

AMERICAN ENERGY INITIATIVE, PART 13: ELEC-
TRIC TRANSMISSION ISSUES, INCLUDING TOPICS
RELATED TO THE SITING, PLANNING, AND
ALLOCATION OF COSTS FOR ELECTRICITY
TRANSMISSION INFRASTRUCTURE

HEARING
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
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**AMERICAN ENERGY INITIATIVE, PART 13:
ELECTRIC TRANSMISSION ISSUES, INCLUDING
TOPICS RELATED TO THE SITING,
PLANNING, AND ALLOCATION OF COSTS
FOR ELECTRICITY TRANSMISSION INFRA-
STRUCTURE**

THURSDAY, OCTOBER 13, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:36 a.m., in room 2322 of the Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Members present: Representatives Whitfield, Shimkus, Walden, Terry, Burgess, Bilbray, McMorris Rodgers, McKinley, Gardner, Pompeo, Griffith, Barton, Rush, Dingell, Engel, Green, Matsui, and Waxman (ex officio).

Staff present: Charlotte Baker, Press Secretary; Ray Baum, Senior Policy Advisor/Director of Coalitions; Anita Bradley, Senior Policy Advisor to Chairman Emeritus; Allison Busbee, Legislative Clerk; Patrick Currier, Counsel, Energy and Power; Andy Duberstein, Deputy Press Secretary; Cory Hicks, Policy Coordinator, Energy and Power; Dave McCarthy, Chief Counsel, Environment and Economy; Jeff Baran, Democratic Senior Counsel; and Caitlin Haberman, Democratic Policy Analyst.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. Good morning, and I want to call this hearing to order.

Today we will focus on Federal transmission issues, including permitting, planning and pricing of electricity transmission infrastructure.

Additional investments in transmission infrastructure certainly will help our country meet anticipated future energy needs. But there are hurdles, particularly for wires that cross State lines and require agreement of multiple stakeholders.

Two recent transmission-related developments will help us evaluate the challenges facing the buildup of transmission infrastructure in this country. First, the Department of Energy recently consid-

ered whether to designate to the Federal Energy Regulatory Commission certain authorities granted to DOE by Congress in the Energy Policy Act of 2005. The proposal would have delegated to FERC DOE's authority to designate certain areas as National Interest Corridors. FERC already has backstop siting authority to site transmission facilities within those corridors, so the delegation would have placed all of the National Interest Corridor authority under FERC's jurisdiction. Secretary Chu's decision this week to not delegate this authority to FERC is quite timely because I noticed in my comments here, he had not made that decision yet when they wrote this. So I have to change my views.

The other transmission issue before us today is FERC's recently finalized Order 1000, which outlines changes to regional transmission planning and cost allocation. Although many of the implications of Order 1000 cannot be fully known or appreciated until compliance filings are made with FERC next year, it is important to evaluate the potential impact this final rule may have on stakeholders. Order 1000 seeks to provide flexibility to regions with respect to how regions should plan and pay for new transmission. There are a number of issues. For example, my home State of Kentucky, we do not have a renewable portfolio standard and I have some counties in my district that are in a regional transmission organization and others are not, so those counties could conceivably get stuck paying the bill for renewable energy transmission from States that do have a renewable portfolio standard without any direct benefit.

So we have a great panel of witnesses this morning. We have a lot of diverse views, as a matter of fact, on this issue, but I certainly want to thank our first panel for being here today, the Honorable Jon Wellinghoff, who is chairman of the Federal Energy Regulatory Commission, and Ms. Lauren Azar, Senior Advisory, Office of the Secretary, U.S. Department of Energy. So we look forward to your testimony as well as testimony of all of our witnesses as we set out to explore this important issue and how it is going to work as we move forward and what the impact is going to be and a lot of different stakeholder interest.

[The prepared statement of Mr. Whitfield follows:]

Opening Statement of Chairman Ed Whitfield
Subcommittee on Energy and Power
Hearing on "The American Energy Initiative" – Day 13
October 13, 2011
(As Prepared for Delivery)

Today's hearing is the thirteenth in our series on the American Energy Initiative. Today we will focus on federal transmission issues, including permitting, planning, and pricing of electricity transmission infrastructure.

Additional investments in transmission infrastructure will help our country meet anticipated future energy needs. But there are hurdles, particularly for wires that cross state lines and require agreement of multiple stakeholders.

However, building new long-distance, multi-state transmission facilities in order to bring remote resources, like wind and solar, to load centers may not always be the most efficient or cost effective means of meeting local energy needs.

There are a lot of options for meeting local electric energy demands, including locally available fuel, such as coal, for new plants and innovations in energy efficiency. Some of those options have shorter lead times than major transmission investments have.

Building large, costly transmission projects could unnecessarily increase costs to customers and should be used when less costly options are not available. After all, a local solution may be the most affordable and efficient one.

Two recent transmission-related developments will help us evaluate the challenges facing the build out of transmission infrastructure in this country.

First, DOE recently considered whether to designate to the Federal Energy Regulatory Commission ("FERC") certain authorities granted to DOE by Congress in the Energy Policy Act of 2005. The proposal would have delegated to FERC DOE's authority to designate certain areas as National Interest Corridors. FERC already has "backstop siting authority" to site transmission facilities within National Interest Corridors, so the delegation would have placed all of the National Interest Corridor authority under FERC's jurisdiction.

I am pleased with Secretary Chu's decision this week to not delegate this authority to FERC, as many of us believe that DOE does not have the authority for this kind of delegation to FERC under the Energy Policy Act of 2005.

The other transmission issue before us today is FERC's recently finalized Order 1000, which outlines changes to regional transmission planning and cost allocation.

Although many of the implications of Order 1000 cannot be fully known or appreciated until compliance filings are made with FERC next year, it is important to evaluate the potential impact this final rule may have on stakeholders.

Order 1000 seeks to provide flexibility to regions with respect to how regions should plan and pay for new transmission. I'm concerned that the rule could result in cost allocation formulas that spread the costs of new transmission broadly to customers without an appropriate connection to the benefits received, if there are any.

For example, my home state of Kentucky does not have a renewable portfolio standard and I have some counties in a regional transmission organization, so those counties might get stuck paying the bill for renewable energy transmission from states that do have a renewable portfolio standard without any direct benefit.

I'm also concerned that Order 1000 could lead to transmission investments that cost more than is economically justified. Transmission upgrades should be based on competitive and innovative market forces that find the alternative that is most cost effective for the greatest number of users. In many cases if the EPA would just get out of the way and allow communities to build efficient coal-fired electricity plants, this would reduce emissions, provide cheap electricity, negate the need for costly transmission construction, and save jobs.

I realize that both the delegation proposal and Order 1000 are attempts by DOE and FERC to address hurdles that have limited the ability to site and construct transmission infrastructure, such as the recent court decisions that have severely constrained the National Interest Corridor provisions of the Energy Policy Act of 2005.

It is important, however, that any federal action to support the development of transmission infrastructure should strike the appropriate balance between the various stakeholders, including preserving the proper roles of state and local governments.

The permitting, planning, and pricing of electricity transmission infrastructure are important issues that will undoubtedly have implications for the future of energy policy in this country. I am pleased that we are examining these issues and giving transmission policy the appropriate consideration that it deserves.

I thank the witnesses for being here today and look forward to the discussion.

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Mr. WHITFIELD. With that, Mr. Rush, I recognize you for your opening statement.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. I want to thank you, Mr. Chairman, and I want to also thank Chairman Wellinghoff and Ms. Azar as well as the other expert witnesses on the second panel for appearing before this subcommittee today.

Mr. Chairman, today we are holding a hearing focusing on Federal transmission issues as they relate to siting, planning and cost allocation for electricity transmission infrastructure. The basis of this hearing is FERC Order 1000, which was finalized in June 2011, which addresses three main issues: planning, cost allocation and the Federal right of first refusal for incumbent transmission provides. Order 1000 establishes three new requirements regarding cost allocation. First, it requires that each regional transmission planning process establish a regional cost allocation method for transmission lines selected in the regional transmission planning for the purposes of cost allocation. This cost allocation method must satisfy six principles: those who do not benefit from a transmission project do not have to pay for it. That is the first principle. The second principle is the cost allocation must be at least, and I quote, “roughly commensurate” with estimated benefits. The third cost allocation method is the benefit-to-cost thresholds must not exclude projects with significant net benefits. Fourthly, allocations of cost outside a region are not permitted unless the other regions agree. The fifth measure is the cost allocation methods and identification of beneficiaries must be transparent. And lastly, number six, different allocation methods can apply to different types of transmission facilities.

The second requirement is that neighboring regions must select a common interregional cost allocation method for new interregional transmission lines based on the same six principles that I have previously outlined.

The third and final requirement allows for participant funding of new transmission lines where costs of a new transmission line are allocated only to entities that volunteer to bear those costs but under Order 1000 this cannot be the regional or interregional cost allocation method.

Mr. Chairman, many of the issues covered under Order 1000 are very technical in nature, to say the least, but I applaud you for holding this hearing and understanding all these technicalities. So we are going to hear directly from many of the stakeholders who have been charged with implementing and who would be most impacted by these proposals. Many of these issues surrounding Federal electricity transmission break down by region rather than by party. I look forward to the question-and-answer segment to learn more about how Order 1000 will affect my State, the State of Illinois, specifically, as well as the Midwest region in general. So I am very eager to hear testimony from Chairman Wellinghoff as well as the other witnesses, and I look forward to a very informative, inspirational, education and robust discussion on these very important

issues, Mr. Chairman. It is so good to be back in a hearing with you once again.

With that, I yield back the balance of my time.

Mr. WHITFIELD. Thank you, Mr. Rush. Mr. Rush always complains we don't have enough hearings.

At this time I would like to recognize the chairman emeritus of the full committee, Mr. Barton of Texas, for 5 minutes.

**OPENING STATEMENT OF HON. JOE BARTON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BARTON. Thank you, Mr. Chairman.

It is very understandable that you may not have heard the decision that Secretary Chu made since you have been doing such good work on the floor the last several weeks on so many issues. It is understandable that you might not have heard that he made the decision to keep the siting authority at the Department of Energy. We want you to keep doing the good work and we will send you notes as developments occur on these other issues.

Let me say on the siting issue that I think the Secretary made the right decision. While I think it is reasonable for FERC to get the authority given the fact that since the court case in Virginia several years ago the Department of Energy has not exercised its authority that we gave them in the Energy Policy Act of 2005. There was a reason that we had a split responsibility, and I was the chairman of the conference committee and we thought about it quite a bit. We wanted the Department of Energy as an independent agency to make a transparent decision that a certain corridor needed to have new transmission and then we wanted the FERC once that designation was made to be responsible for working with the stakeholders and to develop the actual permitting process and the specific siting process. We thought it was best to have two different groups do each part of the process. Since the court decision, the Department of Energy has not really tried to designate any new corridors, and I would encourage you, Madam Senior Advisor, to work with the Secretary and the others in the department. If you need additional legislation language, I am sure we can do that on a bipartisan basis. But I think the system and the current law will work if we start to try to make it to work.

The one thing that I did question about the request or the delegation is, I think it is Congress's role to make those decisions and I don't think the Executive Branch can just delegate the explicit authority given to it under law.

With regard to FERC Order 1000, as Mr. Rush indicated, that is a fairly complicated piece of work. As a past chairman of this subcommittee and also of the full committee, I have been involved for over 20 years with these issues and I can tell you folks here in the audience that it is no surprise it is very complicated. My main problem with FERC Order 1000 is that it appears that under certain conditions an entity could be forced to pay for something that they don't want to participate in, don't receive a benefit from and yet they can still be forced to pay. I think that is a problem and I think it needs to be looked at.

Overall, though, I think FERC Order 1000 is a noble attempt to try to bring some order out of what has been a somewhat chaotic

system with all the various RTOs and MSIOs and independent marketers and still some parts they are in regulated markets. It is a miracle that anything ever gets sited and anything ever gets done.

So Mr. Chairman, it is good for you and Mr. Rush to be continuing these hearings. Hopefully we will shed some light on the issue.

With that, I want to yield to Mr. Terry. I think he has got a unanimous consent request.

Mr. TERRY. Thank you, Mr. Chairman Emeritus. I do ask unanimous consent that I may submit for the record the APPA letter report.

Mr. WHITFIELD. Without objection.

Mr. TERRY. Thank you. Yield.

[The information follows:]



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**Statement
Of the
AMERICAN PUBLIC POWER ASSOCIATION (APPA)
For the
HOUSE ENERGY AND COMMERCE COMMITTEE'S ENERGY AND POWER
SUBCOMMITTEE
Hearing on "The American Energy Initiative: Electric Transmission Issues, Including
Topics Related to the Siting, Planning, and Allocation of Costs for Electricity Transmission
Infrastructure"
October 13, 2011**

The American Public Power Association (APPA) appreciates the opportunity to offer this statement for the record in the above-referenced hearing addressing a number of electric transmission-related issues.

Public Power Background

APPA represents the interests of more than 2,000 publicly-owned, not-for-profit electric utility systems across the country, serving approximately 46 million Americans. APPA member utilities include state public power agencies and municipal electric utilities that serve some of the nation's largest cities. However, the vast majority of these publicly-owned electric utilities serve small and medium-sized communities in 49 states, all but Hawaii. In fact, 70 percent of our member systems serve communities with populations of 10,000 people or less.

Overall, public power systems' primary purpose is to provide reliable, efficient service to their local customers at the lowest possible cost, consistent with good environmental stewardship. Like hospitals, public schools, police and fire departments, and publicly-owned water and waste-water utilities, public power systems are locally created governmental institutions that address a basic community need: they operate on a not-for-profit basis to provide an essential public service, reliably and efficiently, at a reasonable price. Furthermore, any costs incurred by public power utilities are passed through to their customers.

The great majority of APPA's members are "transmission dependent," meaning that they must pay third parties for access to the "bulk" transmission system (*i.e.*, the higher voltage portion of the interconnected electric system) in order to acquire electricity from power plants for distribution to their retail customers. There are, however, a number of public power systems that own a significant amount of bulk transmission facilities.

Because the Department of Energy's (DOE) Energy Information Administration (EIA) stopped collecting transmission data from public power, cooperative and federal utilities in recent years, 2003 data are the latest comprehensive statistics available by utility. Based on the 2003 data, APPA estimates that approximately 110 public power utilities own approximately eight percent of the nation's transmission lines of 138 kilovolts (kV) or greater. The North American Electric Reliability Corporation (NERC) collects information each year on planned transmission additions of 230 kV or greater.

Because of EIA's decision to discontinue collecting data from the entire electric utility industry, the only up-to-date comprehensive information on existing transmission investment and ownership is NERC's

data on total transmission miles of lines 230 kV or greater summarized by NERC regions and sub-regions. Other information sources only cover part of the industry (for example, the Federal Energy Regulatory Commission's (FERC/Commission) Form 1 transmission data covers only FERC-regulated "public utilities," primarily investor-owned utilities – **not** publicly-owned and operated electric utilities collectively known as public power utilities) or are published in inconsistent formats. Consistent, industry-wide data would be very useful in assessing actual progress in getting needed new transmission facilities built.

Transmission Issues under Consideration

The last time major changes were made to the Federal Power Act (FPA), the law under which the Federal Energy Regulatory Commission (FERC) regulates transmission of electric energy in interstate commerce, was in the Energy Policy Act of 2005 (EPAct05), and the results have been mixed. Since the passage of this legislation, an increasing emphasis has been put on getting transmission facilities built to interconnect remotely-located renewable generation and deliver it to loads. Addressing this new challenge has layered additional complications on an already complex policy situation.

Siting:

APPA believes one of the most significant impediments to getting new transmission facilities built continues to be siting, and that the EPAct05 federal "backstop" siting authorities added to the FPA in Section 216 should be clarified and improved. Unfortunately, two court cases have essentially stifled the ability of DOE and FERC to use their respective authorities under that section to site transmission facilities in designated National Interest Electric Transmission Corridors. Additional congressional guidance appears to be warranted to rectify this situation. While APPA supported the original statutory compromise set out in FPA Section 216, we had substantial concerns with the recent proposal by FERC to "jump start" the process through the delegation of DOE's authorities under that section to FERC. APPA is pleased that FERC and DOE decided this week to withdraw it. We look forward to working with the Subcommittee to address the siting issue in the future.

Planning and Cost Allocation:

APPA's membership has a variety of views on the myriad issues involved in the transmission planning and cost allocation debate and hence on FERC's Order No. 1000, issued in July. However, there are some overarching policy positions and specific concerns with Order No. 1000 upon which our members do agree. Regarding transmission planning, APPA members agree that, because of the variety of stakeholders involved in the electric utility industry, the "not in my backyard" syndrome, and the interconnected nature of transmission systems, regional planning for major transmission lines is essential. APPA, therefore, supports inclusive, transparent planning processes to meet the needs of all load-serving entities. Turning to transmission facilities cost allocation, APPA has long opposed Congress deciding upon one cost allocation regime for the bulk transmission system in perpetuity, given the changing uses and flows on electric transmission systems. One specific method is likely not appropriate for all users in all regions for all time. The costs of transmission facilities should be recovered through cost-based rates that are just and reasonable, and not unduly discriminatory, consistent with cost-of-service ratemaking principles. APPA does not support allocation of the costs of such facilities to regions, sub-regions or entities that will receive little or no benefit from the facilities, and therefore opposes any federal statutory requirement to allocate such costs on an interconnection-wide basis.

In terms of the specifics of Order No. 1000 itself, APPA believes that the Commission got many things right. For example, APPA appreciates that the Order provides a stronger framework for the electric utility industry to implement regional and interregional transmission planning and cost allocation regimes. Among other things, the Order left the regions considerable flexibility to develop the regional and interregional transmission planning and cost allocation regimes that work best for them, rather than

imposing a single template on all regions. FERC refused to designate a “default” transmission cost allocation method, knowing that doing so would poison the well in regional negotiations on cost allocation issues. Finally, the Commission has initiated a separate docket (*Promoting Transmission Investment Through Pricing Reform*, Docket No. RM11-26-000) in which it issued a Notice of Inquiry seeking comment on the issue of transmission rate incentives (discussed further below).

However, there are several provisions in the Order that are problematic from our standpoint (as noted above, some of our individual members may have a broader list of concerns). We believe that:

- The Commission failed to provide sufficient assurances to public power utilities participating in regional transmission planning processes that public power transmission providers’ specific legal obligations and concerns (in particular, the need to maintain the integrity of their tax-exempt bond financing) will be accommodated in such processes.
- The Commission erred in failing to acknowledge that Federal Power Act (FPA) Section 217(b)(4) is a core statutory obligation that it must implement, and therefore failed adequately to account for that obligation in developing its transmission planning and cost allocation regime. This section of the FPA was added in EPAct05 and specifically provides that FERC must use its FPA authorities to address the transmission needs of electric utilities that are *obligated* to provide electric service to their customers (as opposed to merchant providers that have no such obligation, statutory or otherwise).
- The Commission erred in failing to require merchant transmission providers to participate fully in regional transmission planning processes. This situation could enable a merchant provider to essentially “helicopter” in and propose a transmission line without any consideration for the needs of the region as determined in the planning process. The Commission also erred in failing to ensure that reliability of transmission service to all adversely impacted transmission customers in a region will be adequately protected if a non-incumbent (or incumbent) transmission provider does not construct a transmission project needed for regional reliability, and that all adversely affected “users, owners and operators of the bulk-electric system” will be excused from penalties for violations of reliability standards assessed under FPA Section 215 as a result of such a failure.
- The Commission additionally erred in “clarifying” that incumbent transmission providers would be eligible for abandoned project cost recovery associated with certain transmission projects and facilities. There is no need to provide such blanket clarifications at this time, in the absence of a record justifying the reward of such a transmission rate incentive in a specific case.

Other Transmission Issues

A number of other transmission-related issues that impact siting, planning and costs, and are of importance to public power utilities, and are delineated below:

Joint Ownership:

Some of the problems involved in regional transmission planning and cost allocation could be minimized or resolved if new or upgraded transmission facilities were jointly owned by those utilities using those facilities to serve load, but the Commission did not address this issue at all in Order No. 1000. While there are parts of the country in which joint ownership is common, it is the exception rather than the rule in other regions. A number of APPA members that have been willing and able to finance and own their share of needed new transmission have been turned down or bypassed by some investor-owned entities to form such partnerships while at the same time these for-profit transmission developers have sought equity return incentives from regulators in order to build.

Intermittent Resources:

As mentioned above, integrating intermittent resources has added a new level of complexity to the transmission planning and cost allocation processes. New transmission is required to provide access to remote renewable resources, and also for reliability and adequacy of supply, including ensuring that long-term transmission rights are available to load-serving entities (“load” in electric industry terminology means customer demand) for new generation resources they develop and to ensure that adequate capacity continues to be available for existing power supply resources. Renewable generation sites are often located remotely from load centers, making new and longer transmission lines necessary to access that generation. However, because some renewable generation (wind and solar, for example) is intermittent (*i.e.*; no electricity is generated when the wind is not blowing or the sun is not shining) other types of generation are needed to “firm up” these resources. And some load-serving entities have made the decision to develop renewable resources close to their own systems, or even “behind the meter,” reducing their need to rely on remote renewables. All of these needs and strategies must be taken into account in planning a reliable bulk transmission system.

Transmission Rate Incentives

In EPAct05, Congress also granted FERC in new FPA Section 219 the ability to award transmission rate incentives under certain conditions. As mentioned above, the Commission has decided to review its implementation of the transmission rate incentives authority it received in 2005, and opened a “Notice of Inquiry” to take comments from stakeholders on its current policy (comments were due in September). It is not clear at this point what the Commission will do next on this topic.

APPA joined over 30 other stakeholders (known as the “Joint Commenters” below) in comments to the Commission in this docket, the essence of which follow:

“After several years of experience with the Commission’s transmission rate incentive policies set out in Order No. 679 and its successors, it is time to take a close look at how those policies are functioning. A broad cross-section of the energy industry and its participants, including the Joint Commenters, agree that new transmission infrastructure is needed in the United States. But there exists an equally broad-based concern, also shared by the Joint Commenters, that the rapid expansion of the grid has been accompanied by an alarming escalation in the costs of transmission service, and that the ready availability of rate incentives has contributed to that escalation.

The Commission, in reviewing applications for transmission rate incentives, should distinguish between those rate policies that reduce utility risk (full recovery of construction work in progress, increased abandoned plant cost protection, formula rates, and accelerated depreciation) and those that enhance utility/developer returns (rate of return adders and hypothetical capital structures). Return-enhancing incentives, except in extraordinary cases, should not be extended to those projects already receiving risk-reducing rate treatment; rather, the Commission should favor risk-reducing incentives over return-enhancing ones. The Commission should calibrate incentives to relative risk, rejecting incentive treatment for low risk projects (*i.e.*, projects that are routine or have alternative sources of funds available), entertaining requests for risk-reducing incentive treatment for projects of intermediate risk (*i.e.*, projects with significant and demonstrable risk elements), and reserving return enhancing incentives only for the highest risk projects.”

