Testimony of The Honorable Tony Clark
Executive Director
National Association of Regulatory Utility Commissioners
United States House of Representatives Energy and Commerce Committee
Subcommittee on Energy
"Wires, Rates and States: Permitting Transmission for Reliable Affordable Power"
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Summary

1. States are generally supportive of the value of transmission scenario planning within and across regions, even as some of our members litigate technical legal questions about the precise extent of FERC jurisdiction over such matters under the Federal Power Act.
2. Given FERC's prescribed jurisdiction, states believe transmission planning exercises should build upon and work in harmony with state policies, laws and planning. Federal transmission planning that does not consider the role of states, supplants the work of the states, or worse yet, works in outright contravention of state energy policies, will drive up electricity rates.
3. State commissions are generally supportive of common-sense federal permitting reform efforts, so long as "permitting reform" is defined as reform of federal processes that may impede needed critical energy infrastructure.
4. State commissions are generally opposed to "permitting reform" if it is defined as preempting state primacy in electric transmission siting. We believe preempting states leads to less efficient permitting of infrastructure, the creation of affordability risks, and landowners effectively losing access to their permitting authorities.
5. Finally, state commissions are concerned with the trend towards greater federalization of electricity policy generally. Many of the cost drivers that are now increasing consumer electric bills are from components of the energy delivery system that are removed from the oversight of state commissions. Nonetheless, state commissions are the entities that are legally required to pass along many of these costs to retail customers. State commissions believe that a continuing movement away from decision-making by the officials that are closest to the retail bill creates a risk of even more affordability challenges.

Chairman Latta, Ranking Member Castor and Members of the Committee, thank you for the invitation to be with you today. I am Tony Clark, Executive Director of the National Association of Regulatory Utility Commissioners (NARUC). NARUC is the organization that represents the public utility regulatory commissions in the 50 states, the District of Columbia and the U.S. Territories. Just like Congress, our membership has diverse views on a variety of energy topics, so while there may not always be unanimity among our members, there are several areas around which there is general agreement. Among those areas of consensus are many of the issues that you are discussing today related to planning, siting and permitting of electricity transmission.

I have five main points I would like to share with you.

1. **States are generally supportive of the value of transmission scenario planning within and across regions, even as some of our members litigate technical legal questions about the precise extent of FERC jurisdiction over such matters under the Federal Power Act.**

   Because state commissions are the regulatory entities closest to retail electric bills, our members have more interest than just about anyone in ensuring that utilities are taking into consideration all factors that affect electric bills. One of those components is weighing the cost and benefits of various transmission investments and comparing these investments to other utility capital expenditure options. Transmission is an area in which states have varying degrees of jurisdiction, depending on their regulatory structure and region. For state commissioners to

engage in sound decision making, they need to have all data available to them, and a meaningful planning exercise can be a critical part of that assessment

2. **Given FERC's prescribed jurisdiction, states believe transmission planning exercises should build upon and work in harmony with state policies, laws and planning. Federal transmission planning that does not consider the role of states, supplants the work of the states, or worse yet, works in outright contravention of states, will drive up electricity rates.**

As I have said in prior testimony before this Committee, transmission exists to support customers, not the other way around. Transmission is not a product that exists in a vacuum. When done right, it can be a facilitator of lower cost generation and can support reliability. When done wrong, it can work at cross-purposes with other decisions and can result in a higher overall rate for customers. There is not just one way to generate, transmit and distribute power. Spending in any one of these areas can have a spillover effect onto other areas and thereby impact the retail bill. Transmission solutions may sometimes be the best cost option, but in other cases, generation built closer to load may be a more cost-effective solution for customers. In other situations, non-wires alternative like price responsive demand, storage or energy efficiency may be a better investment. What must be appreciated is that while transmission may sometimes be the "right" answer, in other situations, large transmission investments may crowd out other non-wires alternatives, at a greater cost than the alternatives. The key is that transmission planning cannot exist in a

