputs that form the basis of its two-step DCF model?*

      With the court remand of Order No. 531, I believe the time is now ripe for the Commission to consider many transmission investment issues holistically. This review could include consideration of the mechanics of the DCF methodology, transmission incentives, and the decision making process the Commission employs when deciding whether to send a transmission compliant to hearing.

   c. *What, if any, "fixes" to the Commission's application of DCF might FERC consider? Also, what, if any, alternative models or methodologies might the Commission consider in lieu of in or in addition to the DCF model to better account for factors and conditions not considered by the DCF model, including measures of capital market risk?*

      Should the Commission choose to change its ROE-setting methodology, yours is among the most difficult questions the Commission will attempt to answer. Unfortunately, there is no simple answer and no silver bullet.

      Consistent with Congress' directives and the Federal Power Act, FERC should ensure that any methodology it chooses results in ROEs that are appropriately constructive to transmission investment. Commission policy needs to provide a relatively stable and predictable methodology for calculating ROEs while not being so rigid that it precludes the Commission from ensuring that transmission investment remains appropriate in changing economic conditions.

      Any change will inevitably result in litigation and, as the court remand in Order. No, 531 proves, persuading a court when making a regulatory policy shift can prove challenging. If the Commission determines its existing methodology no longer produces just and

reasonable returns given the investment risk associated with constructing transmission, there are several refinements the Commission could consider, including different models for ROE-setting that are employed by regulatory bodies both in the U.S. and internationally.

The Commission will also need to decide how it would implement a change in policy. In Order No. 531 it altered the methodology via a contested complaint case, but the Commission could also choose to open a broader inquiry through an industrywide rulemaking proceeding. Each approach has its advantages and disadvantages which the Commission will want to assess. Regardless of if or how the Commission chooses to proceed, one recommendation I have is for the Commission to be as diligent as possible in how it communicates any changes to the broader stakeholder community. Regulatory surprises should be avoided since they can have unintended consequences on the entire utility sector and unduly chill needed investment.

The Hon. Richard Hudson

On April 19, PERC issued a new rule (Order No. 845) concerning revisions to_ the interconnection process for large generators which are over 20 MWs. The intent of this rule is to reduce the backlog of interconnection queue requests, however, these new regulations put the onus on the transmission provider to develop new procedures to accommodate additional flexibility for interconnecting generators. The interconnection process is already quite complicated with several studies often required to determine the impact of the new generation on the transmission grid with various deadlines for each specific step in the process. This was manageable when there were only a handful of interconnection requests in a year. However, these queues have grown more recently due to the significant increase in the number of smaller-sized interconnection requests for wind and solar generation. Developers typically put in several requests at one time, knowing that many of them will not get built. In some cases, there is more proposed generation in the queue than the total customer load in a particular area.

1. *Do you believe that this new interconnection rule will alleviate those backlogs?*

I believe the Commission may have missed an opportunity to better address some of the root causes of the ongoing queue backlogs. In my experience, queue backlogs are often the result of queues being flooded with speculative projects that may have limited chance of being brought to completion. When these speculative projects flow into and out of a queue they add frustrating uncertainty for other interconnection customers and the transmission providers. The problem can lead to time consuming delays when transmission studies need to be recompleted. Yet, as you correctly noted in your question, much of the bulk of the regulatory mandates in Order No. 845 fall to the transmission providers rather than adopting tools that would more rationally streamline the queues to those projects that have the best chance of advancing expeditiously. I am concerned that unless the Commission addresses the root causes of the backlogs,

especially the problem of so many speculative projects cluttering the queues, the problem will persist.

2. *How would modifications made by interconnection customers affect the interconnection studies of later-queued requests?*

   Your question gets to the heart of the problem of a large unwieldy interconnection queue process. As speculative projects drop out of the queue or if they seek to modify their project, it can cause a cascade of circumstances that affect other projects in the queue.

3. *Would you agree that vertically-integrated utilities may already be better positioned with aggressing grid resilience in transmission planning since generation, transmission and distribution needs can be evaluated holistically through the IRP process?*

   Undoubtedly, one of the strengths of the vertically integrated utility model is in its ability to plan generation, transmission and distribution facilities in a way that ensures public imperatives are met in relation to resilience, reliability, affordability and fuel source security and diversity.

The Hon. Scott Peters

1. *As climate change continues and we see more frequent and more intense natural disasters destroying our grid, how is the grid affected in terms of capital costs and how do those costs affect consumers?*

   I have not personally conducted a study of the costs to the grid, and to consumers, related to a changing climate. Assessing the costs to individual utilities and their customers would likely be specific to each utility given the many differences that each face given the geographic diversity of the territories they serve.