APPA believes that the Commission should develop a set of criteria to assess more objectively the relative risks and benefits of each proposed transmission project for which incentives are sought.

Conclusion

The electric transmission issues being addressed in this hearing are extremely complex from a policy standpoint. However, the Subcommittee's interest in these issues is helpful from an oversight perspective as well as an educational one, and we appreciate the initiative taken by the Chairman to delve into these topics. APPA also believes that additional legislation may be warranted to clarify and improve the ability of DOE and FERC to use back-stop siting authority under FPA Section 216.

Mr. BARTON. And I would yield to Mr. Shimkus for my final minute.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. And just to welcome the first panel and concur with Mr. Barton's analysis. I served on the conference committee also in 2005. I know what our intent was. I know what the courts have ruled, which is against the intent of Congress, for expedited siting. Even if you believe in the new green world, you need new transmission and we need to be able to get across State lines. So I think there will be a lot of folks in support of that.

Chairman Wellinghoff, good to see you again. I still have concerns with reliability if you want most of the coal plants in this country to be decommissioned. I also have concerns, as you know, on the projection on the gigawatts, yours versus the EPA, as we discussed last time, and the transmission is another big key to this. If we want reliability, we have to have transmission, so hopefully we will be allies on this, and I yield back my time.

Mr. WHITFIELD. The gentleman yields back his time.

I would also ask unanimous consent to enter into the record the statement of the National Rural Electric Cooperative Association. Without objection.

[The information follows:]

U.S. House of Representatives

Committee on Energy and Commerce
Subcommittee on Energy and Power

Hearing on Issues Impacting the Electricity Transmission Infrastructure
Associated with the Thirteenth Day of Hearings on "The American Energy Initiative"

October 13, 2011

Written Testimony Submitted by the Honorable Glenn English
Chief Executive Officer
National Rural Electric Cooperative Association



**National Rural Electric
Cooperative Association**

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Introduction

I appreciate the invitation to provide the views of electric cooperatives on transmission policy; however, I am required to attend the National Rural Electric Cooperative Association's (NRECA) regional meeting being held in Denver, Colorado. As a result, I am submitting this written testimony to be included in the hearing record.

NRECA is the not-for-profit national service organization representing over 900 not-for-profit, member-owned electric cooperatives. The great majority of these cooperatives are distribution cooperatives, which provide retail service to over 42 million consumers in 47 states. Kilowatt-hour sales by electric cooperatives account for approximately 12 percent of total electricity sales in the United States. NRECA's members also include approximately 65 generation and transmission (G&T) cooperatives, which supply wholesale power to their distribution cooperative owner-members. Both distribution and G&T cooperatives were formed to provide reliable electric service to their owner-members at the lowest reasonable cost.

Cooperatives still average fewer than seven customers per mile of electric distribution line, the lowest density in the industry. Low population densities, together with the issues of traversing vast expanses of remote and often rugged topography, present unique economic and engineering challenges for electric cooperatives. Cooperatives own only approximately six percent of the nation's interstate transmission lines, making them by and large transmission-dependent.

NRECA believes that the Order No. 1000 Final Rule should result in increased transmission planning transparency and potentially more transmission supported by fair cost allocation. NRECA recognizes the tremendous amount of work done by the Federal

Energy Regulatory Commission (“the Commission”) and stakeholders resulting in the Final Rule. Notwithstanding that effort, even more work will be required during the next year as compliance filings are prepared by public utilities with meaningful stakeholder input. Substantial Commission action will then occur as the Commission transitions from setting and monitoring the Final Rule’s processes to acting upon those compliance filings. Because much will depend on the Commission’s disposition of the compliance filings to be made by public utilities next year, NRECA raised only a limited number of issues on rehearing of the Final Rule at the Commission.

With this understanding I address only a single issue in my written testimony: The imposition of costs on entities that do not receive transmission service from a public utility.

There Is No Statutory Authority Allowing A Public Utility To Charge Persons Not Taking Service From That Utility

The Order 1000 Final Rule erroneously asserts that the Commission has the authority to impose costs—akin to a tax—on entities that do not receive transmission service from a public utility. The Final Rule’s determination that the Commission has this authority is inconsistent with the history and scope of the Commission’s statutory authority under the Federal Power Act.

By permitting “flows of funds to public utility transmission providers through mechanisms other than agreements between the service provider and the beneficiaries of those transmission facilities”, the Commission would divorce the charge for transmission facilities from the provision of jurisdictional transmission service. The result would look much more like a public tax than a charge for jurisdictional transmission service – a step

plainly inconsistent with the Commission's authority under the Federal Power Act, as well as the rights of public utilities in general.

Acceptance of an allocation of costs to be collected by a public utility from an entity that takes no jurisdictional transmission service from that public utility in consideration of unsought regional transmission "benefits" represents a significant departure from the Commission's own prior articulation of its authority under the Federal Power Act.

As a practical matter, it is unclear from the Final Rule how public utilities would calculate and collect charges under the Final Rule in the absence of a contractual arrangement between the parties. For example, it would appear that under the Final Rule, "Public Utility A" could send a bill to "Non-Customer B" (presumably following some showing that Non-Customer B had benefitted from transmission facilities constructed by Public Utility A) for its share of new regional transmission facilities.

The general reach of the Commission's jurisdiction simply does not provide a basis for inferring a power to invest public utilities with the power to collect fees from non-customers. The scope of permissible Commission action is cabined by the limits of the authority Congress gave it. Congress gave the Commission no authority to approve the generalized assessment of charges for regional transmission benefits – *i.e.*, to levy a tax – upon entities that have not purchased or received jurisdictional service. The Final Rule therefore exceeds the Commission's authority under the Federal Power Act. The expansive reading of the Federal Power Act in the Final Rule is contrary to the Commission's prior articulation of its authority.

The Final Rule asserts that cost causation principles compel the Commission to declare that costs may be allocated in the absence of contractual privity because, according to the Final Rule, if the application of the Final Rule was limited to voluntary arrangements, “the Commission could not address free rider problems associated with new transmission investment, and it could not ensure that rates, terms and conditions of jurisdictional service are just and reasonable and not unduly discriminatory.” Even if the Commission could demonstrate that the only way to avoid free rider problems was to assign costs in the absence of a contract for jurisdictional service, the Commission cannot take such action if it is not authorized to do so under the Federal Power Act.

The Commission never has, and lacks the authority, to impose charges directly on the steel producers, crane operators, and wind turbine manufacturers who may find more customers for their products and services as a result of increased transmission capacity; the restaurants, hotels, and other businesses that may indirectly benefit from the increased economic activity in regions with a stronger transmission grid; or the individuals who may find new or better jobs as a result of that economic activity. The fact that utilities may look more like the transmission customers who are the proper object of the statutory just and reasonableness analysis does not mean that they are any closer legally or contractually to the arrangement than these other third-party beneficiaries. If the Commission arrogates to itself the authority to tax entities not taking jurisdictional service for the benefits that they may receive from that service, there is no logical end to that authority.

Conclusion

Chairman Whitfield and Ranking Member Rush, I appreciate the opportunity to submit NRECA's views on transmission policy. NRECA looks forward to working with Members of the Subcommittee and the full Committee on transmission policy and other issues critical to maintaining the nation's supply of affordable, reliable electricity.

Mr. WHITFIELD. At this time I would like to recognize the ranking member of the full Energy and Commerce Committee, Mr. Waxman of California.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman, not only for recognizing me but for working with us on today's hearing on electric transmission.

This is a vital issue. One reason it is so important is the relationship between transmission and renewable energy. Renewable energy is one of the cornerstones of a clean energy economy. Over the next decade, the global clean energy market is going to be worth \$2.3 trillion and we cannot afford to surrender this market to China or other countries with aggressive clean energy policies.

But to compete effectively, we will need to increase dramatically the amount of energy generated from renewable sources. The good news is that our Nation has tremendous renewable resources. There are excellent wind resources in the middle of the country and substantial solar resources, particularly in the southwest. In fact, every region of the country has renewable resources that can be tapped to expand renewable energy generation and reduce carbon pollution.

The challenge is that some of the best renewable resources are often located in remote areas, far from the cities and population centers that need clean electricity. And that brings us to the issue of transmission. We are not going to achieve our job creation and pollution reduction goals without new transmission to connect our renewable resources to the electric grid. There is no question that transmission is not the only solution. Energy efficiency and other methods of reducing electricity demand will play a crucial role.

Distributed clean energy generation is important, but I don't think anyone seriously questions the need for some new transmission lines if we are going to dramatically expand our use of renewable energy.

In approaching this issue, we need to preserve a strong role for local and State interests and expertise but we also need to ensure that important interstate transmission lines aren't blocked for purely parochial reasons.

This is a tough issue. It is an issue that has been the subject of spirited debate during the past several years. The Federal Energy Regulatory Commission recently tackled two key aspects of this issue in its Order 1000. FERC staff submitted a separate proposal to the Department of Energy related to FERC's authority to site certain transmission lines when States fail to do so. This is commonly referred to as Federal backstop siting authority. Right now, the Department of Energy conducts studies of transmission congestion and then designates National Interest Electric Transmission Corridors. Within those corridors, FERC has authority to site lines if the State permitting agency fails to act on a permitting application for one year.

I opposed this provision in 2005 and I think the last 6 years have demonstrated that it was the wrong approach. It focused exclu-

sively on congestion rather than on other important factors like reliability and expanding renewable generation. It was structured in a way that interfered with the traditional authorities of State permitting agencies. There was no link to regional planning, and the Federal backstop siting authority even applied to transmission that didn't cross state lines. Under the prior Administration, DOE also abused the process by designating massive corridors that included whole States.

FERC staff proposed that Secretary Chu delegate DOE's authorities to FERC so that FERC could breathe new life into this flawed provision. Yesterday, Secretary Chu decided not to delegate DOE's authority as FERC proposed. I think that was the right decision. However, Secretary Chu and Chairman Wellinghoff also announced that they will work together to improve implementation of this provision. Today's hearing is a good opportunity for the committee to better understand the details of how this new approach would work.

A broad range of views is represented on both of today's panels and I look forward to the perspectives of our witnesses on FERC's efforts to improve transmission planning and lower cost allocation barriers to building new transmission.

Thank you, Mr. Chairman, and yield back the balance of my time.

Mr. WHITFIELD. Thank you, Mr. Waxman.

We have with us today the Honorable Jon Wellinghoff, who is Chairman of the Federal Energy Regulatory Commission, and as I also stated, Ms. Lauren Azar, who is the Senior Advisor, Office of the Secretary at the Department of Energy. Welcome to both of you. We look forward to your expert testimony, and Mr. Wellinghoff, I will recognize you for your 5-minute opening statement.

STATEMENTS OF JON WELLINGHOFF, CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION; AND LAUREN AZAR, SENIOR ADVISOR, OFFICE OF THE SECRETARY, DEPARTMENT OF ENERGY

STATEMENT OF JON WELLINGHOFF

Mr. WELLINGHOFF. Thank you, Mr. Chairman and Ranking Member Rush and members of the committee. Thank you for having me here today. My name is Jon Wellinghoff and I am the Chairman of the Federal Energy Regulatory Commission.

The development of an efficient electric transmission system benefits consumers by reducing barriers to trade with and among regions, thereby enhancing competition in wholesale electric markets. With this goal in mind and recognizing that significant transmission investment is likely to be made in the foreseeable future, the commission recently issued Order 1000. Order 1000 revisits the commission's transmission planning and cost allocation requirements to ensure that they are adequate to support more efficient and cost-effective transmission investment decisions moving forward. Through these changes, Order 1000 will foster competitive markets to benefit consumers, strengthen our national security and help revitalize our economy.

I would like to highlight three major points about Order No. 1000. First, Order No. 1000 emphasizes regional flexibility and regional action. Within a general framework, each transmission planning region determines its own transmission needs by building upon an open and transparent process that is already in place and each region will propose cost allocation methods. Order No. 1000 does not establish preset regional boundaries nor does it prescribe how those regions plan their systems. Nothing in Order 1000 requires either interconnect-wide plan or interconnect-wide cost allocation. Second, Order 1000 states that those who do not benefit from new transmission facilities should not pay. Third, Order 1000 is about establishing effective processes for transmission planning and cost allocation, not about requiring specific outcomes of those processes. Order 1000 does not favor renewable energy resources nor would such a preference be consistent with the Federal Power Act or the commission's open access transmission policy. Order 1000 does not require or subsidize the use of green energy.

Order 1000 also recognizes the States' vital role in protecting consumers. Order 1000 recognizes the unique perspective that States can provide in regional transmission planning processes. Nothing in Order 1000 is intended to preempt or otherwise affect State laws or regulations with respect to construction of transmission facilities.

Through the reforms adopted in Order 1000, the commission seeks to ensure that the Nation's electric grid is prepared to meet the challenges and realize the opportunities of the 21st century. Order 1000 will reduce the inefficiencies that exist today in today's transmission planning processes and the uncertainty created by the lack of clear cost allocation methods for regional and interregional transmission facilities. Effective regional transmission planning and interregional transmission coordination along with cost allocation reforms as required by Order 1000 will help improve reliability, reduce congestion, increase the deliverability of existing power supplies, allow new domestic power supplies to be developed, and help ensure that consumers have greater access to efficient lower-cost electricity at just and reasonable rates.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Wellinghoff follows:]

**Summary of Testimony of Chairman Jon Wellinghoff
Federal Energy Regulatory Commission
Before the House Energy and Commerce Committee
Subcommittee on Energy and Power
October 13, 2011**

The development of an efficient electric transmission system benefits consumers by reducing barriers to trade within and among regions, thereby enhancing competition in wholesale electric markets. With this goal in mind, and recognizing that significant transmission investment is likely to be made in the foreseeable future, the Commission recently issued Order No. 1000. Order No. 1000 revisits the Commission's transmission planning and cost allocation requirements to ensure that they are adequate to support more efficient and cost-effective transmission investment decisions moving forward. Through these changes, Order No. 1000 will foster competitive markets to benefit consumers, strengthen our national security and help revitalize our economy.

I would like to highlight three major points about Order No. 1000. First, Order No. 1000 emphasizes regional flexibility and regional action. Within a general framework, each transmission planning region determines its own transmission needs by building on open and transparent processes that are already in place, and each region will propose cost allocation methods. Order No. 1000 does not establish pre-set regional boundaries, nor does it prescribe how regions plan their systems. Nothing in Order No. 1000 requires either interconnectionwide planning or interconnectionwide cost allocation. Second, Order No. 1000 states that those who do not benefit from new transmission facilities should not pay. Third, Order No. 1000 is about establishing effective processes for transmission planning and cost allocation, not about requiring specific outcomes from those processes. The reforms adopted in Order No. 1000 are technology-neutral.

Order No. 1000 recognizes states' vital role in protecting consumers. Order No. 1000 recognizes the unique perspective that states can provide in regional transmission planning processes. Nothing in Order No. 1000 is intended to preempt or otherwise affect state laws or regulations with respect to construction of transmission facilities.

Through the reforms adopted in Order No. 1000, the Commission seeks to ensure that the Nation's electricity grid is prepared to meet the challenges and realize the opportunities of the 21st century. Order No. 1000 will reduce the inefficiencies that exist in today's transmission planning processes and the uncertainty created by the lack of clear cost allocation methods for regional and interregional transmission facilities. Effective regional transmission planning and interregional transmission coordination, along with cost allocation reforms, as required by Order No. 1000, will help improve reliability, reduce congestion, increase the deliverability of existing power supplies, allow new domestic power supplies to be developed, and help ensure that consumers have greater access to efficient, lower cost electricity at just and reasonable rates.

**Testimony of Chairman Jon Wellinghoff
Federal Energy Regulatory Commission
Before the House Energy and Commerce Committee
Subcommittee on Energy and Power
United States House of Representatives
Hearing on The American Energy Initiative
October 13, 2011**

Mr. Chairman, Ranking Member Rush, and members of the Committee:

Thank you for the opportunity to appear before you today to discuss the critical topic of the development of our Nation's electric transmission grid.

The development of an efficient transmission system benefits consumers by reducing barriers to trade within and among regions and thereby enhancing competition in wholesale electric markets. With this goal in mind, and recognizing that significant transmission investment is likely to be made in the foreseeable future, the Commission recently issued Order No. 1000. This final rule revisits our transmission planning and cost allocation requirements to ensure that they are adequate to support more efficient and cost-effective transmission investment decisions moving forward. By improving the transmission of electricity in interstate commerce, Order No. 1000 will not only foster competitive markets and facilitate enhanced competition to benefit consumers, but also strengthen our national security and help revitalize our economy.

I would like to highlight three major points about Order No. 1000.

First, Order No. 1000 emphasizes regional flexibility and regional action. Order No. 1000 aligns transmission planning and cost allocation to ensure that, when a region identifies transmission projects as needed and desired by that region, the region will have a method in place for allocating the costs of those projects. To perform planning on a

regional basis in isolation of an understanding of who benefits from, and thus should pay for, that transmission is an inefficient use of time and resources – at a time when everyone is being asked to do more with less.

Second, Order No. 1000 states that those who do not benefit from new transmission facilities should not pay. Order No. 1000 made this point clearly in establishing a series of principles that each region must satisfy when it proposes to the Commission a method for assigning costs to those determined by the region to benefit.

Third, Order No. 1000 is about establishing effective processes for transmission planning and cost allocation, not about requiring specific outcomes from those processes. The reforms that the Commission adopted in Order No. 1000 are technology-neutral.

More generally, it is important to note that Order No. 1000 does not establish pre-set regional boundaries, nor does it prescribe how regions plan their systems. Under the rule, each region defines itself. Within a general framework that the Commission has established, each region determines its own transmission needs by building on open and transparent processes that are already in place. I believe there is great value in allowing the various regions to make such determinations at the local and regional level. Nothing in Order No. 1000 requires either interconnectionwide planning or interconnectionwide cost allocation. Similarly, Order No. 1000 recognizes states' vital role in protecting consumers. Order No. 1000 strongly encourages states to participate actively in regional transmission planning processes and recognizes the unique and important perspective that states can provide. Nothing in Order No. 1000 is intended to preempt or otherwise affect state laws or regulations with respect to construction of transmission facilities.

Through the reforms adopted in Order No. 1000, the Commission seeks to ensure that the Nation's electricity grid is prepared to meet the challenges and realize the opportunities of the 21st century. Order No. 1000 will reduce the inefficiencies that exist in today's transmission planning processes and the uncertainty created by the lack of clear cost allocation methods for regional and interregional transmission facilities. Effective regional transmission planning and interregional transmission coordination, along with regional and interregional cost allocation, as required by Order No. 1000, will help improve reliability, reduce congestion, increase the deliverability of existing power supplies, allow new domestic power supplies to be developed, and help ensure that consumers have greater access to efficient, lower cost electricity at just and reasonable rates.

❖ **Introduction**

Traditionally, electric transmission has been planned in many regions by individual transmission owners to meet their own needs. However, transmission planning needs have changed because of the expansion of interstate commerce in electricity, driven in part by passage of the Energy Policy Acts of 1992 and 2005. Today, transmission planning requires a regional approach, together with the traditional local planning.

The electric utility industry must make substantial investment in transmission facilities to meet the challenge of maintaining reliable transmission service at just and reasonable rates. Though there has been expansion of regional and interregional transmission facilities over the last 15 years, that expansion is not sufficient in light of

changing conditions in the industry. The reforms of Order No. 1000 will: (1) ensure that all regions in the Nation produce a regional transmission plan; (2) encourage broad and open consideration by public utilities and their stakeholders of numerous potential solutions to identified needs so that transmission facilities selected in the regional transmission plan for purposes of cost allocation are appropriate solutions for that region; and (3) increase the number of transmission facilities that move from the proposal stage to operation by specifying in advance who would pay for such regionally selected facilities. The Commission also believes that these reforms will reduce opportunities for undue discrimination.

Order No. 1000 corrects several existing deficiencies. First, it aims to ensure that transmission planning processes at the regional level consider possible solutions to identified needs on a nondiscriminatory basis and produce a transmission plan. Second, it ensures that cost allocation methods will be known in advance and that the costs of transmission solutions chosen to meet regional transmission needs are allocated fairly to beneficiaries. Third, it facilitates identification in those processes of transmission needs driven by state or federal laws or regulations and consideration of possible solutions to meet those needs. Fourth, it enhances coordination between pairs of transmission planning regions. Fifth, it requires elimination of federal rights of first refusal in tariffs and agreements subject to the Commission's jurisdiction, with certain exceptions, so that the Commission itself creates no barrier to allowing all qualified transmission developers seeking to invest in transmission to propose more efficient or cost-effective solutions. The rule is forward-looking and applies to new transmission facilities.

❖ Order No. 1000 – Background and Public Comment

To place Order No. 1000 in context, the Commission issued Order No. 888 in 1996 and required open access to transmission facilities to address undue discrimination and to bring more efficient, lower cost power to the Nation's electricity consumers. Order No. 890, issued in 2007, revised the Commission's open access policies to further improve competition by promoting efficient utilization of transmission and requiring open, transparent and coordinated transmission planning processes. As the Commission monitored the implementation of Order No. 890, many electric industry participants told us that changes in the industry over the ensuing four years necessitated additional reform to transmission planning and cost allocation to reflect the new demands placed on the Nation's transmission system. Specifically, their formal comments and our own review indicated the need for improvements if the transmission system is going to efficiently and cost-effectively address the trends and challenges that were just appearing on the horizon when Order No. 890 was issued.

The planning, cost allocation and nonincumbent developer requirements of Order No. 1000 are intended to work as a package to ensure an opportunity for more transmission projects to be considered in the planning process on a nondiscriminatory basis and to increase the likelihood that those facilities selected in a regional transmission plan for purposes of cost allocation will be the more efficient or cost-effective solutions available. These requirements, in turn, help ensure that consumers have greater access to efficient, lower cost electricity at just and reasonable rates.

❖ **Planning Requirements**

• **Regional Planning**

The Commission does not itself conduct transmission planning. The Commission recognizes and has developed its rules to draw on the expertise of the electric industry and existing transmission planning authorities. Public utilities across the country formed transmission planning regions pursuant to the requirements of Order No. 890. Order No. 1000 does not change the requirements regarding the geographic scope of a transmission planning region, allowing the industry flexibility in forming regions. Order No. 1000 requires each public utility to participate in a regional transmission planning process that satisfies the openness, transparency and coordination principles of Order No. 890 and produces a regional transmission plan.

Order No. 1000 does not require non-public utility transmission providers to participate in a regional transmission planning process, but rather encourages them to do so voluntarily. Such voluntary participation may involve a non-public utility transmission provider accepting responsibility for transmission costs when the region determines that it would benefit from new transmission facilities.

• **Planning for Public Policy Requirements**

Order No. 1000 also requires that there be a place in local and regional transmission planning processes for consideration of transmission needs driven by public policy requirements established by state or federal laws or regulations. Order No. 1000 defines “public policy requirements” as statutes and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level. Some existing

transmission planning processes were not designed to account for, and do not explicitly consider, transmission needs driven by public policy requirements. Therefore, some regions are struggling with how to adequately address transmission expansion necessary to comply with such requirements.