vacuum, but a top-down view of transmission planning that views transmission as a good unto itself may encourage exactly that result. States are critical because, while the federal government, via FERC, is a wholesale regulator whose decisions secondarily affect retail rates, states oversee the one aspect of rates that customers care about most: the bills they pay. Because only states have the ability and expertise to assess how generation, transmission and distribution work in conjunction to affect retail bills, transmission planning must be an exercise that is built from the bottom-up, which means it must be informed by and responsive to state decision-making. NARUC opposes legislation that makes it easier for transmission developers to preempt the states' ability to ensure that a transmission project is in the best interests of consumers relative to other options. Federal transmission planning cannot supplant state decision-making without risking customer affordability.

3. **State commissions are generally supportive of common-sense federal permitting reform efforts, so long as "permitting reform" is defined as reform of federal processes that may impede needed critical energy infrastructure.**

NARUC members believe that meaningful federal permitting reform is important to addressing rising demand. Many Members of Congress have correctly focused on amending existing federal laws to help solve for the real and significant issues that have stifled energy delivery and contributed to rising electricity costs across the United States. Of particular note is possible reform of certain federal laws such as the National Environmental Policy Act which have too often unreasonably

delayed infrastructure projects needed for the safe and reliable delivery of energy to consumers. In our experience, it is often not state regulatory processes that add undue delay to electric transmission projects, it is the creation of a federal jurisdictional nexus where one or more federal agencies become involved. Under existing federal law, when a state-approved transmission project triggers this nexus, such as when a project crosses federally managed land, it means that federal statutes become involved. This trigger in turn can lead to federal litigation and attendant delays. This is problematic anywhere federal public lands are involved, but is particularly noteworthy throughout the Western U.S. If Congress wishes to make improvements to infrastructure permitting, reforming federal laws is the place to start. So long as "permitting reform" is defined as streamlining federal processes that are negatively affecting the feasibility of necessary projects, members of your committee will find much support among the state regulatory community.

4. **State commissions are generally opposed to "permitting reform" if it is defined as preempting state primacy in electric transmission siting. We believe preempting states leads to less efficient permitting of infrastructure, the creation of affordability risks, and landowners effectively losing access to their permitting authorities.**

State commissions wish to preserve cooperative federalism in the energy permitting space. Legislation that further expands federal siting authority and weakens the states' ability to oversee major projects in a state flies in the face of that

spirit of cooperative federalism. Federal backstop siting authority already exists in federal law for the limited number of projects that may qualify for it. This limited backstop authority recognizes that states are generally not the biggest hurdle to getting needed transmission built, but it does allow for a resolution should that occur. We do not believe this backstop authority should be expanded. When transmission is truly needed and cost-effective, states typically site and permit projects expeditiously because state regulators know the right projects will support customer affordability and reliability. States have efficiently permitted thousands of miles of transmission in recent years. In the limited instances of transmission developers being unable to receive state permits, it may be because the project is not (or is no longer) cost effective for the state's consumers, or because a project developer has submitted a deficient application. Alternatively, a developer's landowner relations may be subpar, which can engender local backlash. When developers fail to obtain voluntarily easements, and instead expect an inordinate exercise of eminent domain and condemnation, it only exacerbates the problem. States use the permitting process to resolve landowner concerns with transmission developers. Giving this process to a federal agency will undoubtedly hinder a landowner's ability to provide meaningful input.

Electric transmission projects can be controversial wherever they are proposed, and frankly, in my experience as a former state and federal commissioner who permitted many miles of both electric transmission lines and pipelines, transmission lines tend to attract greater landowner concerns given their generally

larger imposition on the land. But at least with state-led permitting, affected landowners, individuals and communities have access to a local process to have their concerns heard. These processes may include things like a pole-by-pole discussion of how a project route might affect a rural landowner and his or her farming operations. This is often not NIMBY-ism, it is a citizen that is just looking for a route adjustment to address a specific concern. When dealing with governmental power as significant as eminent domain, citizens deserve no less than this sort of access to a permitting authority. Under a federal permitting regime, intensely impactful decisions that affect average Americans would be made at a faraway agency, by people who likely have no connection to the land or people living near where these major projects are proposed and constructed. Unlike project developers, these citizens do not have teams of representatives advocating for them in Washington, DC. They typically have only themselves to make themselves heard. With a state permitting process, these citizens have a better chance to make their voices heard, not only during the permitting process, but during the construction, reclamation and operations phases also. When landowners feel sidelined, local resistance grows, which ultimately makes all needed projects more difficult to build. States are much better positioned to address and balance these local concerns.