Order No. 1000 addresses these deficiencies by requiring each public utility to establish procedures to identify transmission needs driven by public policy requirements and evaluate potential solutions to those needs. Stakeholders must have the opportunity to provide input regarding transmission needs that they believe should be identified in the planning process. As I noted above, Order No. 1000 also emphasizes the vital role of states in transmission planning and strongly encourages states to participate actively in such identification.

Under Order No. 1000's policy of regional flexibility, the procedures to identify such transmission needs may vary by region. There is no mandate to consider any specific public policy requirement. As I stated above, Order No. 1000 is technology neutral. Similarly, Order No. 1000 does not mandate how a public utility must satisfy any specific public policy requirement. The Commission is not creating or choosing the public policy requirements to be considered, but merely acknowledges that public policy requirements may affect the need for new transmission facilities and requires that such needs be considered in transmission planning processes. Because public policy requirements may modify the need for and configuration of prospective transmission facilities, the planning process and resulting transmission plans would be deficient if they

do not provide an opportunity to consider transmission needs driven by public policy requirements.

- **Interregional Coordination**

At present, there is little coordination between neighboring transmission planning regions with regard to prospective transmission facilities that begin in one region and end in the other region. To address this shortcoming, Order No. 1000 requires public utilities in each pair of neighboring transmission planning regions to: (1) share information regarding the respective needs of each region and potential solutions to those needs; and (2) identify and jointly evaluate interregional transmission facilities that may be more efficient or cost-effective solutions to those regional needs. If the neighboring regions identify interregional transmission facilities that they determine are more efficient or cost-effective solutions, and the relevant portions of those facilities are then approved in each individual region's transmission planning process, the facilities would be eligible for cost allocation under an interregional cost allocation method.

Again, I would emphasize that Order No. 1000 does not mandate interconnectionwide planning or interconnectionwide cost allocation.

- ❖ **Cost Allocation Requirements**

Allocating the cost of transmission has become more contentious as the need has grown for transmission infrastructure that meets regional needs or that spans more than one utility system. The development of new regional transmission facilities to support the transmission of electricity in interstate commerce can suffer when prospective cost allocation methods are unclear. This lack can impair the evaluation of proposed

transmission projects, potentially foreclosing implementation of beneficial transmission solutions.

To address this issue, Order No. 1000 requires that transmission planning regions have a cost allocation method for a new transmission facility that the regional participants select in the regional transmission plan for use of a regional cost allocation method. This cost allocation method must satisfy six regional cost allocation principles, as discussed below. Each pair of neighboring transmission planning regions also must have a common interregional cost allocation method for a new interregional transmission facility that the regions select in their respective transmission plans.

- **Cost Allocation Principles**

The central theme of Order No. 1000's cost allocation principles is that those who benefit should pay and those who do not benefit should not pay. Order No. 1000 limits a region's identification of beneficiaries to the region in which the proposed transmission facility would be located. Order No. 1000 establishes six regional cost allocation principles: (1) costs must be allocated in a manner that is at least "roughly commensurate" with estimated benefits; (2) those that receive no benefit from transmission facilities must not be involuntarily allocated the costs of those facilities; (3) benefit-to-cost thresholds must not be excessive such that they exclude projects with significant net benefits; (4) costs cannot be allocated outside a region unless the other region agrees; (5) cost allocation methods and identification of beneficiaries must be transparent; and (6) different allocation methods can apply to different types of transmission facilities.

Thus, under these principles, costs must be allocated in a manner that is at least roughly commensurate with estimated benefits. The Commission did not create the “roughly commensurate” test for determining whether a cost allocation method is just and reasonable – rather, Order No. 1000 adheres to long-standing court precedent as reflected in the language used by the U.S. Court of Appeals for the Seventh Circuit in *Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009). Under Order No. 1000, the public utilities in the various regions must make an appropriate demonstration to the Commission that their proposed cost allocation method(s) satisfy the “roughly commensurate” principle. In reviewing the proposed cost allocation methods, the Commission will determine whether the public utilities in a region provided adequate support to fulfill the “roughly commensurate” principle as well as the other cost allocation principles. Order No. 1000 allows each transmission planning region to propose to the Commission how it will determine the benefits of new transmission facilities. The Commission recognizes that regions may define benefits differently, and that benefits may depend on the type of project at issue. Many comments filed with the Commission during the rulemaking process strongly supported this type of regional flexibility. We listened. As I stated earlier, I believe that such regional flexibility is more appropriate in this context than a one-size-fits-all federal requirement.

The fact that an individual entity or group of entities volunteers to pay for some or all of the costs of transmission facilities is one indicator that the entity will benefit from those facilities. For this reason, participant funding for new transmission facilities is permitted under Order No. 1000. However, the region cannot decide that participant

funding will be the regional cost allocation method. In other words, a transmission developer may choose to use participant funding, but also must have an option to instead pursue a regional cost allocation method that allocates costs to beneficiaries in the region. Order No. 1000 explains that reliance on participant funding as the regional cost allocation method increases the incentive of any individual beneficiary to defer investment in a project in the hope that others will step forward. Because of this, it is likely that some transmission facilities identified as beneficial and needed in the regional transmission planning process would not be constructed, adversely affecting consumers. Permitting participant funding, but not as a regional or interregional cost allocation method, will help to alleviate such concerns.

Order No. 1000 also finds that entities may benefit from transmission facilities in the absence of a voluntary contractual arrangement. Electricity flows over the transmission grid according to the laws of physics, not the wishes or voluntary agreements of those who provide and receive transmission service. A stronger grid with more capacity and alternative pathways for power flows helps protect the grid from outages and relieves congestion in a way that may lower costs for consumers. Therefore, reliability benefits, for example, may accrue in the absence of voluntary arrangements. Also, transmission facilities can be used by free riders – entities that shoulder less than their fair share of the cost and thus cause others to pay more than they should for the facilities. The cost allocation requirements of Order No. 1000 will help to address these issues.

Within the framework of the six cost allocation principles that I described above, each region has the flexibility to develop its own proposed cost allocation method(s). It is important to highlight that, under Order No. 1000, there is no one-size-fits-all method for allocating costs of transmission facilities. The Commission has expressed its strong preference for the regions to reach consensus during the implementation period. If a region cannot decide on a cost allocation method, then the Commission will decide based on the record developed by the region and its stakeholders.

❖ **Nonincumbent Developers**

Some Commission-jurisdictional tariffs and agreements have provisions that grant incumbent transmission providers preferential rights to develop transmission facilities, known as a right of first refusal. Such practices have the potential to prevent the identification and evaluation of more efficient and cost-effective solutions to regional transmission needs because nonincumbent transmission developers have little incentive to propose and develop projects that can be taken away from them by an incumbent transmission provider. To address this problem and to promote competition, Order No. 1000 requires regional transmission planning processes to develop nondiscriminatory procedures for the submission, evaluation and selection of transmission projects, including qualification criteria for entities seeking to propose a transmission project and information requirements to support project proposals. Through this requirement, Order No. 1000 provides opportunities for entrepreneurial transmission developers to propose efficient and cost-effective transmission facilities.

Order No. 1000 also provides that a nonincumbent transmission developer must have the same opportunity as an incumbent transmission developer to use a regional cost allocation method for any sponsored transmission facility.

As part of these requirements, Order No. 1000 requires removal from Commission-jurisdictional tariffs and agreements of a federal right of first refusal, subject to four limitations: (1) this requirement does not apply to local transmission facilities, which Order No. 1000 defines as transmission facilities that are located solely within a public utility's retail distribution service territory and are not selected in a regional transmission plan for purposes of cost allocation; (2) this requirement does not apply to upgrades to transmission facilities, such as tower change outs or reconductoring; (3) nothing in this requirement affects state or local laws or regulations regarding the construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities; and (4) this requirement allows, but does not require, the use of competitive bidding to solicit transmission projects or project developers. In addition, this requirement is not intended to alter the ability of an incumbent to use or control an existing transmission right-of-way.

❖ **Backstop Transmission Siting**

I have also been asked to address the backstop electric transmission siting authority established in section 216 of the Federal Power Act, which Congress enacted as part of the Energy Policy Act of 2005.

In that legislation, Congress recognized that the strong national interest in electric transmission supported establishing a backstop to state siting activity. Accordingly,

Congress established a process in which the Department of Energy (DOE) would conduct studies of electric transmission congestion, and then, in subsequent reports, designate as national interest electric transmission corridors (NIETCs) areas experiencing electric energy transmission constraints or congestion that adversely affected consumers. The Commission was given authority to issue permits within NIETCs for the construction of electric transmission facilities where, e.g., a state lacked the authority to approve the facilities or consider their interstate benefits, or where a state had withheld approval of the facilities for more than one year. The Commission was also required to make certain findings, including that a proposed project was consistent with the public interest, would significantly alleviate transmission congestion and protect or benefit consumers, and would be consistent with sound national energy policy and enhance energy independence.

After a meeting this year that included Secretary of Energy Chu, Secretary of the Interior Salazar, Secretary of Agriculture Vilsack, and me, the agencies agreed to explore ways to implement existing statutory authority on transmission facilities more efficiently and effectively. One such idea was for DOE to delegate its authority to the Commission, in conjunction with the Commission's existing permitting authority, to conduct the required congestion studies and to designate NIETCs, and that the Commission then consider issuing narrower, project-specific NIETC designations where appropriate.

This week, Secretary Chu announced his decision that DOE will work more closely with the Commission in reviewing proposed electric transmission projects under section 216 of the Federal Power Act, as an alternative to delegating additional authority

to the Commission. I look forward to working with Secretary Chu and DOE as we take steps to ease congestion and increase reliability while modernizing the grid.

❖ **Conclusion**

Better planning of improvements to our Nation's aging transmission system is crucial for maintaining adequate and reliable transmission of electricity in interstate commerce at a reasonable cost. A reliable and robust transmission grid is essential to allow regions, states and public utilities to access lower cost resource options to meet state and national security and economic goals. The reforms of Order No. 1000 allow public utilities to address existing transmission planning challenges more efficiently and cost-effectively. Through the reforms that I have discussed, Order No. 1000 will foster competitive markets and facilitate enhanced competition to benefit consumers, strengthen our national security and help revitalize our economy.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions you may have.

Mr. WHITFIELD. Thank you, Chairman Wellinghoff.
Ms. Azar, you are recognized for 5 minutes.

STATEMENT OF LAUREN AZAR

Ms. AZAR. Thank you, Mr. Chairman and Ranking Member Rush. It is a pleasure to testify before you on an issue of utmost importance: upgrading our electric infrastructure.

Today, I start my fifth month as Senior Advisor to Secretary Chu. The Secretary hired me primarily to accomplish one task: build new electric infrastructure. Transmission and storage are my focus. As an attorney involved with permitting of new transmission lines and a former commissioner at the Wisconsin Public Service Commission, I come from the trenches.

Transmission is akin to mortar in a foundation. This Nation requires a robust and resilient grid to connect its building blocks. You need look no further than your own briefcases to understand that our Nation's demand for electricity is changing and doing so dramatically. How many gadgets do you carry that require charging on a frequent basis, and when did you start carrying them?

To propel this Nation forward in the global economy, we must build a grid for the 21st century and we must build it fast. Everyone knows the adage that Thomas Edison could understand the mechanics of our current grid but what most don't realize is that our grid can be visualized as a plate balancing on top of a stick. When something is placed on one side of the plate, a weight of an equal amount must be placed on the other side to ensure stability. If too much counterweight is placed, then the plate topples. The plate is the grid; the weights and counterweights are generation and the demand for electricity. The placement of those weights and counterweights happens second by second. For about the last 130 years, we built the infrastructure necessary to ensure the plate doesn't topple. While I will talk about the need for more transmission generally, and it sounds like this committee agrees with that, this Nation also needs to develop a new type of grid, one that can't be described by plates, sticks and weights.

While my written testimony discusses some of the barriers to building more transmission, I would like to focus my comments on three things the DOE is currently doing to remove those barriers.

First, the power marketing administrations. The department's PMAs are at the forefront of our transmission authorities. Bonneville Power, or BPA, owns more than 15,000 miles of transmission, and the Western Area Power Marketing Administration, or WAPMA, owns 17,000. The Recovery Act provided both PMAs with resources to, among other things, build new transmission. Both are moving forward expeditiously yet with due diligence to do just that. Section 1222 of EPAct 2005 granted authority to Western and Southwestern to partner with the private sector to construct and upgrade transmission facilities in their service territories. Both the borrowing authority and Section 1222 allow the Secretary through the PMAs to help build transmission.

Secondly, the backstop siting has already been discussed in the opening statements. Earlier this week, Secretary Chu and Chairman Wellinghoff have announced they have agreed to collaborate in their implementation of the Federal backstop siting law, which

was also created in EAct 2005. After vetting a proposal that he delegate his authorities to FERC, Secretary Chu declined to do so but is working with the chairman to develop processes to make the law more effectively. In addition to its collaboration with FERC, DOE recognizes that it can administer its 216(a) powers faster, better, with more transparency and more efficiently. Consequently, among other things, DOE will be doing the following: identify targeted areas of congestion based on the evaluation of existing information and on comments submitted by stakeholders; identify narrower congested areas than the broad areas that had been previously studied and solicit statements of interest from transmission developers while considering what national corridors to designate.

Number three, the rapid response team for transmission. Just last week, the Obama Administration announced it would accelerate the evaluation of seven proposed transmission applications. The RRTT leverages a nine-agency collaborative that was established through a 2009 MOU. As an aside, that MOU was yet another authority based on another authority granted in EAct 2005, Section 216(h). The nine agencies of the 2009 MOU have agreed to do the following and agree to the pilot projects: ID all Federal agencies with jurisdiction over transmission, coordinate the calendars of those agencies, establish milestones and target dates for permit evaluation, dedicate staff, and this may be one of the most important aspects of it, dedicate staff that is going to evaluate the transmission permit applications, and that staff is going to be trained in transmission issues such as transmission technologies, transmission economics and how transmission is developed and to create an online dashboard that will document the status. These seven projects will serve as demonstrations of the streamlined Federal permitting and increase cooperation.

In closing, as someone who is passionate about the need to modernize our grid, I look forward to answering your questions.

[The prepared statement of Ms. Azar follows:]

Statement of Lauren Azar, Senior Advisor to the Secretary

Subcommittee on Energy and Power

Committee on Energy and Commerce

U.S. House of Representatives

October 13, 2011

Chairman Whitfield, Ranking Member Rush, it is a pleasure to testify before you today on an issue of the utmost importance— upgrading our electric infrastructure. Today, I start my fifth month as a Senior Advisor to Secretary Chu. The Secretary hired me primarily to accomplish one task: build new electric infrastructure. Transmission and storage are my focus. As an attorney and former Commissioner on the Public Service Commission of Wisconsin involved with permitting new extra-high voltage transmission lines, I come from the trenches.

I am passionate about transmission. It is akin to mortar in a foundation. This nation requires a robust and resilient transmission grid to connect its building blocks. You need look no further than your own briefcases to understand that our nation's need for electricity is changing and doing so dramatically. How many gadgets do you carry today that require charging on a frequent basis and when did you start carrying them?

To propel this nation forward in the global economy, we must build a grid for the 21st century and we must build it fast. While in some corners of this nation we have the grid of the late 20th century, in others it is only the early 20th century.

Everyone knows the adage that Thomas Edison could understand the mechanics of our current grid. What most do not realize is that our grid can be visualized as a plate balancing on top of a stick. When something is placed on one side of the plate, a weight of an equal amount must be placed on the opposite side of the plate to ensure stability. If too much counterweight is placed, then the plate tilts in the opposite direction. If the plate is the grid, the weights and counterweights are the demand for electricity and the generation. The placement of those weights and counterweights happens second-by-second.

For about the last 130 years, we have built the infrastructure necessary to ensure that the plate does not topple. While I will talk today about the need for more transmission generally, this nation also needs to develop a new type of transmission grid – one that cannot be described by a plate, a stick and weights.

If the need for a modern grid is so obvious, are we set to build this critical asset?

A. BARRIERS TO TRANSMISSION DEVELOPMENT

The barriers to developing transmission are regionally-specific and complex. While I continue to discover more and more barriers, the following describes some of them:

1. Uncertain Public Policy Goals

As a state utility commissioner, I was frequently faced with the question of whether to spend billions of dollars either on new electric infrastructure or on upgrading existing plants. The biggest obstacle to making a sound decision was predicting what the future would hold: not the future of how much electricity we would need to generate; but what the public policies would be in the future. For example, what fuels could be used to produce that electricity and what environmental impacts would be acceptable. The possibility of changes in public policy increases the fear that money spent today will be spent on the wrong technology, and, for that reason, the formulation and adherence to a policy that provides guidance to participants in the electric utility industry is in many ways more important than the contents of those policy.

Thankfully, 30 states provided guidance through enacting laws or goals on fuel types, and the Environmental Protection Agency (EPA) is now providing additional guidance on emissions limits. Regardless of this welcome guidance, too much uncertainty remains.

2. Market Power

It is simple supply and demand economics: if demand increases and supply stays the same, then prices rise. If the existing suppliers are able to block competition, those suppliers have the ability to make profits even if their products would be uneconomic in a competitive marketplace.

To ensure they can continue to sell their commodity, some generators would prefer not to have competition, e.g. they would prefer not to have transmission built that could bring cheaper electrons to their customers. Not surprisingly, this is especially true for inefficient generators, because they lose in a competitive market. Hence, the companies with the most inefficient generation resources will likely be the biggest opponents to new transmission.

When a parent company or its generation subsidiaries have the power to block new transmission, it will likely manifest through repeated high prices in that specific location. So, you only need to look at the areas of our nation where we repeatedly have

significant energy price differentials over a long period of time to know that someone or something is blocking the emergence of a competitive marketplace.

3. Out-of-phase Timelines for Building Transmission and Generation

Long transmission lines may take 10 or more years between the point of conception to the start of construction. The length of this process is due, among other things, to the following: local opposition, purchasing easements from hundreds or thousands of individual property owners, obtaining state permits sometimes over multiple states, and obtaining federal permits. In contrast to this protracted time for development, many of the new generators only take approximately 3 years to develop and build new generating facilities. Generators require certainty as defined by long-term power purchasing agreements, stable markets and certainty with respect to environmental regulations.

A dependency exists between transmission developers and generators. Transmission developers are looking for generators who are willing to purchase capacity on future lines and generators would like certainty the line will be built. Unfortunately, the load serving entities often require that the new generator provide energy sooner than the transmission line can be built.

Hence, differing development periods between transmission and generation development can make building a business case for either difficult.

4. Parochialism

Thirty of the 50 states have developed renewable portfolio standards (RPS). A few states have sufficient renewable resources to meet those standards internally on a cost-effective basis. Most do not. Regardless of the cost, a number of states have taken steps to comply with their RPSs in part through native resources, because they are convinced it will improve the economic development of their respective states. It is important to consider the economies of scale that could be captured through working together and tapping the most cost-effective renewable resources.

B. DOE's STRATEGY FOR ELIMINATING THE BARRIERS

Congress has recognized these challenges and the need to upgrade our energy infrastructure by providing numerous authorities to the Department.¹

1. Power Marketing Administrations

The Department's Power Marketing Administrations are at the forefront of our transmission authorities. Bonneville Power Administration (Bonneville) owns more than 15,000 miles of transmission lines in the Pacific Northwest, while Western Area Power Administration (Western) owns 17,000 miles of transmission lines in 15 states. The Recovery Act provided Western with \$3.25 billion in Treasury borrowing authority, which was intended for transmission investment. The Recovery Act also increased Bonneville's borrowing authority to \$7.7 billion, which can be used for all of Bonneville's capital needs, including transmission, hydro system modernization, fish and wildlife mitigation, and energy efficiency. BPA has worked with transmission customers to develop processes which allow transmission to be built when needed in the Pacific Northwest. Both PMAs are moving forward with due diligence, to address the immediate demand for transmission.

Congress also turned to the PMAs in Section 1222 of the Energy Policy Act of 2005, to promote additional transmission line development. Section 1222 grants both Western and the Southwestern Power Administration (Southwestern) the authority to participate with the private sector by using third-party funds to construct and upgrade transmission facilities in their service territories. Both the borrowing and the Section 1222 authorities allow the Secretary, through the PMAs, to help deliver power where it is needed most.

2. Backstop Siting of Transmission Lines

a. The Law

Congress provided another tool for accelerating development of transmission facilities by empowering DOE to designate national interest electric transmission corridors (National Corridors), which in turn triggers FERC siting authority. Specifically, EPA 2005 amended section 216 of the Federal Power Act (FPA) to

¹ This testimony does not provide a complete recitation of DOE's authority over the transmission grid but, instead, focuses on the topic of this hearing.

require DOE to conduct studies every three years of congestion in the nation's electric transmission network, and to authorize the Secretary of Energy to designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a National Corridor. FPA section 216 also granted FERC "backstop" siting authority to issue permits for the construction or modification of transmission facilities in the following limited circumstances:

- If a state in which the transmission facilities are to be constructed or modified does not have authority to approve the siting of the facilities, or to consider interstate benefits of the facilities;
- If the applicant for a permit does not qualify to apply for state approval because the applicant does not serve end-use customers in the state;
- If a state agency authorized to approve the siting of transmission facilities has withheld approval for more than one year after the filing of an application, or for one year after the designation of a relevant National Corridor, whichever is later; or
- If the state agency has conditioned its approval such that the proposed project will not reduce transmission congestion in interstate commerce or is not economically feasible.

b. Historical Summary of DOE and FERC's Application of the Law

Pursuant to the statute, DOE conducted and published a study of electric transmission congestion in 2006. Based on the study, in 2007 DOE designated two National Corridors – one in the Mid-Atlantic region and one in the Southwest. Several parties, including states and environmental groups, challenged both the congestion study and the designations of the National Corridors. The cases were consolidated in a proceeding before the U.S. Court of Appeals for the 9th Circuit, which by a two to one majority vacated the 2006 congestion study and the National Corridor designations. The court held that DOE had not complied adequately with the statute's consultation requirement, and that the corridor designation required the preparation of an analysis pursuant to the National Environmental Policy Act.

Also pursuant to the statute, FERC issued a rule establishing procedures for entities seeking permits to construct or modify electric transmission facilities in National Corridors. Among other things, FERC determined that its authority to permit facilities when a state has withheld approval for more than one year would apply to a timely decision by a state to deny a permit application. The rule was challenged by states and environmental groups in the U.S. Court of Appeals for the 4th Circuit. The

court rejected FERC's interpretation, holding that the statutory trigger for FERC's exercise of siting authority does not include timely denial by a state of an applicant's permit.

While the case before the 9th Circuit was being litigated, DOE completed its 2009 congestion study, and believes the 2009 study was conducted in a manner consistent with the 9th Circuit's interpretation of the statutory consultation requirements. DOE did not designate any National Corridors on the basis of the 2009 study. However, the limitation on FERC's siting authority imposed by the 4th Circuit, if generally applied, would curtail FERC's ability to permit facilities within a DOE-designated corridor. While it can be asserted that the decision is of limited application (i.e., applicable only within the 4th Circuit's five-state area), it is questionable whether a potential applicant for a permit would invest the resources required to file an application with FERC, given the uncertainty of FERC's authority and the likelihood of antagonizing the affected states, and protracted litigation.

Transmission Planning Facilitated by DOE

It is important to maintain a clear distinction between transmission facility *planning* and transmission facility *siting*. Transmission planning focuses on the question of what transmission capacity is likely to be needed in a given geographic area during a specified future planning period, given specific assumptions about that period. Initial transmission planning results in broad-brushed "indicative plans" that provide a general picture of how much energy needs to be moved from one general area to another such area. After an indicative plan has been completed, a party who is considering a possible transmission project in response to needs shown in the indicative plan conducts more granular studies to determine the appropriate size (kV) and endpoints (substations) for the contemplated project. After the endpoints for a possible project have been identified, the developer begins to evaluate alternative routes. Only after the developer has identified a preferred route and some feasible alternatives and submitted an application to the government agencies with siting authority can the siting process begin.

DOE has supported inclusive, long-term, and large-geographic-scale transmission planning processes in the Western Interconnection for most of the past decade. It is probably not accidental that the transmission projects now being approved by state regulators in the West are typically projects that were shown to be regionally beneficial in earlier analyses.

More recently, as mandated by Congress, DOE has provided financial support through the Recovery Act for inclusive, long-term transmission planning at the interconnection level. (These plans will be even more broad-brush than the indicative plans described above.) One important premise of this initiative has been that involving state regulators and NGOs in the transmission planning process will help foster a broader understanding of why, where, and under what assumptions additional transmission would be needed. The more stakeholders understand why additional transmission is needed, the more manageable, predictable, and productive the siting process will become. In general, state regulators and NGOs have responded strongly and favorably to this initiative.

3. FPA Section 216(h)

Section 216(h) of the Federal Power Act states that the U.S. Department of Energy (DOE) is to coordinate all Federal authorizations and related environmental reviews needed for siting interstate electric transmission projects, including National Environmental Policy Act of 1969 (NEPA) reviews. The purpose of this coordination is to streamline agencies' review processes and avoid duplication among Federal agencies.

In October of 2009, nine Federal entities including the White House Council on Environmental Quality (CEQ), the Department of the Interior (DOI), the Department of Agriculture (USDA), the DOE, the Department of Commerce (DOC), the Department of Defense (DoD), the EPA, the FERC, and the Advisory Council on Historic Preservation, signed a Memorandum of Understanding increasing their coordination to expedite and simplify building of transmission lines on Federal lands. The MOU provides uniformity, consistency, and transparency by describing each entity's role and responsibilities when project applicants wish to build electric transmission facilities. Additionally, the MOU designates a "Lead Agency" serving as the single point-of-contact for coordinating all federal environmental reviews necessary to site electric transmission facilities on federal lands. In most instances, the Departments of Agriculture or Interior will be the Lead Agency, since they have jurisdiction over most of the Federal lands and right-of-ways for proposed electric transmission facilities. The MOU requires DOE to maintain a publicly available website and links to the information available from all Participating and Cooperating Agencies. Pursuant to that section, DOE developed an online project tracking system, which can be accessed by DOE-designated Lead Agency project managers to enter pertinent information on 216(h) qualifying projects.

4. Rapid Response Team for Transmission:

Just last week, the Obama Administration announced it would accelerate the evaluation of seven proposed electric transmission applications. This move will speed the creation of thousands of construction and operations jobs while transforming the nation's electric system into a modern, 21st century grid that is safer and more secure, and gives consumers more energy choices.

The Rapid Response Team for Transmission (RRTT) leverages the interagency collaboration established through the 2009 MOU and expands that collaboration to projects outside of federal lands. The same nine agencies of the 2009 MOU have agreed to:

- Coordinating statutory permitting, review, and consultation schedules and processes among involved federal and state agencies as appropriate through Integrated Federal Planning;
- Applying a uniform and consistent approach to consultations with Tribal governments; and
- Expeditiously resolving interagency conflicts and ensuring that all involved agencies are fully engaged and meeting schedules.

The seven pilot projects will serve as demonstrations of streamlined federal permitting and increased cooperation at the federal, state, and tribal levels. Project developers expect that the streamlined projects will increase grid capacity and create thousands of jobs in Arizona, Colorado, Idaho, Minnesota, New Mexico, Nevada, Wyoming, Utah, New Jersey, Pennsylvania, Oregon, and Wisconsin.

Crossing twelve states the RRTT's seven selected pilot project transmission lines are as follows:

- **Boardman-Hemingway Line powering Oregon and Idaho:**

The new 500 kilovolt (kV) transmission line proposed by Idaho Power would create an approximately 300 mile long, single-circuit electric transmission line from a proposed substation near Boardman, Oregon to the Hemingway Substation near Melba, Idaho—known as the Boardman to Hemingway Transmission Line Project or B2H Project. According to the developer of this project during peak construction, this project is estimated to create about 500 jobs in Idaho and Oregon.

- **Gateway West Project to bring new transmission across Wyoming and Idaho:**
 Jointly proposed by Idaho Power and Rocky Mountain Power, this project would add approximately 1,150 miles of new, high-voltage transmission lines between the Windstar Substation near Glenrock, Wyoming and the Hemingway Substation near Melba, Idaho. According to the developer of this project, during peak construction, it is estimated to create between 1,100 and 1,200 jobs.
- **Hampton-Rochester-La Crosse Line to bring power to Minnesota and Wisconsin:**
 This double-circuit capable 345 kV transmission line will run between a new substation near Hampton, Minnesota, a new substation north of Pine Island, Minnesota, and continue on to cross the Mississippi River near Alma, Wisconsin. A single circuit 345 kV line will be built in Wisconsin to a new substation in the La Crosse area. Two 161 kV lines will be built between the new substation near Pine Island and existing substations northwest and east of Rochester. According to the developer of this project, approximately 1,650 jobs will be created during peak construction.
- **Oregon to get additional transmission from Cascade Crossing Line:**
 Portland General Electric's proposed Cascade Crossing Transmission Project includes approximately 210 miles of 500 kV transmission line from Boardman to Salem, Oregon—for the construction of four new substations, expansion of three existing substations, and upgrades to the existing transmission systems near Salem. According to the developer, Cascade Crossing is expected to create about 450 jobs during peak construction.
- **SunZia Transmission, LLC to bring power to New Mexico and Arizona:**
 SunZia Transmission, LLC plans to construct and operate up to two 500 kV transmission lines originating at a new substation in Lincoln County in the vicinity of Ancho, New Mexico, and terminating at the Pinal Central Substation in Pinal County near Coolidge, Arizona. According to the developer estimated job creation will be about 3,408 direct jobs during the construction period.
- **Susquehanna to Roseland Line brings new transmission to Pennsylvania and New Jersey:**
 PPL Electric Utilities (PPL) and Public Service Electric and Gas Company (PSE&G) have proposed the Susquehanna-Roseland power line project which includes an approximately 145-mile long 500 kV transmission line from the Susquehanna Substation in Pennsylvania to the Roseland Substation in New Jersey, and several 500 – 230 kV substations in both Pennsylvania and New Jersey. Based on the current schedule for the environmental review, the project is expected to be in service in the spring of

2015. According to the project's developer, over 2000 jobs will be created in New Jersey and Pennsylvania.

- **Transwest Express to stand-up transmission from Wyoming to Utah and Nevada:**

TransWest Express LLC plans to construct and operate a more than 700 mile, 600 kV, transmission line, which is estimated by the developer to create 1,035-1,550 direct jobs per year at peak construction. This project will facilitate the development of new wind projects in Wyoming.

C. THE FUTURE OF DOE'S CONGESTION STUDY, DOE'S NATIONAL CORRIDOR DESIGNATIONS AND FERC'S BACKSTOP SITING

DOE, FERC, and other federal agencies have been considering whether it might be appropriate for Secretary Chu to delegate his powers under FPA § 216(a) to FERC in order to efficiently expedite consideration of transmission project proposals under the limited backstop siting powers authorized by that section. In July and August, the proposal was presented to stakeholder groups to solicit comments. In addition to oral comments, 61 written comments were submitted. The comments can be found at <http://www.congestion09.anl.gov/delegation/index.cfm>. Secretary Chu carefully considered these comments in deciding not to delegate to FERC his authority under FPA § 216(a) but to develop an alternative.

DOE and FERC have agreed to work together to develop processes and procedures to make the statute work more efficiently. In addition to its new collaboration with FERC, DOE recognizes that it can administer its § 216(a) powers better, faster, with more transparency and more effectively. Consequently, among other things, DOE will be doing the following:

- Begin immediately to identify targeted areas of congestion based on the evaluation of existing information and on comments submitted by stakeholders;
- Identify narrower areas of congestion than the broad areas previously studied; and
- Solicit statements of interest from transmission developers while considering what National Corridors to designate.

D. CONCLUSION

In closing, as someone who is passionate about the need to modernize our grid, I understand and have faced the passions on all sides of this issue. I believe the Administration is on the path to best implement many existing planning and siting authorities many of you worked very hard to enact into law. I look forward to answering your questions.

Mr. WHITFIELD. Thank you very much, and we appreciate your testimony. We actually didn't have an opportunity to read your testimony because it came in pretty late last night, but thank you for going through it with us this morning.

Mr. Wellinghoff, would I be correct in saying that one of the reasons for issuing Order 1000 was a result of the Illinois decision in the 7th Circuit Court of Appeals? Was that one of the reasons that you all decided to issue Order 1000 or was that just one of the many reasons?

Mr. WELLINGHOFF. Mr. Chairman, I don't believe that court case was a reason for issuing Order 1000. Certainly, Order 1000 talks about costs and benefits, and the 7th Circuit case talks about costs and benefits as well, but I am not sure it was a reason for issuing Order 1000.

Mr. WHITFIELD. Well, one of the reasons I bring that up, I was reading in that decision, and the court made some references about the lack of analysis on benefits and reliability and so forth, and as I was reading some of the comments of the witnesses that will be on other panels, they were also talking about the lack of clarity in Order 1000 on establishing benefits and calculating benefits, and I was curious from your perspective, do you feel like it is valid to criticize Order 1000 on the lack of clarity of the way you determine benefits or do you feel like that is something that you will address before it becomes final?

Mr. WELLINGHOFF. The order is final, although it is subject to rehearing. We certainly will look at those comments with respect to clarity but it is sort of the glass half empty, the glass half full. Some people think there is not enough clarity, other people think there is not enough flexibility. What we wanted to try to do is preserve as much flexibility as possible for the reasons to ultimately determine what they believed were appropriate benefits in their bucket of benefits for that particular region. So Order 1000 was structured in a way to give the regions maximum flexibility. There are some people who are asking for more clarity, but if we give more clarity, that means more direction from Washington, more oversight from Washington and more specificity by us, and there is a lot of people who would then push back the other way on that. So it can go either way on that.

Mr. WHITFIELD. Right. You are just trying to reach a fine balance, right?

Mr. WELLINGHOFF. Yes.

Mr. WHITFIELD. Would you describe how Order No. 1000 will impact utilities and stakeholders in traditionally regulated regions such as the Northwest and Southeast as opposed to organized wholesale markets?

Mr. WELLINGHOFF. Well, I think it will be similar in the sense that both of those areas, those distinct areas, will have to have regional planning authorities, and in fact, they do. Even in the areas that do not have organized markets—the West, Northwest, that you talked about, Southeast as well—they do have now regional planning authorities that could qualify under Order 1000 as part of the Order 1000 process. So I don't see that there will be specific large differences between the two. Both areas will have to comply with the premise of Order 1000. However, Order 1000 as I men-

tioned before has sufficient flexibility so that those regions can tailor their regional activities to fit their regional needs.

Mr. WHITFIELD. Ms. Azar, you have been over there, I think you said 5 months maybe. Is that right?

Ms. AZAR. Just completing four.

Mr. WHITFIELD. When we talk about transmission needs of the country, there certainly are a lot of different studies about that, and what analysis have you seen since you have been at the Department of Energy that would reflect exactly how many transmission lines do we need, how many new ones do we need and what is the condition of the transmission infrastructure in the country in general, would you say? You know, we hear some criticism that it is an old system, it is outdated. What is your analysis just from your professional experience in that area about where do we really stand today on transmission needs in America?

Ms. AZAR. There are a variety of needs, and, you know, I don't rely on any one specific analysis because what I can tell you is, any specific analysis is based on assumptions that are guesses for what the future looks like, and we know it is going to be wrong, right? But we need to figure out a way in which to build the infrastructure that is going to work in the most of our guesses with what the future looks like, the most robust, the most resilient and the most flexible.

Our needs are great, not just to build transmission itself to convey the electrons but we need a lot of different kinds of technologies for the grid to make it more resilient against things like what happened in San Diego, and I don't like to be an alarmist but what happened in San Diego with regards to the blackout in Arizona, California and New Mexico should never have happened. That was—you know, we plan the electric grid to accommodate at least one bad thing happening, and one bad thing happened but the grid went down there and so that tells me that we do have issues more than just meets the eye.

Mr. WHITFIELD. And that was a result of one individual mistake being made, right?

Ms. AZAR. That is correct.

Mr. WHITFIELD. OK.

Ms. AZAR. And he was not intending harm.

Mr. WHITFIELD. OK. Mr. Rush, you are recognized for 5 minutes.

Mr. RUSH. I want to thank you, Mr. Chairman.

Chairman Wellinghoff, what role does Order 1000 provide for as relates to State regulators in the regional transmission planning process?

Mr. WELLINGHOFF. It actually provides for a robust role for State regulators. In fact, includes in there a provision for cost recovery for allowances for State regulators to actually participate. So we are making every provision we can to ensure that they are included as part of the stakeholder process. They are included in the process in regional planning. In fact, I have had discussions with State regulators and I explained to them that they in fact can decide what their region will look like. I mean, they are the ones who really have the power. I have literally told them, they have the power to determine how these regions are formed and what the regions will consist of, and so as such, they really can step up and take the ball

and run with it, and we have given them that opportunity in Order 1000.

Mr. RUSH. So what has been their overall general response? Are they generally in favor of Order 1000?

Mr. WELLINGHOFF. The ones I have talked to in the West have been pretty enthusiastic about that idea because they have sort of flexible regions in the West that have changed over time, and so this is an opportunity I think for some of the regulators in the non-RTO regions in the West to take hold. In the East, they have already more established RTO regions so usually those market regions are the planning authorities, and in fact, in those areas in the East, the regulators are participating in those RTO regions very heavily already, so they seem to be oK with it.

Mr. RUSH. And that would also include most of the Midwest also?

Mr. WELLINGHOFF. Yes.

Mr. RUSH. Order 1000 relies heavily on regional transmission planning processes to develop and implement cost allocation methods for new transmission facilities. How will FERC ensure that it does not delegate too much authority to regional stakeholders?

Mr. WELLINGHOFF. Well, through a number of ways. Certainly by the overall guidelines that we have set forth in Order 1000, by the review process that we have with respect to the planning processes that will come back and the cost allocation processes that will come back. We have to approve those in a compliance order and also through the complaint process where if any of the regions are engaging in this planning in a way that goes outside of those boundaries, anyone can come to FERC, file a complaint and we can resolve the issue. So we ultimately have the ultimate decision-making authority with respect to those activities, even though we have given the regions all this flexibility. I mean, we let them go off and hopefully they can solve their own problems but if they can't, FERC is the ultimate arbiter of the final activity there.

Mr. RUSH. The courts have held that cost allocation methods must satisfy, and I quote "cost causation principle." Can you explain what your understanding of that principle is? How does the emphasis on beneficiaries in Order 1000 meet that test?

Mr. WELLINGHOFF. Yes, I can. It is my understanding that the D.C. Circuit and also the 7th Circuit case have indicated that people who benefit can be in essence those cost causers. So to the extent, and again, we have made it very clear in the rule, to the extent that there are benefits, then costs can be allocated to individuals that benefits are determined but the determination of those benefits, and this goes back somewhat to the clarification question of the chairman, the determination of those benefits and how those benefits will be structured will be up to the individual regions of how they will determine what will actually be benefits, but there can be that causation link between costs and benefits, as I understand it from a number of circuit court decisions.

Mr. RUSH. Mr. Chairman, I want to thank you, and I yield back the balance.

Mr. WELLINGHOFF. Thank you.

Mr. WHITFIELD. Thank you, Mr. Rush.

At this time I recognize Mr. Terry for 5 minutes.

Mr. TERRY. Thank you.

Mr. Wellinghoff, help me, because I am uncertain what a region is and how it is developed, and it is all interstate? Is it allowed under the order for States to band together? I just can't get my mind around the definition of region, so work me through that.

Mr. WELLINGHOFF. Certainly. I would be happy to. The way we have defined a region in the Order 1000 is pretty open. It allows the States to determine what they want to be a region. The minimum we have said, it has got to be at least two utilities, so you can't just have one utility be a region. You have to plan with more than another utility. But ideally, it can be as large as PJM, which is a very large regional transmission organization that goes all the way from New Jersey to Chicago, extremely large, 133,000 megawatts of power under control, or it could be as small as two utilities in the Southeast. I believe that there is two or three utilities in the Southeast that have decided to form themselves into a region. I think South Carolina Electric and Gas and one other utility, I believe, have decided to form themselves into a region, and again, this is ultimately with the approval and assent of their State public utility commissioners. Those utility commissioners make determinations—

Mr. TERRY. But they can only do within the one State so if it is multi-State, is that where FERC comes in and organizes?

Mr. WELLINGHOFF. Well, no. If it is within one State, it is still only related to interstate transmission, and transmission in that State of a certain voltage—

Mr. TERRY. And you are saying—

Mr. WELLINGHOFF (continuing). And certain characteristic in nature is determined to be interstate transmission. So you could have, you know, within one State transmission that is still interstate transmission under FERC's jurisdiction. But with respect to a utility's participation in that particular entity, a State commission is going to have a big say in that as well.

Mr. TERRY. Ms. Azar, does DOE have any concerns about the unyielding nature of the definition of region?

Ms. AZAR. DOE is supportive of the Order 1000. We think it is a good step towards getting transmission built. As the chairman has indicated, they had to weigh and balance a lot of different interests in this and are trying to give flexibility at the same time being prescriptive, and I think we will be able to tell with time if they reached the balance appropriately that allowed us to build transmission.

Mr. TERRY. Mr. Wellinghoff, does FERC Order 1000 allow for a preference in energy depending on how it is generated? For example, will clean energy have a preference over, let us say, coal-generated electricity?

Mr. WELLINGHOFF. No.

Mr. TERRY. None at all?

Mr. WELLINGHOFF. The regions will determine how to plan for the transmission they need, and that transmission will be driven by market forces. So whatever the market forces are with respect to the particular resources that are developed in that region, those will be the resources that will get on those transmission lines.

Mr. TERRY. OK. So there is no mechanism to say public policy requires that clean energy be used?

Mr. WELLINGHOFF. The market forces will be driven by market things like fuel prices and other characteristics and also will be driven by both State and Federal public policy determinations as they are in all the States in this country. There are some 30-odd States that have renewable portfolio standards, for example. Those are in essence market forces that have been created by State legislatures that set forth certain resource decisions in the markets.

Mr. TERRY. Ms. Azar, any comment?

Ms. AZAR. No. With regards to public policy, public policy when it is required and mandated is used in transmission planning to determine what sort of infrastructure we need, and whether it be, you know, a requirement that, you know, a certain State complies with a renewable portfolio standard, that would be one thing that the utilities have to comply with. So in order to predict what the future looks like, you are going to assume that that is true. The same thing that if, for instance, a State would come up and say look, you need to assume that clean coal technology is going to work and that is what our future is going to look like, transmission planning would incorporate that kind of public policy and Order 1000 requires that.

Mr. TERRY. Thank you. Yield back.

Mr. WHITFIELD. Thank you, Mr. Chairman.

At this time I will recognize the gentleman from Michigan, Mr. Dingell, for 5 minutes.

Mr. DINGELL. Mr. Chairman, I appreciate your courtesy and I commend you for this hearing.

These questions are to Mr. Wellinghoff. First, welcome. Second, I hope you will answer these questions yes or no because that will enable us to get a lot more on the record. One, does Order 1000 provide subsidies for renewable energy or transmission lines to carry renewable energy? Please answer yes or no.

Mr. WELLINGHOFF. No.

Mr. DINGELL. Does Order 1000 provide incentive rates for renewable energy lines? Yes or no.

Mr. WELLINGHOFF. No.

Mr. DINGELL. By the way, thank you for your cooperation. No disrespect is intended here.

Mr. WELLINGHOFF. I am happy to answer for you.

Mr. DINGELL. Does Order 1000 require anybody to pay for transmission for which they receive no benefit? Yes or no.

Mr. WELLINGHOFF. No.

Mr. DINGELL. Does Order 1000 require anybody to use or build renewable energy generation? Yes or no.

Mr. WELLINGHOFF. No.

Mr. DINGELL. My home State of Michigan has a renewable portfolio standard that must be met by in-State generation. In other words, a wind farm in South Dakota cannot be used to meet Michigan RPS requirements. Would a regional planning evaluation under Order 1000 take into account laws like that of Michigan? Yes or no.

Mr. WELLINGHOFF. It would be up—that is a hard yes or no one. It would be up to the regional planning group to make that decision.

Mr. DINGELL. OK. And wherever we get to the point where we have some difficulty on this yes or no, I would expect that you would submit some additional comments for the record if you please.

Mr. WELLINGHOFF. I would be happy to do that, Mr. Dingell.

Mr. DINGELL. Now, in Order 1000, FERC notes that after Order 890 was issued in 2007, conferences and requests for comments were held in 2009. Did these conferences or comments include discussions of issues that were ultimately included in Order 1000?

Mr. WELLINGHOFF. I believe so but I will have to submit something to you on that to make sure.

Mr. DINGELL. And again, I apologize for this, but time is so limited here.

Were public utilities allowed to participate in the conferences or requests for comments?

Mr. WELLINGHOFF. I believe so.

Mr. DINGELL. By delegating much of the responsibility for transmission planning and cost allocation to multiple and diverse regions, do you risk dilution of consistency and supportable national energy policy? Is that a risk?

Mr. WELLINGHOFF. I don't believe so, no. I believe that I have a lot of faith in the regions.

Mr. DINGELL. And I in you and I hope that you will feel free to add additional comments.

Order 1000 states FERC's intention was not to disrupt the progress made with respect to transmission planning and investment in transmission infrastructure. However, isn't the act of requiring regions to develop inter- and intraregional planning processes disruptive?

Mr. WELLINGHOFF. There is an assumption to your premise of your question that is incorrect. Order 1000 does not require inter-regional planning.

Mr. DINGELL. OK. And I don't want you to be hesitant about disagreeing with me if you do.

Claims have been made on both sides of this issue that the policies in Order 1000 will either greatly increase rates on consumers or will help keep rates down. Which do you think will be the case?

Mr. WELLINGHOFF. I think it will improve efficiencies and keep rates down.

Mr. DINGELL. Well, we have completed this in 1 minute—or rather we have 1 minute and 15 seconds.