5. **Finally, state commissions are concerned with the trend towards greater federalization of electricity policy generally. Many of the cost drivers that are now increasing consumer electric bills are from components of the energy delivery**

system that are removed from the oversight of state commissions. Nonetheless, state commissions are the entities that are legally required to pass along many of these costs to retail customers. State commissions believe that a continuing movement away from decision-making by the authorities that are closest to the retail bill creates a risk of even more affordability challenges.

State Commissioners are on the front lines of the affordability challenges that are affecting electricity consumers. Because our members are the retail regulators that are closest to the consumer, they often bear the brunt of customer dissatisfaction when rates rise. While it has always been the case that state utility regulators have a difficult job: making sometimes unpopular, but necessary, decisions about customer rates to ensure the public's interest is met by having reliable sources of energy; in recent years our members have seen a different dynamic at work as federal jurisdictional creep has coincided with growing rate pressures. State regulators see increasing costs that are frequently outside of their control, but over which they have limited tools to shield the customers they are there to protect. Wholesale generation capacity, energy and transmission costs have all ballooned in recent years, but these are largely federally jurisdictional charges that are required to be passed on to consumers. Supply chain costs, general inflation, and the impact of federally ordered reliability must run units are all having a cumulative effect on customer rates, but cannot be controlled by the retail regulator: state commissions. Even where states have more independent authority, over distribution investments for example, increasing electrification at the edge of the grid,

including for electric vehicles, and facilitation of distributed energy resources (all of which are impacted greatly by federal policy decisions), are necessitating greater distribution investments. Into this reality we see increasing talk about even more federalization of decisions, from infrastructure siting to a potential unprecedented assertion of federal jurisdiction over certain large load retail interconnections, which could impede the states' ability to protect all retail customers from shouldering an unfair portion of grid costs. If states are being asked to help hold the line on rising costs for average residential and commercial consumers, then state jurisdiction cannot be continually encroached upon. To be clear, different states will address these energy issues in different ways. California will approach these issues differently than my home state of North Dakota. North Dakota will approach things differently than Texas. Not only is this okay, it is actually preferable to most decisions about electricity being made in Washington, DC. Electricity production and delivery is not a one-size-fits-all scenario in the United States. This country is too large and too diverse for that to work. States and regions have very different population densities, weather patterns, grid operating characteristics, system peaks, land-use considerations, energy resources and policy goals. A renewables, transmission, or storage-heavy solution that works for one region might utterly fail in another. A region with large public power and rural cooperative operators will necessarily look at regulatory issues a bit differently than one largely served by vertically integrated investor-owned utilities, or one served by unbundled merchant generators. A state with a large cohort of residential customers will have a different set of considerations

than one with a disproportionally large base of industrial customers. This diversity is a strength of the American electricity delivery system, and we would urge Congress to embrace that strength by resisting efforts to expand federal jurisdiction in ways that could move decision-making away from the states, who are the entities best positioned to protect the interests of your constituents who pay monthly utility bills.

For the Committee's reference, I have submitted three documents along with my testimony. The first is a letter to Congressional leadership late last year outlining NARUC's thoughts on federal permitting reform. The second is a more recent letter to U.S. Senate Committee on Energy and Natural Resources leadership reiterating and expanding on several of these points. The last is a letter NARUC submitted to FERC detailing recent state actions to facilitate the interconnection of large retail loads, while taking steps to protect other customer classes from unfair cost burdens.

I look forward to answering any questions you may have.