Ms. Azar, do you have any comments to make on the points that we have just had?

Ms. AZAR. No. Thank you, sir.

Mr. DINGELL. Mr. Wellinghoff, the statutory authority for Order 1000, is that the Federal Power Act or is that other enactments that we have made such as some of the conservation energy legislation that we have passed in the last couple years?

Mr. WELLINGHOFF. It is the Federal Power Act, sir.

Mr. DINGELL. Only?

Mr. WELLINGHOFF. Yes.

Mr. DINGELL. OK. Do you need additional statutory authority to make this work or to enforce that properly or to see to it that the process goes forward?

Mr. WELLINGHOFF. I do not believe so.

Mr. DINGELL. Mr. Chairman, I yield back 26 seconds. Thank you.

Mr. WHITFIELD. Thank you very much, Mr. Dingell.

Mr. McKinley, you are recognized for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman.

I haven't had a chance to read your 620 pages of this order yet, but from what I can gather, everyone else is going to have trouble understanding that as well and some of the questions that have already come up suggest there are still a lot of questions, like the regional planning. In your testimony, you say it does not establish regional boundaries but yet in the testimony you said there has to be regional planning. Who is going to set that? I am a little confused, just like Congressman Terry, as to who sets these boundaries. Are these going to be like the football conferences that they keep changing all the time? Can we have overlapping regions? I thought I gathered a little of that earlier. Can you describe just a little bit about what those councils could be, these planning groups? If it is not set up, who sets them up? The companies themselves, these two companies?

Mr. WELLINGHOFF. To my knowledge, everyone in the country, these are already set up. In some places, they are part of the processes of the organized wholesale markets, the regional transmission organizations or the independent system operators. In other places where those don't exist and there is six of those under our jurisdictions, where they don't exist, which is primarily the Southeast and the West except for California, they have the States and the utilities and the transmission owners and other stakeholders have already formed themselves largely into regions, but if the State utility commissioners or other—

Mr. MCKINLEY. So is West Virginia—which one are we in? Which region are we in then if you say that they are already—

Mr. WELLINGHOFF. I believe you are in PJM.

Mr. MCKINLEY. And PJM would be?

Mr. WELLINGHOFF. A regional transmission organization that goes all the way from New Jersey to Chicago.

Mr. MCKINLEY. OK.

Mr. WELLINGHOFF. It has been in place for many years.

Mr. MCKINLEY. One of your answers I found was interesting because it was back to Congressman Dingell's question. You said there is no subsidy, but I am a little confused about it and you can help me out here with this because of the Caparden article that came out in July. So what you are saying is that prior to renewables the cost is X to the customers in West Virginia, but then when we bring renewables on and it becomes cost X plus something else, isn't that a subsidy?

Mr. WELLINGHOFF. I am sorry. I am not familiar with the Caparden article.

Mr. MCKINLEY. Well, it was published on July 28th and it said this is going to be the—that your ruling will be the most progressive clean energy action the Federal Government will take this year resulting in thousands of miles of new line to bring renewable energy to your home. I am not opposed to new energy but I think that we all have to—you said there is no subsidy but it sure smells to me like in these 620 pages that there is a subsidy in here some-

how for renewable energy because if the cost prior to renewables is X, it is going to increase once we put a new transmission line into a wind farm that that cost is going to increase, so why isn't that a subsidy? Is that just Washington talk?

Mr. WELLINGHOFF. Mr. McKinley, I have read all 620 pages and I can assure you there is no subsidy in there for renewables.

Mr. MCKINLEY. If their cost goes up by having renewables because we are putting a line in for a wind farm and now I have to pay more, why is that not a subsidy?

Mr. WELLINGHOFF. Again, I take you back to the 620 pages. There is nothing in there with respect to one kind of—

Mr. MCKINLEY. Is this about the definition of benefit?

Mr. WELLINGHOFF. No, it is not about the definition of benefit at all. It is ultimately about what is in the 620 pages, which has nothing to do with a particular resource. It has to do with planning and allocation of transmission costs.

Ms. AZAR. Congressman, can I weigh in here?

Mr. MCKINLEY. Please.

Ms. AZAR. I just wanted to point out in PJM alone, the lack of transmission cost your constituents and the other constituents in PJM, \$1.4 billion in 2010 alone, and by building more transmission and getting the system to be more efficient, we are not going to be letting that money on the table anymore and so there is ways in which, you know, money is going to be saved as we are bringing on new generation that is moving us into the new economy.

Mr. MCKINLEY. I am just trying to understand the effect, what the likelihood of increased cost is going to be under Order 1000 to the residents of West Virginia.

Ms. AZAR. I actually think they will go down.

Mr. MCKINLEY. Mr. Wellinghoff, can you tell me, is it likely? What is the cost going to be to the residents?

Mr. WELLINGHOFF. I think as Ms. Azar has indicated, to the extent that we can reduce congestion in West Virginia, we can provide access to West Virginia to lower cost resources, ultimately your costs will be lower.

Mr. MCKINLEY. So Order 1000 you think is going to lower utility costs?

Mr. WELLINGHOFF. Order 1000 will allow for the planning and cost allocation of efficient transmission. Efficient transmission can in fact lower cost.

Mr. MCKINLEY. Do you think it will?

Mr. WELLINGHOFF. I can give you one particular example in northern New Jersey, for example.

Mr. MCKINLEY. I don't care about northern New Jersey.

Mr. WELLINGHOFF. Well, it is an example—

Mr. MCKINLEY. I asked about West Virginia, the 1st District of West Virginia.

Mr. WELLINGHOFF. Again, efficient transmission and markets will lower your cost.

Mr. WHITFIELD. The gentleman's time is expired.

Mr. Griffith, you are recognized for 5 minutes.

Mr. GRIFFITH. Our districts don't touch but I am in the same neighborhood as Mr. McKinley, so I do have concerns there because, you know, it is hard to cheaper than what we used to have,

and I understand some environmental concerns, and I if understood you correctly, Mr. Wellinghoff, the 620 pages, and I, like Mr. McKinley, have not had an opportunity to get through all 620 pages of it, but as I understand from your testimony previously, the 620 pages doesn't have anything to do with that, that has to do with public policy decisions made at the State and Federal level. Is that correct?

Mr. WELLINGHOFF. I am sorry. I don't understand the question.

Mr. GRIFFITH. Doesn't the fact that if costs go up because we are bringing in renewable energy and new sources of energy, that is not because of your transmission line? If I understood your testimony correctly, that is not because of the transmission line or the 620 pages of Order 1000 but because of other public policy decisions made by the State and Federal Governments.

Mr. WELLINGHOFF. Any public policy decisions that influence the markets will influence the costs in those markets.

Mr. GRIFFITH. All right. So let me ask you, if we are building a small wind farm on top of a mountain in my district, who pays for that electricity to get to the grid? Is that something that is paid for by the developer of the wind farm or is that going to be picked up by the region? And I am also in—I always get the initials backward—but PJM.

Mr. WELLINGHOFF. If it a gen tie line, a line going from the wind farm into a particular transmission line, which gen ties are not part of Order 1000, then the developer will pay for the line.

Mr. GRIFFITH. Now, apparently in March you stated that "I believe that additional Federal authority with respect to transmission planning, site and cost allocation would significantly increase the likelihood that those needed facilities would be constructed in a timely manner." In Order 1000, you assert that FERC already has this authority, and you indicated in answering to Mr. Dingell that the authority came out of the Federal Power Act, and I am wondering, just so I can save myself a lot of time, where will I find that authority in the Federal Power Act and was it there before and you hadn't stumbled across it, or what is different between now and March?

Mr. WELLINGHOFF. I am sorry. What specific authority are you referring to?

Mr. GRIFFITH. OK. Mr. Dingell asked you about the authority to do the things that you need to do.

Mr. WELLINGHOFF. It is under the Federal Power Act, but I didn't understand the first part of your question. I am sorry.

Mr. GRIFFITH. OK. I am looking at a statement here that was given to me that says that in March you testified that "I believe that additional Federal authority with respect to transmission planning, siting and cost allocation would significantly increase the likelihood that those needed facilities would be constructed in a timely manner," and I am just wondering, guide me through how I reconcile March to now.

Mr. WELLINGHOFF. OK. That is a fair question, and I am not certain—I will tell you quite frankly, I am not certain what my reference was there. I perhaps was referring to the issue of siting, which is not under Order 1000. Order 1000 only relates to planning and cost allocation. There has been a lot of discussions about siting

back and forth, the recent decision by Secretary Chu and others, so I may have been referring to siting specifically.

Mr. GRIFFITH. And maybe we can have a conversation later or maybe we can figure out how you can rectify that.

Mr. WELLINGHOFF. I would be happy to.

Mr. GRIFFITH. I am not trying to get a “gotcha.” I am just trying to sort it all out because I am one of those people that, you know, I may not get to it today but I am going to read through the 620 pages at some point, and it would save me a lot of time instead of having to read through the whole power act and figure out what part gives you authority, if you could get somebody to get me a cite for that so I can read that as well.

Mr. WELLINGHOFF. I would be happy to do that.

Mr. GRIFFITH. Thank you very much. I appreciate it.

Mr. WELLINGHOFF. Thank you.

Mr. GRIFFITH. Mr. Chairman, with that I will yield back my time.

Mr. WHITFIELD. Ms. Azar, I want to just ask you one question. You had made a comment about moving into the new economy, and could you just explain to us what is your perspective of the new economy?

Ms. AZAR. Well, the new economy includes things like this, that we are powering up and it is likely a dramatic increase in the use of electricity through electric vehicles, through continued development of gadgets like this, and also things like cybersecurity where we want to make sure that our grid is resilient and strong and that we are competing with—able to compete with the global economy. So we need a resilient grid. We need, you know, good resources and we need it to be at a reasonable cost.

Mr. WHITFIELD. Thank you.

Mr. SHIMKUS, you are recognized for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. I apologize. I had to go to the floor and spend 5 minutes talking about Yucca Mountain, which is another favorite topic of mine. I know, Mr. Wellinghoff, you understand that.

Some general questions to the Department of Energy. Do you have any views on FERC Order No. 1000?

Ms. AZAR. Yes. In general, the Department of Energy supports FERC Order 1000 as a good step forward in trying to get transmission built. I think time is going to tell whether or not it is sufficient. They tried to balance some very difficult interest there.

Mr. SHIMKUS. In your testimony, you identified that it takes about 10 years to build transmission and approximately 3 years to build new generation facilities. I have been a member 15 years. I have still got some general facilities that we are trying to get built, so I don't know where those—maybe that is after all the permitting.

Ms. AZAR. It just depends on what the generation is. I mean, natural gas and, you know, certain kinds of renewables can be built very quickly. Nuclear and baseload coal plants take much longer.

Mr. SHIMKUS. What implications do the differing development periods have on resources planning? In other words, you have got 10 and 3—

Ms. AZAR. Significant differences. You know, transmission planning—usually when people are doing planning, it is a lot easier to plan in the near term than the long term, and so when you are thinking about some dramatic changes in, you know, how energy is going to move, how our populations are going to move, how our economy is going to move, it is a lot more difficult to predict where we are going to be in the future, and so when you are thinking about transmission, and it takes so much longer to build transmission, you are looking in the far term and so predicting with accuracy is not something that frankly is a goal predicting, you know, essentially designing a system that is going to accommodate a lot of different hypothetical futures is what we do in transmission. That is not what you do when you are trying to decide what kind of generation to build and where to build that.

Mr. SHIMKUS. And why I am going down this line of questioning is that we do know with clean air, interstate transport rule or whatever the name of it is, that there is generation that is going to be retired. In fact, there was an announcement that two coal-fired power plants would go offline, about 600 megawatts in total that will not be available, as in the last hearing, baseload generation. I think it affects reliability concerns.

But it sounds like we may be able to build at least some new generation in the near term but new transmission lines to connect this generation as you were just answering could be put off.

Ms. AZAR. No, no, I didn't say put off. There is a disconnect between the planning horizons which actually creates difficulties. It doesn't mean transmission should be put off. It is actually the exact opposite. Because transmission takes so long to plan and build, we need to do it now so that we can accommodate new generation.

Mr. SHIMKUS. That is a better way to put it, and I appreciate. With that disconnect, that does affect reliability. I mean, if you have generation and you don't have transmission, I mean, the whole baseload debate—

Ms. AZAR. I think you and I are using the term "reliability" differently. With regards to how reliable the system is, that is exactly what we—what is why we do the planning.

Mr. SHIMKUS. But the disconnect between the building of new generation and the transmission lines can cause problems.

Ms. AZAR. It can cause difficulties, correct.

Mr. SHIMKUS. Do you believe the 9th Circuit decision in the California Wilderness Coalition versus DOE impaired DOE's ability to carry out its duties under Section 216 of the Federal Power Act?

Ms. AZAR. I think we need to do it differently, and we are doing it differently.

Mr. SHIMKUS. And what do you believe are the primary barriers to building transmission in this country?

Ms. AZAR. How long do we have?

Mr. SHIMKUS. I have 48 seconds.

Ms. AZAR. All right. There is a lot of different barriers. It depends on different regions, and I set forth just some of them in my written. I apologize that I didn't get it to you sooner but we didn't have enough notice for getting it in on time. With regards to the barriers, things like market power, things like, you know, the lack

of willingness of load-serving entities to want to sign power purchase agreements for merchant generation for us to allow to do the proper planning is another one. Yes, you keep looking at the clock, which makes me more and more nervous. I would be happy to talk with you, sir, offline or submit further comments on the record.

Mr. SHIMKUS. No, we appreciate it. Thank you for your time.

I yield back.

Mr. WHITFIELD. Thank you very much.

Mr. Green, you are recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Welcome to our panel.

Chairman Wellinghoff, Texas has led the way in identifying competitive renewable energy zones and ensuring the development of adequate transmission infrastructure to bring the new renewable resources from those renewable rich zones to the concentrated loads in our urban area. Is it fair to say that Order 1000 provides a structure for other regions of the country to likewise identify and build transmission infrastructure that is needed to bring new renewable resources online?

Mr. WELLINGHOFF. Mr. Green, I would agree that Texas is a great model. You have done a great job down there in Texas. Even though FERC has no jurisdiction with respect to transmission planning and cost all and Order 1000—

Mr. GREEN. We are all familiar with ERCOT.

Mr. WELLINGHOFF (continuing). Does not apply to Texas specifically, but certainly the types of things that Texas has done with building the \$5 billion worth of transmission in Texas are the types of things that other regions could look at. They will have that opportunity in planning processes and processes that are set forth and structured in Order 1000 for those other regions, yes.

Mr. GREEN. Transmission development is done incredibly well, as you said, in Texas using your regional approach. Are you surprised by some of the criticism of the order?

Mr. WELLINGHOFF. Well, there is always going to be criticism to anything that is suggested from a Federal regulatory standpoint. Again, we are trying to give as much flexibility to those regions as possible, and sometimes giving flexibility, you get criticism coming back the other way, as I indicated from the question of the chairman earlier about clarity. If you give too much flexibility, people think you are not being clear enough, and if you give too much clarity, people think you are being too restrictive. So again, we are trying to strike a balance, trying to give those regions that balance they need to do what they need to do to ensure they get the transmission built to economically reduce costs for consumers.

Mr. GREEN. Well, I know we have done great with growth of wind power in west Texas, but it doesn't do any good in west Texas. The customers are in Dallas-Fort Worth, Houston, Galveston, San Antonio, so that commitment there. Mr. Transeth, who will be testifying on our next panel on behalf of the Coalition for Fair Transmission Policy, writes that "FERC Order 1000 is deficient not so much on what it says but more what it doesn't say. Under the Order, the commission delegates to regions the ability to determine how transmission planning will be conducted and how costs will be allocated with very little, if any, guidance on the parameters of such important decisions." Mr. Transeth also writes,

“In particular, the order provides no guidance to regions on how benefits should be defined, thus leaving open the very real possibility regions can adopt extremely broad definitions and result in unfounded conclusions that everyone benefits from new transmission and should all pay, thus socializing the transmission costs.” What do you say to this criticism?

Mr. WELLINGHOFF. Well, FERC will provide the ultimate guidance to the extent that a particular region can make decisions, can't arrive at their own decisions with the flexibility that we have given them. It will fall back to FERC to ultimately set forth a cost allocation methodology and make those decisions, and we have made that clear in the order. So again, I think the criticism is unfounded because again, we do try to give the regions the amount of flexibility and the amount of room that they need to do what they need to do for the regions, but again, if that clarity and preciseness is needed in the sense that they can't make the decision themselves within the structure that we have given in Order 1000, then ultimately when those compliance plans come in showing that they haven't made a decision, FERC will make the decision for them. I don't relish that. I don't think that is the best way to do it, but again, that is the ultimate end of the line where the buck stops with FERC.

Mr. GREEN. For the most part our Texas grid is regulated under ERCOT, an RTO that is actually regulated at the State level and not by FERC. A small part of Texas falls in the Southwest Power Pool, though, and it is my understanding that SPP first began its process for determining its regional planning process shortly after FERC first proposed its regional planning and cost allocation rule in 2010. Was the SPP methodology approved by FERC?

Mr. WELLINGHOFF. We set some parameters out in Order 890 with respect to planning, so to that extent, and they did file a compliance plan for Order 890, so to that extent, we did review their planning process. We certainly haven't reviewed the one that would be under Order 1000 as of yet, and I believe you have got Nick Brown from SPP who is going to testify here before you today.

Mr. GREEN. Have any other RTOs sent updated planning and cost allocation methodology to FERC for approval since the rule was first proposed in 2010, and if so, were those approved? Was there pushback in the region on the methodology, et cetera? First of all, I guess, were updated plans and cost allocation submitted to FERC?

Mr. WELLINGHOFF. There have been some submitted. Some are pending before us, which I can't talk about because they are pending cases before us, but there have been some submitted.

Mr. GREEN. Some have been approved?

Mr. WELLINGHOFF. I believe some have been approved, but there are a number that are pending right now before us as well.

Mr. GREEN. And the last thing, although I am out of time, Mr. Chairman, has there been pushback on the methodology?

Mr. WELLINGHOFF. Certainly there has been differing sides on the methodology, and again, that is what FERC does is, we resolve those issues as to the differing positions on particular methodologies.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. WHITFIELD. At this time I recognize the gentleman from Colorado, Mr. Gardner, for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman, and thank you as well to the witnesses.

Mr. Wellinghoff, a question for you. Are you familiar with the cap-and-trade legislation that passed the House a couple years ago?

Mr. WELLINGHOFF. No, I am not.

Mr. GARDNER. Were you familiar with any of the amendments that were added to it in terms of transmission siting issues, the manager's amendment?

Mr. WELLINGHOFF. I don't believe so, no.

Mr. GARDNER. There was an amendment that was added in the negotiations at the end of the process, and I will read you a summary of the amendment. It basically passed onto the bill. It provided FERC with siting authority for the construction of certain high-priority interstate transmission lines constructed in the western interconnection and amended the National Interstate Electric Transmission Corridor. The DOE/FERC delegation proposal, is that the same kind of idea? If you aren't familiar with that amendment, perhaps you could get back to me.

Mr. WELLINGHOFF. I would be happy to get back to you on that.

Mr. GARDNER. Thank you very much. And then I will be asking this question later as well to some other witnesses, but it is my understanding that the order, the FERC Order 1000, requires each public utility transmission provider to participate in the regional transmission planning process. While some regions of the country have regional transmittal organizations that could run such a process, others do not. Could you explain to me how the regional planning requirement would work for States like Colorado that aren't part of—

Mr. WELLINGHOFF. Could you explain to me which ones don't have those—my understanding is everyone—Colorado, in fact, is in one of the western regional planning entities. I am not sure. There is a couple out there, I am not sure which one it is in, but in fact, they are already in one and they are already conducting regional planning.

Mr. GARDNER. Well, perhaps I can get back to you with further details of the question. It is my understanding from a number of the public utility providers that they are not right now in an RTO.

Mr. WELLINGHOFF. They are not in an RTO but they are in a regional planning entity. There are regional planning entities. RTOs and regional planning entities aren't necessarily the same thing. A lot of RTOs do the regional planning but in other areas where they don't have RTOs, they just have regional planning entities that in essence are an informal group of utilities who come together with stakeholders including State commissioners and transmission owners and consumers and others that participate in these processes. There is one called West Connect and there is ColumbiaGrid, and there is a number of other ones in the West, and I know that Colorado—

Mr. GARDNER. Perhaps you could follow up with your office a little bit more with this question because there are some concerns from my constituents.

Mr. WELLINGHOFF. Sure.

Mr. GARDNER. I yield back my time, Mr. Chairman.

Mr. WHITFIELD. Thank you. At this time I recognize the gentleman from Texas, Dr. Burgess, for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman, and thanks to our witnesses for being here.

Mr. Wellinghoff, kind of following up on what Mr. Gardner was asking, the regional planning entity, Texas, as I understand it, is sort of its own regional planning entity. Is that correct?

Mr. WELLINGHOFF. ERCOT is the regional planning entity, and in fact, they are again outside of our jurisdiction and not under Order 1000.

Mr. BURGESS. As it should be. And just to follow up on some of the stuff that Mr. Green was asking, are there implications for Texas about the rule that is being discussed this morning? So ERCOT is outside but there are other areas that will be affected?

Mr. WELLINGHOFF. There is a very small piece. I believe that it is in SPP that is already part of the SPP planning process and participates and will be affected to the extent that they are part of what SPP already does and then what SPP needs to conform to vis- & vis Order 1000.

Mr. BURGESS. Now, one of the things that we see happening in Texas is of course all of the wind occurs in places where people don't live and people live in places where the wind doesn't blow, so getting the power from the wind farms in west Texas to the population centers in the metroplex requires an east-west transmission line, which is essentially going to bisect my district. Now, the planning for that, is that all handled at the State level through the public utility commission?

Mr. WELLINGHOFF. In Texas?

Mr. BURGESS. In Texas.

Mr. WELLINGHOFF. I believe so but I am not that familiar with—

Mr. BURGESS. So FERC is not involved in the—

Mr. WELLINGHOFF. No.

Mr. BURGESS. There is not a Federal role in the siting of those transmission lines?

Mr. WELLINGHOFF. No.

Mr. BURGESS. It occurs at the State level?

Mr. WELLINGHOFF. That is correct.

Mr. BURGESS. Mr. Chairman, in the interest of comity, I am going to yield back the balance of my time.

Mr. WHITFIELD. You are so kind. Thanks.

Mr. Walden, you are recognized for 5 minutes.

Mr. WALDEN. Thank you, Mr. Chairman, and I thank you for holding this hearing. I have got a couple of questions here.

Picking up a bit on what my colleague from Colorado asked about the western regions, now, it is my understanding, non-jurisdictional utilities such as municipalities and the Bonneville Power Administration have raised various concerns on rehearing of FERC Order 1000. specifically, for BPA, the Transmission System Act of 1974 charges the BPA Administrator with determining what transmission investments are necessary and appropriate. BPA has also expressed concerns to FERC that this responsibility is non-delegable. Also, BPA's capital is limited. The Administrator is required

to include proposed expenditures in his budget submission to the Congress. BPA has expressed concerns to FERC that obligations of its capital must be decided upon by the Administrator consistent with that statutory budget process.

So Mr. Wellinghoff, can you assure me the commission will thoroughly consider and be responsive to these concerns?

Mr. WELLINGHOFF. I can assure you of that.

Mr. WALDEN. You can?

Mr. WELLINGHOFF. Yes.

Mr. WALDEN. Good. Thank you, sir. As you know, the Pacific Northwest had implemented extensive and transparent transmission planning processes that have identified several transmittal lines that need to be built to address transmission congestion and reliability issues. These lines are in the process of being approved and built. This is all being done without an RTO. Will the commission be flexible under its order and allow the existing regional planning processes in the West to address the transmission needs of all their utilities and customers?

Mr. WELLINGHOFF. Those regional entities that are conducting that planning are certainly open to do that, yes.

Mr. WALDEN. So your order will allow that to continue?

Mr. WELLINGHOFF. I believe so.

Mr. WALDEN. As a westerner, you know that 50 percent of the West is owned by the Federal Government—well, controlled by the Federal Government—and the single greatest obstacle to building transmission in the West is the difficulty of doing so on Federal lands. What can FERC do to overcome this obstacle? Because a lot of these lines these companies are looking at putting in, they are just saying I am not even going to waste my time going over here on the Federal ground. It is just too difficult, cumbersome to litigate it. So then they try and take it on the private ground, which of course causes a few issues with farmers who are having to give up a couple hundred feet on each side of this big lines of prime farm ground or they try and run it right in front of the Oregon Trail Interpretative Center windows. Can you give us some help here? Is the Administration open to doing anything to help on the Federal land to expedite the issues we face there on siting?

By the way, I am hearing the same thing on the fiber side with the BTOP grants. I met with a recipient of one of the grants to build out fiber, and it is the Forest Service and the permitting process and it is this and it is that. It seems like every intersection of the Federal Government becomes more dangerous and slow and congested.

Ms. AZAR. Congressman, can I answer that?

Mr. WALDEN. You may.

Ms. AZAR. Wonderful. And thank you for the question because we have set up a rapid response team for transmission which is precisely addressing that issue, which is to make the Federal permitting process for transmission lines much more expedited, and the application of the statutes are still going to happen but we can do it better, we can do it faster, and we are going to.

Mr. WALDEN. All right. So if we have specific instances, we could contact you and—

Ms. AZAR. Absolutely. I can give you my cell phone.

Mr. WALDEN. Excellent. Thank you.

As a practical matter, utilities in the Pacific Northwest need to coordinate interregional transmission planning with the Bonneville Power Administration, a non-jurisdictional Federal entity. Does FERC anticipate that BPA will fully participate in the interregional planning process under Order 1000?

Mr. WELLINGHOFF. Certainly, they are encouraged to do so. I can't speak for Steve Wright or what BPA will actually do but they are certainly encouraged to do so, and we would hope they would.

Mr. WALDEN. And will transmission projects that are taken through a regional or interregional cost allocation process be given special consideration by FERC for incentive rates?

Mr. WELLINGHOFF. We have a pending incentive rate docket open right now. I can't say one way or the other.

Mr. WALDEN. OK. I have no bonus question for this round. Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. WHITFIELD. Thank you. Mr. Rush, I understand you have one additional question for Ms. Azar.

Mr. RUSH. Yes, and I want to thank you, Mr. Chairman, for your consideration.

Ms. Azar, are you familiar with the two plants in Illinois that will be shutting down? I have been told that the two plants are 70 years old, have run sporadically over the last few years because they are the least efficient in Ameren's fleet and do not produce electricity cheap enough to sell in a weak power market. So do you agree that that is the real reason that they are shutting down?

Ms. AZAR. Ranking Member Rush, plants shut down all of the time, and a number of plants right now are being mothballed or there are folks waiting for the phone to ring and the phone doesn't ring because they are not economic. Ironically, it is oftentimes the owners of those very uneconomic plants that don't want transmission to be built, and the reason for that is, they can't compete in a competitive market. So as a consequence, you may hear it in terms of oh, the cost-benefit analysis can't be done appropriately or, you know, they are going to be socializing the costs. The bottom line is, if you really want real competition, some of these guys don't want it because they are going to lose, and, you know, I can't speak to the two plants in Illinois. I don't know them. You know, my home State is Wisconsin. I can tell you when I was a commissioner, we took a very hard look at some of the plants that needed to be shut down because they were uneconomic.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. WHITFIELD. OK. That concludes the first panel. We thank you all again for being with us, and at this time I would like to call up the witnesses on the second panel. We have with us the Honorable Greg White, who is the Commissioner with the Michigan Public Service Commission. We have the Honorable Philip Jones, who is a Commissioner with the Washington Utilities and Transportation Commission. We have Mr. John DiStasio, General Manager and CEO of Sacramento Municipal Utility District, who is here on behalf of the Large Public Power Council. We have Mr. Steven Transeth, who is the Principal with Transeth and Associates, who is testifying on behalf of the Coalition for Fair Transmission Policy. We have Mr. Nicholas Brown, who is President and

CEO of Southwest Power Pool, and we have Mr. Joseph Welch, who is Chairman, President and CEO of ITC Holdings Corporation.

So I want to welcome all of you. We appreciate your joining us this morning and we look forward to your testimony and the information that you will provide.

Each one of you will be given 5 minutes to make an opening statement, and so Mr. White, we will call upon you to begin. You are recognized for 5 minutes.

STATEMENTS OF GREG WHITE, COMMISSIONER, MICHIGAN PUBLIC SERVICE COMMISSION; PHILIP B. JONES, COMMISSIONER, WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION; JOHN DISTASIO, GENERAL MANAGER AND CHIEF EXECUTIVE OFFICER, SACRAMENTO MUNICIPAL UTILITY DISTRICT, ON BEHALF OF LARGE PUBLIC POWER COUNCIL; STEVEN A. TRANSETH, PRINCIPAL, TRANSETH AND ASSOCIATES, PLLC, ON BEHALF OF COALITION FOR FAIR TRANSMISSION POLICY; NICHOLAS A. BROWN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SOUTHWEST POWER POOL, INC.; AND JOSEPH WELCH, CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, ITC HOLDINGS CORPORATION

STATEMENT OF GREG WHITE

Mr. WHITE. Thank you very much. Chairman Whitfield, Ranking Member Rush and members of the subcommittee, thank you for inviting me to testify regarding issues of critical importance to the citizens of Michigan. I am grateful to have this opportunity to present the views that the Michigan Public Service Commission has expressed concerning the issues surrounding cost allocation proposals for transmission projects and the Federal Energy Regulatory Commission, FERC Order No. 1000 and the impacts to State planning processes.

Let me begin by emphasizing our recognition of the importance of the development of strategic transmission resources as critical to the further development of markets and the reliable operations of the Nation's transmission system. My State has committed thousands of hours in staff time and in commissioner time working in various regional planning processes. We are in the MISO, Midwest Independent System Operator, RTO. We are also in the PJM RTO, Pennsylvania, Jersey, Maryland, and we have committed again thousands of hours of staff and commission time.

My testimony today can really be boiled down simply to the concern that the allocation of costs to utility customers properly reflects the benefits the customers may receive. In other words, the costs allocated must be aligned with the benefits. Under Sections 205 and 206 of the Federal Power Act, the FERC is charged with ensuring that the rates, terms and conditions for transmission of electricity and interstate commerce are just, reasonable and not unduly discriminatory or preferential. This has been interpreted by the FERC and the courts to mean that the costs of transmission facilities must be allocated in a manner that satisfies the cost causation principle that all approved rates reflect to some degree the costs actually caused by the customer who must pay them. The

U.S. Court of Appeals for the 2nd Circuit explained that compliance with this principle is evaluated by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party. The Michigan Commission does not believe that the cost allocation proposals considered in our region satisfy the cost causation principle and we are very concerned that the allocation of costs to Michigan could far exceed any benefits that the State would receive from most of these projects.

In particular, it is important to recognize Michigan's unique peninsular geography and therefore its limited electrical interconnection to the rest of the MISO and PJM transmission system. As a result of geography and limited interconnections, it is likely that Michigan will realize minimal benefits from distant transmission expansion projects constructed in other States. However, on the basis of electric load, Michigan will be exposed to a disproportionate share of approximately 20 percent or more of all of these costs. It is clear that my State will not benefit from the construction of all transmission lines in the Midwest or that Michigan receives benefits that are commensurate with such allocation of costs.

The Michigan Commission's concern with FERC Order 1000 is again that the method used for determining the allocation of costs for these transmission projects selected to fulfill interregional planning is just and reasonable and reflective of the benefits that would be ascribed to Michigan's unique circumstances. In addition, the Michigan Commission believes individual transmission projects should be periodically reviewed in order to enable the FERC to strike an appropriate balance between consumer and investor interests.

The final item I would like to bring up, my testimony was filed at 10 a.m. on Tuesday morning. At about 1 p.m. on Tuesday afternoon, the announcement came out that the DOE had elected not to designate the FERC with the responsibilities for the national corridor designation, and so I would just like to point out that the announcement in that joint statement between the DOE and the FERC, we view that as a positive development. While the details of this proposal will be critical, we appreciate that Energy Secretary Chu has given strong weight to the concerns raised by the States and numerous other parties. State public service commissioners understand as much, if not more, than anyone else about the importance of modernizing our Nation's electrical system. We are working across State boundaries to ensure that needed transmission is built in a timely manner to benefit all customers and consumers and that everybody has a voice.

So this is a welcome development and we look forward to working with the Department of the Energy and the FERC.

[The prepared statement of Mr. White follows:]

**Summary Statement of Honorable Greg R. White
Commissioner, Michigan Public Service Commission**

**Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives**

**Legislative Hearing On:
The American Energy Initiative: Electric Transmission Issues, Including Topics
Related to the Siting, Planning, and Allocation of Costs for Electricity Transmission
Infrastructure**

October 13, 2011

In Summary, the Michigan Commission Believes:

1. That the Midwest Independent Transmission System Operator's (MISO) Multi-Value Projects (MVP) cost allocation proposal does not satisfy the "cost causation" principle and the Michigan Public Service Commission is very concerned that the allocation of costs to Michigan may far exceed any benefits that could be derived from this proposal. In addition, a portion of the costs from projects with distinctly local benefits should be ascribed to the local area where the benefits are realized.
2. That Federal Energy Regulatory Commission (FERC) Order No. 1000 appropriately acknowledges the need to develop transmission planning protocols in areas not currently participating in regional transmission planning processes and to expand the planning process to include public policy-drivers, however the cost allocation of projects included in those regional plans needs to be fairly assigned to those that benefit, including inter-regional beneficiaries.
3. The Department of Energy (DOE) proposal to delegate to FERC the authority to identify and designate National Interest Electric Transmission Corridors (NIETC) will result in duplicative efforts and inefficiencies, especially in regions already participating in the Regional Transmission Organization (RTO) transmission planning functions and especially in light of the FERC Order No. 1000 planning protocols. In addition, state law recognizing siting authority must be recognized and differentiated from federal authority.

**Testimony of Honorable Greg R. White
Commissioner, Michigan Public Service Commission**

**Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives**

Legislative Hearing On:

**The American Energy Initiative: Electric Transmission Issues, Including Topics
Related to the Siting, Planning, and Allocation of Costs for Electricity Transmission
Infrastructure**

October 13, 2011

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee, thank you for inviting me to testify today regarding issues of critical importance to the citizens of Michigan. I am grateful to have this opportunity to present the views that the Michigan Public Service Commission (Michigan Commission) has expressed concerning the Midwest Independent Transmission System Operator's (MISO) cost allocation proposal for Multi-Value Projects (MVPs), Federal Energy Regulatory Commission's (FERC) Order No. 1000 impacts to state planning processes, and the Department of Energy's (DOE) proposal to delegate to FERC the authority to identify and designate National Interest Electric Transmission Corridors (NIETC).

MISO MVP Cost Allocation Proposal

Under sections 205 and 206 of the Federal Power Act, the FERC is charged with ensuring that the rates, terms, and conditions for transmission of electricity in interstate commerce are just, reasonable, and not unduly discriminatory or preferential. In interpreting this statutory requirement, the FERC and the Courts have found that the costs of transmission facilities must be allocated in a manner that satisfies the "cost causation"

principle that "all approved rates reflect to some degree the costs actually caused by the customer who must pay them." The U.S. Court of Appeals for the Seventh Circuit explained that compliance with this principle is evaluated by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.

The Michigan Commission does not believe that the MISO's MVP cost allocation proposal satisfies the cost causation principle and is very concerned that the allocation of costs to Michigan could far exceed any benefits that the State would receive from MVP projects. In particular, it is important to recognize Michigan's unique peninsular geography and therefore its limited electrical connection to the rest of the MISO transmission system. As a result of geography and the limited interconnections, it is likely that Michigan will realize minimal benefits from distant transmission expansion projects constructed in the other twelve MISO states. However, on the basis of electric load, Michigan will be exposed to a disproportionate share of approximately 20% or more of all MISO's MVP costs. It is clear that our state will not benefit generally from the construction of all transmission lines in MISO or that Michigan receives benefits that are commensurate with such an allocation of costs. In addition, Michigan has enacted Renewable Portfolio Standards, 2008 PA 295; MCL 460.1021 et seq., that provide a comprehensive roadmap for both the development of renewable resources within the state and the transmission upgrades needed to accommodate these demands. Development of these in-state renewable energy projects substantially undermine any claim that Michigan will receive a benefit from the construction of MISO MVP transmission projects intended to transmit electricity from new renewable energy projects in other states.

The Michigan Commission believes the MISO MVP cost allocation proposal could unfairly burden Michigan citizens with costs that do not reflect the disproportionately small share benefits that Michigan residents and businesses will derive from MVP projects as a result of our unique circumstances. To accomplish the intent of the Seventh Circuit, the Michigan Commission believes that steps must be taken to determine whether there are any regions or pricing zones that receive minimal benefit from the proposed MVP project. In such regions or pricing zones where disparity exists, the Michigan Commission believes that, subject to an appropriate implementation of FERC Order No. 1000, there should be an allocation of little or no costs.

FERC Order No. 1000

The new rule, described as the latest evolution in FERC's reform of electric transmission planning and cost allocation, builds upon FERC's Order No. 890 by requiring regional transmission planning and a fair allocation of costs among the beneficiaries associated with those transmission projects chosen to meet regional planning needs. FERC's Order No. 1000 expands the Order No. 890 regional transmission planning requirements by, among other things, requiring coordinated planning between neighboring planning regions and the inclusion of public policy considerations in the planning process.

The Organization of MISO States (OMS), including the Michigan Commission, supports FERC's effort to induce more inter-regional transmission planning efforts that will enhance coordination, accountability and oversight between Regional Transmission Organization (RTO) regions and which will also include non-RTO stakeholder

consideration and participation in inter-regional planning processes. The Michigan Commission also supports FERC's inclusion of public policy-driven projects as a category of transmission projects that can be considered in the regional transmission planning process, as transmission planning should respond to all forms of identified and verified transmission needs in a region.

The Michigan Commission's concern with FERC Order No. 1000 is, again, that the method used for determining the allocation of costs for these transmission projects selected to fulfill inter-regional planning is just and reasonable, and reflective of the benefits that would be ascribed to Michigan's unique circumstance. In addition, the Michigan Commission believes individual transmission projects should be periodically reviewed in order to enable the FERC to strike an appropriate balance between consumer and investor interests.

DOE Delegation to FERC of the Authority to Identify and Designate National Interest Electric Transmission Corridors (NIETC)

The Michigan Commission shares the DOE's vision that an efficient, reliable electric transmission grid is critical to the economy and security of the United States. However we believe that DOE's proposal to delegate to FERC the authority to identify and designate NIETC's in which federal backstop siting authority would apply, would cause duplication in transmission planning functions and result in inefficiencies, particularly in markets currently served by RTO's where most transmission planning is already coordinated.

Moreover, because this plan anticipates developers filing with the States and FERC at the same time, this will result in due process concerns, “forum shopping,” and lead to a compromised State siting process. If the NIETC applications are initiated at FERC on a project-specific basis, and a State is simultaneously reviewing a siting application for the same line, the relevant State authority will likely be precluded under procedural rules from participating in the [federal] docket.

The Michigan Commission believes that the DOE’s delegation proposal should be limited to areas where there is a demonstrated need - perhaps such as those geographic regions that do not have RTOs and where FERC finds that such areas have been unable to develop the effective inter-regional transmission planning protocols envisioned by FERC Order No. 1000. In addition, the Michigan Commission believes the DOE should recognize regional planning functions currently in place and differentiate these functions at the federal level from state planning processes and defer to state siting authority in these instances.

In Summary, the Michigan Commission Believes:

1. That the MISO’s MVP cost allocation proposal does not satisfy the “cost causation” principle and the Michigan Commission is very concerned that the allocation of costs to Michigan could far exceed any benefits that could be derived from this proposal. In addition, a portion of the costs from projects with distinctly local benefits should be ascribed to the local area where the benefits are realized.

2. That FERC Order No. 1000 appropriately acknowledges the need to develop transmission planning protocols in areas not currently participating in regional transmission planning processes and to expand the planning process to include public policy-drivers, however the cost allocation of projects included in those regional plans needs to be fairly assigned to those that benefit, including inter-regional beneficiaries.
3. The DOE proposal to delegate to FERC the authority to identify and designate NIETCs will result in duplicative efforts and inefficiencies, especially in regions already participating in RTO transmission planning functions and especially in light of the FERC Order No. 1000 planning protocols. In addition, state law recognizing siting authority must be recognized and differentiated from federal authority.

Mr. WHITFIELD. Thank you.

Mr. RUSH. Mr. Chairman?

Mr. WHITFIELD. Yes.

Mr. RUSH. Mr. Chairman, before we go to the next witnesses, I have a UC request. Mr. Chairman, Ms. Matsui is not on the subcommittee but she is interested in asking questions of this second panel, and one of her constituents will be testifying, so my unanimous consent request is that Representative Matsui be allowed to participate in the questioning of witnesses.

Mr. WHITFIELD. Well, without objection, and of course, we have the rule of the committee that she will have to wait until all the members of subcommittee ask their questions, and we would be happy to do that.

Mr. RUSH. She will comply with that.

Mr. WHITFIELD. Thank you, sir.

Mr. Jones, you are recognized for 5 minutes.

STATEMENT OF PHILIP B. JONES

Mr. JONES. Thank you. Chairman Whitfield, Ranking Member Rush. Former Ranking Emeritus Chairman Dingell, good to see you again. Members of the subcommittee, I appreciate the opportunity to testify today on Federal transmission issues and transmission issues affecting the Western Interconnection in general which have been mentioned in the previous panel and the Pacific Northwest region and my State in particular.

During my 6 years as a commissioner, I have been active in energy issues in the Western Interconnection and as a member of the Committee on Regional Electric Power Cooperation in the West, an entity which I describe in my testimony which has a long history of 3 decades of voluntarily cooperating to enhance electric power cooperation in the West.

In my testimony, I include a map of the NERC interconnections. You may want to look at that. Representative Gardner, there have been some questions about regions and NERC and electric reliability regions, planning regions and other regions. It is a complicated area and each kind of reliability and economic and this new Order 890 have created new planning entities and they are all a little bit different. But I think the bedrock of the planning is the reliability organizations that are governed by NERC.

As I said, this CREPC, this Committee on Regional Electric Power Cooperation, has been active in the West for years. It is voluntary. We think we are doing a good job in the West because outside of California and the Cal ISO we are generally what we call a vertically integrated market where the generation and transmission is owned by the same utility. The western region has been planning for renewable energy generation and integrating that into the grid. The WREZ, the Western Renewable Energy Zones, which I describe in my testimony, have been active for years. We have been working on integrating that renewable energy into the grid, and we commend the DOE and the FERC, both commissioners and staff, attend our meetings. And now of course, we have the interconnection-wide-funded effort by DOE to look at the interconnection-wide efforts, so there is a maze of acronyms, there is a maze

of planning entities, and I would be happy to clarify on questions what they all do.

The role of Bonneville as was described earlier, and maybe if Congressman Walden comes back we can get into that more, that is critical in our region. Bonneville owns 75 percent of the high-voltage system in our region but under Bonneville we have two what we call sub-regional groups, ColumbiaGrid and the Northern Tier Transmission Group, what we call NTTG, and these have been engaged in planning for the region since actually Order 890, so again, this is not new. Order 890 required even Colorado and all the regions of the country to start planning.

The other development is WECC. This is what I showed you on reliability. Our reliability organization came out with a 10-year plan just 2 weeks ago for transmission. The bottom-line summary conclusion of that was no new transmission in the WECC region is needed by 2020 either to meet demand or to meet RPS needs. So again, transmission, as you know, can be driven by reliability issues, RPS needs or load. The WECC study indicated that no new transmission is needed. However, they are now conducting a 20-year plan to look at the needs way into the 2030 time frame and that investigation is underway now.

A couple more points on Order 1000 and siting. Order 1000, I think, has struck a good balance, as Chairman Wellinghoff said, between regional deference and the Federal needs. He listened to us. We all submitted a lot of comments, and I think the FERC listened. Yes, on some issues like cost allocation, I would argue that FERC punted. FERC punted some of the issues down the road. There is nothing wrong with that. We live in a federalist system. So these cost allocation systems are going to be critical. One is in our region. Our region is participant funding, bilateral deals. We are not in an RTO region so participant funding is mentioned in Order 1000 as a possible way of funding transmission but you cannot use it for regional cost allocation mechanism. It has to be different than participant funding. But in my view, the order is a little bit fuzzy on the difference between participant funding by the transmission provider and whatever the new interregional cost allocation system is going to be, let us say between PJM and MISO. This is all to be worked out.

The siting issues, just let me say a word on that. The States obviously felt very strongly about that. As many of you know, we weighed in quite strongly in—how should I put this—in opposition to the chairman's proposal on delegation of authority under Section 216. We think there are a number of reasons for doing that. I think it is kind of in the past now. But we are grateful for that decision but I can assure you on behalf of NARUC and member States in the West that we look forward to working with both the chairman and Lauren Azar on trying to get some of this stuff sited. The big issue in the West is Federal agencies. As Congressman Walden said, whether it is BLM or the Forest Service, transmission projects in the West are being held up by Federal siting delays.

So Mr. Chairman, with those remarks, thank you.

[The prepared statement of Mr. Jones follows.]

Testimony of
Philip B. Jones, Commissioner
of the
Washington Utilities and Transportation Commission
before the
Energy and Power Subcommittee of the United States House of Representatives
Committee on Energy and Commerce
Hearing on
The American Energy Initiative: Electric Transmission Issues

October 13, 2011



Washington Utilities and Transportation Commission

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Summary:

For the past 27 years, Western States and Canadian Provinces in the Western Interconnection have shared information and addressed challenges in the Western Interconnection through our Committee on Regional Electric Power Cooperation (CREPC). CREPC includes the public utility commissions and Governors' and Premiers' energy agencies in the Western Interconnection.

The West has extensive transmission planning currently underway through CREPC, the Western Renewable Energy Zone project, and the first-ever 10-year interconnection-wide transmission plan, released by the Western Electricity Coordinating Council (WECC) on September 22. In addition, WECC, with the guidance of states, provinces and other stakeholders, has begun work on a second 10-year plan and a first-ever 20-year transmission plan for the interconnection. These plans are examining transmission needs for a wide range of future energy scenarios and will be completed by 2013.

These efforts have promoted an increasingly robust interconnection and sub-regional transmission expansion planning processes in the West.

How FERC implements Order 1000 can aid the West further down its successful path of transmission building. However, there is potential for the implementation to be at odds with the progress the West has made. Among the key issues to be resolved are:

- Will Order 1000 reshape the boundaries of sub-regional planning efforts underway?
- How will these sub-regions be governed and what is the role of states?
- What types of plans will sub-regions be required to develop?
- How will the sub-regions address cost allocation?
- How will the progress made in the Pacific Northwest to involve non-jurisdictional utilities in the planning and cost allocation process be preserved and strengthened?

Order 1000 falls short of demonstrating why the current method of financing transmission expansion in the West is not working and thereby needs to be revised with new cost allocation procedures. What transmission does FERC think is needed in the West that is not already being planned and built? Is any transmission identified as needed not being built because of an inability to get cost recovery? Or, are lines not being built because of a lack of demand for the power they would carry? Further, are permitting problems prohibiting lines from being built?

The Secretary of Energy made the appropriate decision in choosing to not delegate some of its responsibilities under Section 216 to FERC.

Federal agencies should continue to concentrate on streamlining the permitting of transmission across federal lands.

INTRODUCTION

Chairman Whitfield, Ranking Member Rush, and members of the subcommittee, I appreciate the opportunity to testify today on federal transmission issues and transmission issues affecting the Western Interconnection, in general, and the Pacific Northwest region and, in particular, the State of Washington.

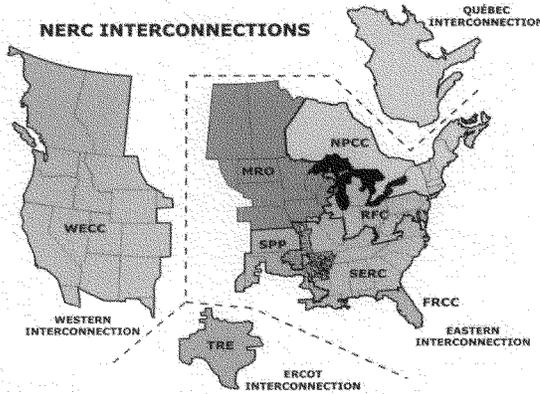
My name is Phil Jones. I have been a Commissioner with the Washington Utilities and Transportation Commission since 2005. Currently, I am the Second Vice President of the National Association of Regulatory Utility Commissioners (NARUC), Co-Chair of NARUC's Washington Action Committee, and a member of the Board of Directors of the National Regulatory Research Institute (NRRI).

During my six-plus years as a Commissioner, I have been active in energy issues involving the Western Interconnection as a member of the Committee on Regional Power Cooperation (CREPC), an entity that I describe below, which has a long history of nearly three decades in enhancing electric power collaboration in the West, which includes the two Western Canadian provinces.

Western Interconnection Perspective:

For the past 27 years, Western States and Canadian Provinces in the Western Interconnection have shared information and addressed challenges in the Western Interconnection through our Committee on Regional Electric

Power Cooperation (CREPC). CREPC includes the public utility commissions and Governors' and Premiers' energy agencies in the Western Interconnection. Over the years, CREPC has provided valuable advice and suggestions on interconnection-wide modeling to the Western Electricity Coordinating Council (WECC) of the transmission providers, and specifically to the Transmission Expansion Planning Committee, or TEPPC. In addition, in 2006, Western Governors launched a Western Renewable Energy Zone project to identify renewable energy zones in the West and transmission necessary to access those areas. (See attachment for a map of the renewable energy zones.) More recently, in 2009, DOE awarded funds to the states and provinces and to the industry to accelerate interconnection-wide planning in the West and other interconnections.



These efforts have created increasingly robust interconnection and sub-regional transmission expansion planning processes in the West. As a native of Spokane, Washington, the eastern part of the state, I am most familiar with the robust transmission planning processes ongoing in the Pacific Northwest.

The transmission of the Bonneville Power Administration (BPA) is the backbone for delivering electricity throughout the Northwest region. It operates in four states; Washington, Oregon, Idaho, and Montana, and provides approximately 75 percent of the region's high voltage transmission capacity. BPA transmission includes the integration and transmission of electric power from federal and non-federal generating units, the provision of service to its customers, supporting inter-regional interconnections, and maintaining electrical reliability and stability throughout its service territory. On a regular basis, BPA assess its system requirements to determine whether new transmission is required with this 4-state region. If a need is identified, BPA engages regional utilities and other stakeholders in the vetting of proposed projects to determine the most effective means of servicing the entire region's needs. Over the years, BPA has built up robust and deep interconnections and commercial ties on a north-south axis with our neighboring regions to the north and south: namely, with the transmission providers in British Columbia and Alberta, and with the utilities and RTO in California (CA-ISO) and the Desert Southwest.

In addition, Pacific Northwest utilities, including BPA, have formed two transmission planning organizations: ColumbiaGrid and the Northern Tier Transmission Group (NTTG). These organizations operate to improve the operational efficiency, reliability, and planned expansion

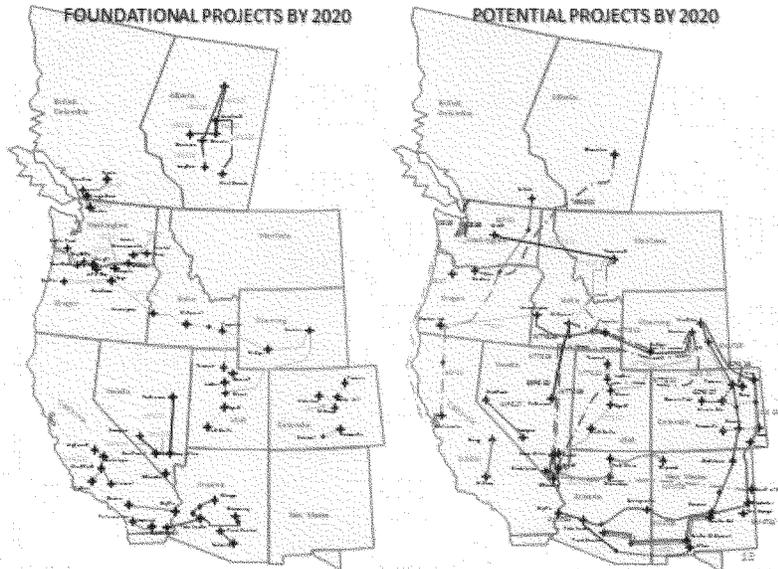
of the transmission grid in our region (in WECC parlance, these are called sub-regional groups, or SPGs). Their members represent private and large publicly owned utilities operating in the Northwest states, California, Utah, and Wyoming. Their transmission and system planning objectives and analysis feed into the planning processes conducted by BPA and the WECC.

I now turn to the efforts of the Western region to plan for future transmission development. In accordance with FERC Order 890 and the interests of Western states and provinces, the region's utilities engaged in open and transparent planning processes for the purpose of examining the need for new transmission investment throughout the Western Interconnection. These processes have generated a number of detailed transmission planning studies at a sub-regional level by Columbia Grid and NTTG, as described above.

On September 22, 2011, after a significant amount of studies, modeling, and stakeholder involvement, WECC released the first-ever 10-year interconnection-wide transmission plan.¹ Moreover, WECC, with the guidance of states, provinces and other stakeholders, has begun work on a second 10-year plan and a first-ever 20-year transmission plan for the interconnection. These plans are examining transmission needs for a wide range of future energy scenarios and will be completed by 2013.

WECC's first 10-year plan indicated that no new major transmission is needed by 2020 to meet demand and state policy objectives (e.g., Renewable Portfolio Standards) beyond the "foundational" projects already under development are energized by 2020, as expected.

¹ WECC is the reliability organization in the Western Interconnection. Its transmission study can be found at www.wecc.biz/library/StudyReport/Wiki%20Pages/Home.aspx

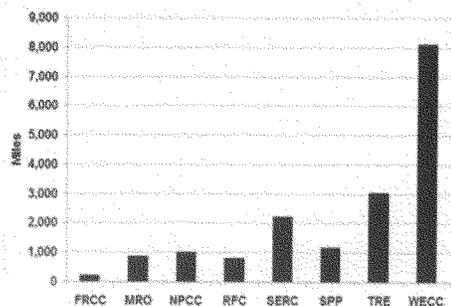


The map on the left shows the 44 foundational projects covering 5,000 miles of new transmission. The map on the right shows the many other proposed and potential transmission projects. Due to a lack of demand for the power that the proposed lines could carry, not all of these potential projects will be built.

Data from the Federal Energy Regulatory Commission (FERC), shown in the chart below, confirm the rapid pace of transmission development in the Western Interconnection. The chart also confirms that the historical method of paying for transmission in the West, i.e., voluntary agreements among the beneficiaries of a line, has worked and is continuing to work to build needed infrastructure.

Finally, the WECC 10-year plan includes many suggested improvements for future plans, demonstrating that planning in the West is continuing to evolve. The WECC planning combined with the sub-regional planning constitutes the roadmap for future transmission planning in the West.

Projected Investment Costs of Transmission Projects with a Proposed In-Service Date by July 2013



FERC August 22, 2011

FERC Order 1000:

Concomitant with the steady progress being made in the West, in July 2011, FERC issued Order 1000. There are a number of implementation details yet to be determined. How FERC's implements its Order can aid the West further down its successful path of transmission building. However, there is potential for the implementation to be at odds with the progress the West has made. Among the key issues to be resolved are:

- Will Order 1000 reshape the boundaries of sub-regional planning efforts underway?
- How will these sub-regions be governed and what is the role of states?
- What types of plans will sub-regions be required to develop?
- How will the sub-regions address cost allocation?

- How will the progress made in the Pacific Northwest to involve non-jurisdictional utilities in the planning and cost allocation process be preserved and strengthened?

Under the aegis of CREPC, Western States and Provinces are meeting with FERC and the industry later this month to begin to address these issues.

Given the extensive transmission planning currently underway in the West, I am optimistic that Western utilities will be able to meet the planning requirements in Order 1000 and achieve the needed cooperation across the Western Interconnection. Indeed, in Order 1000, FERC expressed some deference to these existing planning processes, and FERC staff, as well as Chairman Wellinghoff personally, has been monitoring the progress of these regional planning efforts.

Implementation of the cost allocation requirements in Order 1000 may be more challenging. In its proposed Order, FERC was critical of the existing “participant funding” method of allocating costs of transmission. That criticism continued in the final Order, though FERC acknowledged that while “participant funding” may be permitted, it cannot be the default mechanism used by the regions under Order 1000. The Order still falls short of demonstrating why the current method of financing transmission expansion in the West is not working and thereby needs to be revised with new cost allocation procedures. What transmission does FERC think is needed in the West that is not already being planned and built? Is any transmission identified as needed not being built because of an inability to get cost recovery? Or, are lines not being built because of a lack of demand for the power they would carry? Further, are permitting problems prohibiting lines from being built?

In Order 1000, FERC deferred many of the hard decisions on the details of cost-allocation methodologies. While articulating a number of broad principles, it left it to the regions to work out the details in plans that will be subject to subsequent FERC review. So, the hard work on this issue is yet to come; and I hope that meetings, such as the CREPC meeting later this month, can help smooth the way to those future decisions. This is very much a work in progress, and I urge this Subcommittee to monitor that progress.

Delegation of Section 216 responsibilities from DOE to FERC:

We heard earlier this week that the Secretary of Energy has decided to work more closely with FERC in reviewing transmission projects rather than delegating some of DOE's functions to FERC. The Secretary had been considering transferring responsibilities for studying transmission congestion and identifying National Interest Electric Transmission Corridors, or NIETC's, from DOE to the Commission. As you know, most of the corridor designation work was required under EPACT 2005, and while much of that work was done over several years until 2009 or so, we haven't observed much activity by our federal counterparts in recent years. We do, however, appreciate the outreach activities that all FERC Commissioners and DOE staff have carried out with Western states on the previous corridor designations, congestion studies, and in general transmission planning.

In comments to Secretary Chu, the Washington Utilities and Transportation Commission, as well as many other PUCs in the West and nationally, opposed the proposed delegation. The WUTC doesn't have statutory authority over the siting of transmission facilities in our state; instead, that is delegated to a state-wide siting agency called the Energy Facilities

Siting Council (EFSEC), with whom we work closely. Western states believed that a delegation at this time would be counterproductive in reaching the mutually held goal of expeditiously permitting needed transmission in the West. In the West, it has historically been federal agencies, not states that have been the major obstacle to permitting transmission. Western states urged Secretary Chu to focus on the promising concept of a Rapid Response Team to improve federal agency permitting and to coordinate federal agency efforts with the generally more expeditious state permitting processes. Western Governors sent a similar message to the Secretary. We are pleased with the decision the Secretary announced on Tuesday, and look forward to working with both the DOE and the FERC on the issues identified in their joint public statement.

Similar to the concerns raised on cost allocation under Order 1000, Western states also urged that federal agencies develop a statement of the problems in the Western and Eastern Interconnections that they are trying to address. The problem statement supporting any delegation should be supported by factual information that has been confirmed with stakeholders.

Regarding the potential impact on our state and region of these two proposals, I think it is premature to speculate at this juncture. The issue of non-jurisdictional transmission providers in Order 1000, such as BPA, is a difficult legal and policy issue that involves the reciprocity provisions in its pro forma OATT filed with FERC. While I cannot speak with authority on that subject, I can state that Bonneville is not only planning, but also building at least three important transmission projects in our region that strengthen the interconnection,

relieve congestion, and enable the integration of large amounts of wind projects in its balancing authority. In addition, the other large transmission provider in the footprint of NTTG and ColumbiaGrid is Pacific Power, owned by Mid-American Energy Holdings, which operates a substantial bulk transmission system in the Rocky Mountain and Pacific Northwest regions. They are committed to and building out the important Gateway West projects, which were announced several years ago. From what I understand, most of the permitting work with local governments is proceeding largely on schedule in the five states in which Pacific Power operates, but the slow progress in receiving permits from federal agencies has been a major impediment.

Conclusion:

In conclusion, in the Western Interconnection:

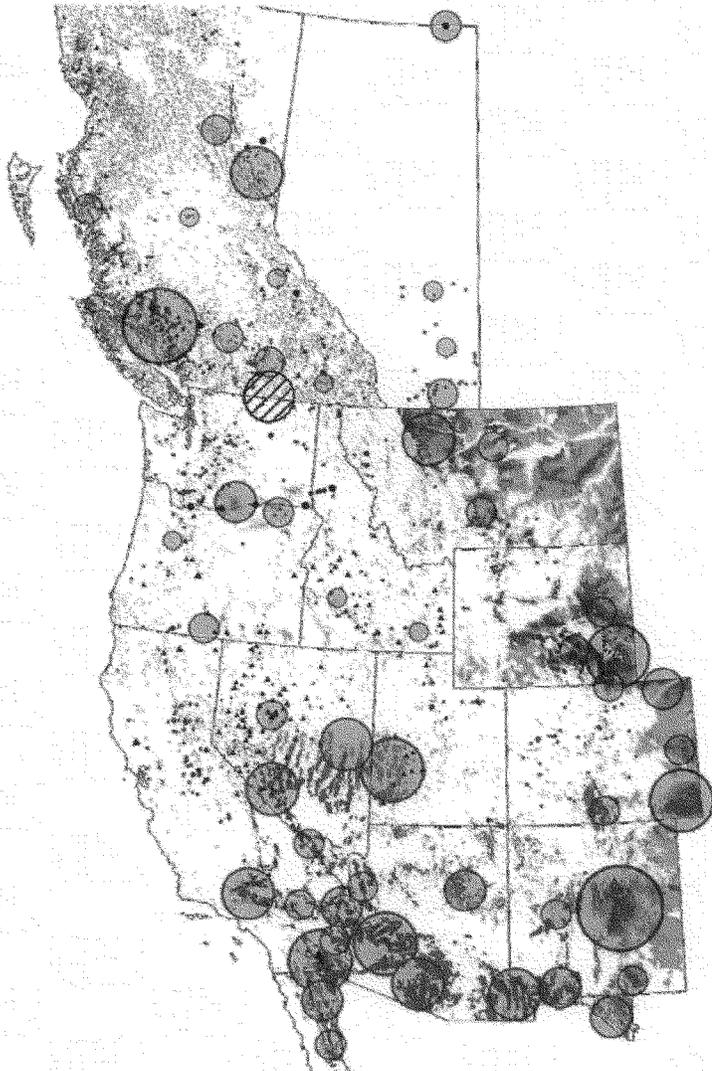
- Sub-regional and interconnection-wide transmission planning are increasingly robust and are developing information on the transmission needs in the West.
- Transmission planning in the West is transparent and open, as required by FERC Orders.
- Substantial transmission is getting built in the Western Interconnection.
- Depending on its implementation, FERC Order 1000 can support the transmission building path the West is on, but has the risk of working cross-wise with the West's efforts.
- FERC has not demonstrated why new cost allocation procedures are needed to supplement the proven and successful allocation procedures already in use in the West.

- The Secretary of Energy made the appropriate decision in choosing to not delegate some of its responsibilities under Section 216 to FERC.
- Federal agencies should continue to concentrate on streamlining the permitting of transmission across federal lands.
- The new Rapid Response Teams are a promising development to coordinate permitting actions among federal agencies and with state permitting processes. Your subcommittee should continue to monitor the efforts of these teams.

Thank you for this opportunity to share my view with the Subcommittee.

APPENDIX:

Renewable Energy Zones in the Western Interconnection



Mr. WHITFIELD. Thank you very much.
Mr. DiStasio, you are recognized for 5 minutes.

STATEMENT OF JOHN DISTASIO

Mr. DiSTASIO. Thank you, Mr. Chairman, Ranking Member Rush and members of the subcommittee. Thank you for inviting me to address you today.

My name is John DiStasio. I am the General Manager and Chief Executive Officer of the Sacramento Municipal Utility District, or SMUD, as we are called. SMUD has been powering California's capital region for 65 years. We have a population of 1.4 million customers, and I am testifying on behalf of also the Large Public Power Council. The Large Public Power Council is an association of the Nation's 25 largest municipal and State-owned utilities. LPPC members own approximately 35,000 miles of transmission lines in the United States. We are not-for-profit systems and we are directly accountable to consumers. We are pleased to serve consumers in seven States represented on this subcommittee.

I speak from the perspective of a utility that is among the most aggressive in the Nation in integrating renewable resources into its portfolio and an implementing demand-side management programs. Currently, 24 percent of SMUD's electric supply portfolio is renewable, and we plan for that figure to increase to 37 percent by 2020 and exceeding State mandates.

FERC Order 1000 was designed to encourage greater regional transmission planning and the more efficient construction of new transmission facilities. The planning features of the order and the funding mechanism for the development of new transmission facilities that FERC directs utilities to develop in the planning process have been championed by developers of renewable resources that are located far from customers and require the development of long-line transmission facilities in order to be commercially viable. I am concerned that burdening ongoing planning discussion with debates over allocation of costs will undermine existing planning processes that are actually working fairly well. I am also concerned that the cost allocation mechanism that Order 1000 contemplates will provide a subsidy for remotely located renewable generation.

Speaking for a utility that has invested heavily in local renewable and demand management resources, this subsidy calls for a form of double payment for renewable resources that my customers have already funded. Looking ahead, I am concerned that this subsidy will severely curtail the development of local renewable resources.

I want to note that SMUD and other LPPC members have been active participants in existing regional planning processes. The requirement in Order 1000 that system planners now develop transmission cost allocation mechanisms based on a determination of so-called benefits calls for system planners to make highly subjective judgments. The commission fails to articulate a definition of such benefits, and I am concerned that controversy over the identification and associated allocation of costs will throw a wrench into planning processes that are now functioning effectively.

As to cost allocation, Order 1000 requires that each region of the Nation develop a transmission plan that includes a cost allocation

methodology meeting the commission's specified criteria. Although the order provides the planning region some flexibility in deciding how to allocate costs of new facilities, it clearly prevents planning regions from relying on participant funding. This term describes current practice, which calls for entities that take service over new transmission lines to pay for them.

We are further troubled by language in Order 1000 suggesting that costs may be allocated to entities even where no service relationship exists. This is a significant departure from historical FERC practice, which has always required an entity to agree to take service under a contract or a tariff before charges could be assessed. FERC's proposal seems to me a little bit like a restaurant which charges its customers for a list of items on its menus whether the customers choose to order them or not. In filed comments, we have expressed our belief that the commission lacks legal authority to allow developers to recover costs in this manner. We believe that allocating transmission costs broadly based on claimed benefits will subsidize transmission used to access remote resources. This may result in long, expensive transmission facilities being constructed to access remote resources even where there are no customers with a need to take service over them. We are concerned that this will result in the construction of unnecessary or underutilized facilities, the cost of which would be borne by consumers.

SMUD owns and operates 102 megawatts of wind facilities with plans to more than double that capacity next year. We also operate one of the Nation's largest utility-sponsored solar programs that is going to be approaching megawatts in the next couple of years. These local generation investments have required only interconnection to local transmission. No new transmission lines have been needed to date. We believe that relying on these resources is a more efficient and least expensive way to meet the renewable policy established by our board and our State. These efficiencies will be lost if we are required under Order 1000 to pay for transmission we do not use.

Thank you again for the opportunity to speak with the committee, and I look forward to your questions.

[The prepared statement of Mr. DiStasio follows:]

Summary of Testimony

**Testimony of John DiStasio On behalf of
The Sacramento Municipal Utility District and Large Public Power Council
Before the
U.S. House of Representatives Energy and Commerce Committee
Subcommittee on Energy and Power
Hearing on
“The American Energy Initiative: Electric Transmission Issues”
October 13, 2011**

On behalf of the Sacramento Municipal Utility District and the Large Public Power Council, Mr. DiStasio objects to the rule advanced by FERC in Order No. 1000 requiring the creation of regional transmission plans that would allocate the cost of new transmission development to utilities on the basis of presumed “benefits,” whether or not the utilities to which these costs are allocated use the new facilities. Mr. DiStasio argues that assessing these costs without regard to usage would subsidize generation that is located remotely from utilities, to the detriment of local energy solutions, including local renewable resources and investment in demand management programs and efficiency initiatives. The decision to allocate costs to entities without a service relationship to transmission developers is unprecedented and poor economics that will likely drive utility rates up.

Mr. DiStasio is encouraged to know that the Department of Energy has chosen not to delegate to FERC authority under Federal Power Act section 216 to study transmission congestion and establish National Interest Transmission Corridors. The proposed delegation was unwisely designed to facilitate the siting of transmission facilities for which costs would be allocated regionally under Order No. 1000. Although Mr. DiStasio believes that some additional federal backstop siting authority may be useful where it will facilitate new facilities supported by actual demand, he does not support the retrofit of section 216 in order to site financially unsupported projects under Order 1000.

**Testimony of John DiStasio
On behalf of
The Sacramento Municipal Utility District and
Large Public Power Council**

Before the

**U.S. House of Representatives Energy and Commerce Committee
Subcommittee on Energy and Power**

**Hearing on
“The American Energy Initiative: Electric Transmission Issues”**

October 13, 2011

Good morning Mr. Chairman, Ranking Member Rush, and Members of the Committee.

Thank you for inviting me to provide my testimony on behalf of the Sacramento Municipal Utility District and the Large Public Power Council. I commend this distinguished committee for focusing attention on issues vital to our nation's energy and economic security.

I. INTRODUCTION

My name is John DiStasio and I am the General Manager and Chief Executive Officer of the Sacramento Municipal Utility District (“SMUD”) located in Sacramento, California. SMUD has been supplying electricity to California's capital region since 1946. SMUD serves a population of 1.4 million consumers and has 473 miles of transmission lines and 9,784 miles of distribution lines crossing its 900 square mile service territory.

I am testifying today on behalf of SMUD and the Large Public Power Council ("LPPC").¹ LPPC is an association of 25 of the nation's largest municipal and state-owned utilities. LPPC members own approximately 35,000 miles of transmission, representing nearly 90% of the transmission investment owned by non-Federal public power entities in the United States. LPPC's member systems are located in states and territories representing every region of the country. LPPC utilities are not-for-profit entities that are directly accountable to their customers – the citizens of their respective communities. LPPC's commitment is to provide highly reliable, low cost and environmentally responsible electric service to its customer-owners.

My testimony will address two subjects FERC Order No. 1000², and briefly, proposed delegation of "back-stop" siting authority by the Department of Energy ("DOE") to the Federal Energy Regulatory Commission ("FERC"). As to Order No. 1000, I am concerned that FERC's rule forces transmission planning to be driven inappropriately by regulatory policy instead of economic demand, will likely result in additional and unnecessary costs for our customers, and that the transmission subsidy contemplated by the Order will tilt the market playing field in favor of distant generating resources, and against more efficient resources such as local renewables and demand management resources. With respect to DOE delegation, I understand and am encouraged to know that DOE has chosen not to delegate its authority to FERC.

¹ LPPC's members are Austin Energy, Chelan County Public Utility District No. 1, Clark Public Utilities, Colorado Springs Utilities, CPS Energy (San Antonio), Electricities of North Carolina, Grant County Public Utility District, IID Energy (Imperial Irrigation District), JEA (Jacksonville, FL), Long Island Power Authority, Los Angeles Department of Water and Power, Lower Colorado River Authority, MEAG Power, Nebraska Public Power District, New York Power Authority, Omaha Public Power District, Orlando Utilities Commission, Platte River Power Authority, Puerto Rico Electric Power Authority, Sacramento Municipal Utility District, Salt River Project, Santee Cooper, Seattle City Light, Snohomish County Public Utility District No. 1, and Tacoma Public Utilities.

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 76 Fed. Reg. 49,842 (Aug. 11, 2011), 136 FERC ¶ 61,051 (2011) ("Order," or "Final Rule").

SMUD and LPPC considered the proposed delegation to be unwisely designed to facilitate siting of the very transmission facilities the cost of which my customers may be asked to bear under Order No. 1000.

I speak from the perspective of a utility that is among the most aggressive in the nation in integrating renewable resources into our portfolio and in implementing demand-side management techniques. Currently, over 24% of SMUD's electric supply portfolio is renewable, and we plan for that figure to increase to 37% by 2020. In addition, SMUD is implementing an ambitious smart grid program featuring 615,000 new smart meters in our system. In other words, SMUD shares the perspective of those who believe that we must aim high in implementing programs designed to reduce our dependence on fossil fuels. But I also believe that we must employ our resources as efficiently as possible, and that Order 1000 undermines our effort to invest in local energy solutions.

II. FERC Order No. 1000

Issued on July 21, 2011, FERC Order 1000 was designed to encourage greater regional transmission planning and the construction of new transmission facilities. As to regional planning, SMUD, and LPPC members generally, have been dedicated participants in planning processes previously implemented by the FERC following issuance of Order No. 890.³ We agree that regional planning and interregional coordination is critical in ensuring that transmission facilities necessary to ensure reliability are constructed.

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, order on reh'g, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), order on reh'g, Order No. 890-B, 123 FERC ¶ 61,299 (2008), order on reh'g, Order No. 890-C, 126 FERC ¶ 61,228 (2009), order on clarification, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

To the extent the intent of Order No. 1000 is to advance these goals, SMUD and LPPC are sympathetic and dedicated to cooperating with the Commission. Municipal utilities such as SMUD are exempt from direct regulation by FERC for specific purposes under section 201(f) of the FPA. Nonetheless, we voluntarily participate in the planning processes under FERC Order No. 890, and FERC indicates in Order No. 1000 that it “expects” municipal participation in the new processes. I also expect that we will do all we can to participate in these processes, but want to make sure that our customers bear no unnecessary costs, or sacrifice other goals, such as development of local energy resources.

LPPC members have approached transmission planning from a “bottom up” perspective. In a nutshell, this planning philosophy calls for the evaluation of needs and resources on a local level in the first instance, to be followed by consideration of more distant resources and solutions, including long-line transmission, where necessary. The regional planning process under Order No. 890 assumes appropriately that State and local authorities directly accountable to the citizens that they represent are best suited to make informed choices when confronted with competing priorities during the transmission planning and siting process. This is not to say that regional needs can be ignored. Using my own utility as an example, SMUD coordinates its transmission planning with other transmission providers and stakeholders in Northern California, and the Western Interconnection as a whole.

The significance of the regional coordination outlined above and similar ongoing efforts of other LPPC members across the nation cannot be overstated. These processes result in transmission plans that identify transmission facilities needed to

meet the needs of transmission customers and other stakeholders in the region. Thus, comprehensive transmission planning currently exists, planning studies are being performed, results are being evaluated, and interested stakeholders are actively engaged.

Grafted onto these existing planning programs, Order 1000 requires regions to develop formal regional plans (as opposed to calling for regional planning and coordination). The Commission specifies that these regional plans must include a "cost allocation" mechanism that provides for the recovery of costs on a region-wide basis from all utilities deemed to "benefit" from new transmission projects. The Commission does not specify how such benefits will be defined, nor exactly how the cost of these transmission projects will be recovered. This new approach to "cost allocation" differs from historical practice because it allows a transmission developer to assess costs for new transmission lines to all entities within a region regardless of their demand for such facilities.

My concern with this new approach is two-fold, relating first to the impact on existing planning, and second to the cost implications. As to the impact on current planning processes, I am concerned that mandating development of regional plans which must include cost allocation mechanisms will turn existing planning and coordination into contentious processes that may very well grind to a halt. Like other companies, SMUD participates in regional planning and interregional coordination because we understand that these discussions are mutually beneficial. The ability to exchange information and cooperation in the development of new facilities provides demonstrable benefits to us and to members of our planning region. System planners

involved in these processes are responsible for either seeking contribution to fund facilities they decide they need, or to avoid projects and associated costs they believe are unjustified. I believe requiring such processes to culminate in the development of a plan that provides for the recovery of new transmission projects from all regional participants based on some abstract determination of their "benefits" will likely embroil system planners in counterproductive arguments concerning planning transmission lines that might not benefits to their utilities. I am concerned that forcing our planning discussions to follow the path to cost allocation prescribed by Order 1000 will undermine the cooperative environment in which this work now takes place.

As to the merit of cost allocation proposals Order 1000, I have several concerns. First, I am concerned with the difficulty in defining the "benefits" that the Commission says will justify regional cost allocation. The Commission specifically prohibits what it refers to as "participant funding" in regional cost allocation proposals. Participant funding describes the current practice that calls for entities which take service over new transmission developments to pay for them. It is important to distinguish what is at issue in Order 1000 – the allocation of costs across a region by developers who have no direct service relationship to utilities or their customers – from the allocation of costs by utilities to customers who take service from them. By separating the determination of so-called "benefits" from an assessment of actual use of new transmission facilities, the Commission invites endless debate regarding the definition of benefits. Order 1000 does not define how benefits will be calculated, other than to note that they may include such broad and rather vague notions as reliability, economic, and public policy benefits.

As such, Order 1000 could likely result in transmission charges being assessed to entities for facilities over which they take no transmission service.

In comments LPPC and SMUD filed with FERC, we pointed out that the Commission does not have the legal authority to permit transmission developers to recover costs from entities with which they do not have a contract or service relationship.

Additionally, the allocation of costs based on a determination of apparent benefits regardless of usage (sometimes referred to as "cost socialization") masks the true costs of developing remote resources that require long transmission lines to reach load. By enabling a transmission developer to broadly allocate its transmission costs to all entities within a region regardless of use and based only on a vague benefits test, Order 1000 effectively subsidizes projects that may otherwise be uneconomic. Such a policy removes market discipline, which is critical in ensuring efficient investments are made and creates an environment in which the developer has little to lose if the generation projects for which these long transmission lines are constructed do not ultimately pencil out. I firmly believe that planning and constructing transmission based on a hypothetical set of policy goals instead of demonstrated demand for these facilities is a grave mistake.

Transmission development fueled by speculation of future need carries with it the risk of stranded investments, which imposes even greater financial and environmental costs on consumers. Energy markets are dynamic, especially in the world of renewable resources where a project's environmental value can evaporate overnight due to shifting regulatory policy. For instance, the Bonneville Power Administration (BPA) recently

reported that many of its customers that signed precedent transmission service agreements requiring that they take and pay for transmission service over new facilities upon completion of construction have requested to be released from that obligation. The customers requesting termination of their agreements represents almost 2,000 MW. Wind representatives cited changing regulations limiting the demand for out-of-state renewable resources under the California renewable portfolio standards (RPS), and the fact that most utilities in the northwest have met their RPS requirements through 2020, as the reason for the dramatically decreased demand. Fortunately, in this case, BPA has not yet moved forward with the massive infrastructure builds as they currently stand, and will likely allow the developers to terminate their transmission service agreement rather than risk being saddled with stranded assets, the costs of which would ultimately be borne by BPA ratepayers.

LPPC members support establishing a framework that maximizes the reliable and economic integration of these resources into grid operations. However, the cost allocation policy advanced in Order 1000 is simply not necessary to encourage needed new facilities, and may actually discourage the development of local energy solutions.

Forcing upon all entities within a transmission planning region the substantial cost of constructing transmission to reach remote resources creates sunk costs, and may have the unfortunate effect of diverting scarce resources that would otherwise be used to support non-transmission solutions such as the development of local renewable resources, deployment of smart grid, and the implementation of energy efficiency measures. I note that JEA, an LPPC member, has made significant commitment to solar energy, agreeing to purchase the full output of a 12.7 MW central station solar

photovoltaic plant in Jacksonville, Florida through 2040. Heavy transmission subsidies for other forms of remote renewable energy could have undermined this project, and the nascent solar industry in the Southeast.

Another LPPC member, Snohomish PUD presently has 1 MW of net metered distributed generation within its service territory. That resource has been incentivized directly by Snohomish PUD through cash incentives (\$500/kW with \$2,500 limit) or low-cost loans (\$25,000 limit) to residential customers and provides cash incentives to businesses (\$500/kW with \$10,000 limit) for the installation of qualified solar photovoltaic systems.

My own utility, SMUD, employs a diverse renewable energy supply mix which includes biomass, wind, solar, and small hydro in an effort to reduce its environmental footprint, in accordance with the policies established by our Board of Directors. Of this mix, we own and operate 102 MW of wind facilities, with plans to more than double this capacity by 2012. We also operate one of the nation's largest and most comprehensive utility-sponsored solar electric (photovoltaics) programs. We have over 10 MW of photovoltaics operating in our territory, deployed in more than 1,100 individual sites. We expect to add 100 MW of local solar generation to our portfolio over the next few years. We are also exploring energy storage options, such as pumped hydropower storage, and demand response measures to help manage the impacts that these resources will have on our system operations. Almost all of these projects are either within our service territory or within 30 miles of it, and have required only interconnection and local transmission upgrades, which SMUD intends to fund without

reliance on any Order 1000 process. No new transmission lines have been required to date.

Additionally, California's Governor Jerry Brown earlier this year released his Clean Energy Jobs Plan, which focuses on creating local jobs through renewable energy and efficiency. This plan calls for the development of 12,000 MW of on-site or small energy systems by 2020. At the same time, California strictly limits the extent that a utility may purchase out-of-state resources to meet California's aggressive RPS goal of meeting 33% of its energy needs by 2020.

The types of projects and policies outlined above impact customers rates. When these investments were made it was beyond contemplation that the customers in these regions may be required by federal policy to pay for remote facilities that they will never use. State and local policy makers are best situated to determine which resource mix will most economically meet their unique regional needs, and whether the costs of any particular project are outweighed by its potential benefits. Broad cost allocation policies skew this analysis by making non-transmission alternatives uneconomic, and with respect to regions that have already committed to meet their regional needs with local resources, threaten to impose yet another set of costs that must ultimately be passed on to consumers with no real benefit.

I should add that as a municipal utility, a company such as SMUD would generally be exempt from an allocation of costs by FERC. Of course, we do pay FERC-regulated transmission rates to the extent we use the service of investor-owned utility systems. One unique feature of Order No. 1000 that changes our exempt status is that FERC now says that our participation in regional planning discussions means that we

necessarily benefit from new regional transmission and must pay these new costs. I do not think that FERC has the legal authority over us to take this action, and I believe that threatening to do so will discourage companies such as SMUD from participating in regional planning as they historically have .

III. DOE Delegation Under FPA Section 216

Turning to the DOE delegation issue, I understand and am encouraged to know that the DOE has chosen not to delegate authority to FERC under section 216 of the Federal Power Act (FPA).

SMUD and LPPC have been concerned that the proposed delegation of authority was unwisely designed to facilitate siting of the very transmission facilities our customers may be asked to pay for under Order No. 1000. I continue to believe that it is inappropriate to retrofit section 216 to force the siting of otherwise uneconomic projects under Order 1000.

Thank you again for the opportunity to speak to you today. I look forward to your questions.

Mr. WHITFIELD. Thank you very much.
Mr. Transeth, you are recognized for 5 minutes.

STATEMENT OF STEVEN A. TRANSETH

Mr. TRANSETH. Good morning, Mr. Chairman, Ranking Member Rush and fellow committee members. It is an honor to appear before you today to talk about this very important issue that faces our country today. My name is Steven Transeth. I am a Principal Partner of the law firm of Transeth and Associates, which provides legal services and consulting services on energy issues. I am a former member of the Michigan Public Service Commission, and I have had over 25 years dealing with energy issues.

I am here today to testify on behalf of the Coalition of Fair Transmission Policy, which is a group of geographically and structurally diverse investor-owned utilities that have joined together for the purpose of promoting legislative and regulatory policies that will lead to a customer-focused development of the Nation's electric transmission system in support of the growing demand for clean generation resources. I would like to also stress the coalition is supportive, as has been stated many times today, in upgrading the grid and improving the grid to make sure that it meets our growing needs as we go forward. However, the coalition does have certain concerns on some of the progress that has been made, especially what has been done under Order 1000.

The coalition believes that the costs of transmission must be allocated proportional to the measurable benefits the customer receives and an accurate cost allocation process is critical to ensure that the right price signals are sent and that the consumers are receiving clean energy at the lowest possible rates.

The coalition believes that there are many deficiencies within the order but today I just want to talk really about three. The first is, we believe that too much delegation has been made to non-governmental regional entities to determine transmission planning and cost allocation. We must understand that these regional entities aren't necessarily continuous groups of entities that have a commonality of interest but many times have diverse types of interests and needs, and consequently you have regions such as RTOs, which was mentioned earlier, which may or may not necessarily be meeting the needs of each of its individual members vis-a-vis what we are talking about in terms of transmission today, and in fact, many of these regions, such as RTOs, have a contractual duty to the transmission operators and generators and do not have the legal responsibility or accountability to the customers to make sure that the rates imposed upon them are just and reasonable.

Two: FERC has failed to provide limitations and parameters on what is going to be defined as a benefit and who are the beneficiaries. By allowing benefits to be defined very broadly and costs to be spread very widely, it is going to be possible to ensure that those two are commensurate, and consequently, you are going to have incidences—and I will speak to Michigan's situation in a minute—where customers are going to be forced to pay for benefits they do not receive.

Finally, we believe that the Order 1000 does not go far enough in ensuring that States and localities do have a say in how these

decisions are made. Michigan is another example where we are put into a situation where the RTO has made certain policy decisions in terms of how they are going to progress in terms of their transmission planning that we believe is detrimental to our State. By failing to require this bottom-up planning process, FERC has effectively eliminated consumers from the decision-making process. These concerns are not speculative but are currently being played out in the 13 States that make up the Midwest RTO. FERC last December approved a cost allocation system method that provides for new transmission called multi-value projects, or MVPS, and then allow for the socialization of those costs across all members of the RTO. The multi-value within these programs is the additional benefit factor of meeting public policy requirements but whose public policies are going to be advocated?

Michigan recently, in fact 4 years ago, passed legislation to embark on a very aggressive program to make renewable energy as a driving mechanism of revitalizing our economy. Mr. Welch in the near future is going to be breaking ground on 5,000 megawatts coming out of our thumb to bring wind onto the market. Consumers Energy has built new wind farms in the Ludington area, and we are looking at putting offshore wind in our Great Lakes.

You contrast that to what is occurring in some of the plains States of Minnesota, Iowa and South Dakota where they have adopted what seems to be the public policy that is going to be pursued by the RTO called MISO. That is building large wind farms and exporting that wind across long-distance transmission to the East. Those are both valuable and have merit in their own pursuit, but when you have a policy in place that promotes one to the expense of the other, you are going to have trouble. If the MISO tariff is allowed to stand as it is, it will eliminate Michigan's ability to pursue public policy as it has determined is best for its customers, and most importantly, we will end up paying for the cost of the transmission and receive little or no benefits in return. Michigan is not alone in this. We just happen to be first out of the barrel on this. This is something that could happen across the board as these RTOs develop their policy.

We are not alone in our concerns, and the evidence is more than evident by the fact that over 60 petitions have been filed requesting a rehearing on Order 1000. We believe it is entirely appropriate and timely for Congress to conduct this hearing and consider the broad implications of Order 1000.

Once again, I thank you very much for allowing me this opportunity to testify, and I look forward to your questions.

[The prepared statement of Mr. Transeth follows:]

Summary of Testimony

**Testimony of Steve Transeth
On Behalf of the Coalition for Fair Transmission Policy
before the
U.S. House Energy and Commerce Committee
Subcommittee on Energy and Power
Hearing on
"The American Energy Initiative: Electric Transmission Issues"
October 13, 2011**

The Coalition for Fair Transmission Policy is a group of geographically and structurally diverse investor-owned electric utilities that have joined together for purposes of promoting legislative and regulatory policies that will lead to customer-focused development of the nation's electric transmission system in support of the growing demand for clean generation resources.¹

The Coalition believes that the costs of transmission projects must be allocated to customers in a manner proportional to the measurable benefits that customers receive from new transmission projects. Efficient markets require accurate cost allocations and price signals, and transmission cost allocation should not be used to obscure costs or to shift costs in order to affect market outcomes. We believe that efficient development of renewable and other clean energy resources at the lowest reasonable cost to consumers is important and that getting transmission cost allocation right is a key ingredient to that objective.

With respect to transmission planning, the Coalition believes that transmission planning must be initiated at the local utility and state level, in a bottom-up manner, based on and driven by the needs of the customers who bear the burden and receive the benefits of new transmission.

FERC Order 1000 is deficient not so much for what it says, but more for what it doesn't say. Under the Order, the Commission delegates to regions the ability to determine how transmission planning will be conducted and how costs will be allocated, with very little if any guidance on the parameters of such important decisions. In particular, the Order provides no guidance to regions as to how benefits should be defined, thus leaving open the very real possibility that regions can adopt extremely broad definitions that result in unfounded conclusions that everyone benefits from new transmission and all should pay – thus socializing all transmission costs within a region. We believe such a potential outcome is beyond the bounds of the Federal Power Act and will result in higher costs to customers who will subsidize large remote renewable projects and merchant transmission developers, at the potential expense of local clean resources that may have lower total costs.

Order 1000 also appears to give regions the ability to make assumptions on behalf of utilities and states as to how best to satisfy both state and federal public policy requirements by permitting regions to adopt top-down planning processes. Utilities with responsibilities to satisfy public policy requirements and the state regulators that oversee them may become mere stakeholders in such a process. The Coalition believes that the Commission must only allow planning processes that ensure that individual utility and state generation and transmission resource planning prerogatives are maintained. Regional entities with no responsibilities to state regulators should not be making assumptions that affect the resource choices and costs of utilities (and their customers) that have the responsibility to satisfy both state and federal public policy requirements.

The Coalition has significant concerns about how Order 1000 can and will be implemented, particularly outside of areas served by regional transmission organizations. And there are numerous questions remaining as to the boundaries of the Commission's legal authorities in the areas covered by Order 1000 and the lack of a factual basis for its regulatory mandates. There were over 60 rehearing petitions filed in response to Order 1000 that now are before the Commission, suggesting that there are quite a few concerns. We believe it is entirely appropriate and timely for the Congress to conduct this hearing and to consider the broad implications of Order 1000 for the reliability and economics of our nation's electric systems as we continue to adjust the types of generation resources that we use and expand the transmission system to meet changing needs of our economy and our consumers.

¹ The Coalition's members include ConEdison, Consumers Energy, DTE Energy, Progress Energy, PSEG Corporation, SCANA Energy, and Southern Company.

Testimony of Steve Transeth
On Behalf of the Coalition for Fair Transmission Policy
before the
U.S. House Energy and Commerce Committee
Subcommittee on Energy and Power
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October 13, 2011

Good Morning Mr. Chairman, Ranking Member Rush, and Members of the Committee.

I am honored to appear before this distinguished Committee today to present testimony on behalf of the Coalition for Fair Transmission Policy on issues so critical to the economic security of our nation.

My name is Steve Transeth and I am the principal partner of the Lansing, Michigan law firm of Transeth and Associates which specializes in providing legal and consulting services on energy issues. I am a former member of the Michigan Public Service Commission and also have served as the President of the Organization of PJM States (OPSI), which is the organization of state regulators overseeing the PJM Independent System Operator – the nation's largest regional transmission organization. Prior to my service on the Commission, I served for over 20 years as Legal Counsel on energy issues for the Michigan Legislature. I am testifying today for the Coalition for Fair Transmission Policy, a group of geographically and structurally diverse investor-owned electric utilities that have joined together for purposes of promoting legislative

and regulatory policies that will lead to customer-focused development of the nation's electric transmission system in support of the growing demand for clean generation resources.²

Overview

Specifically, we believe that the costs of transmission projects must be allocated to customers in a manner proportional to the measurable benefits that customers receive from new transmission projects. Efficient markets require accurate cost allocations and price signals, and transmission cost allocation should not be used to obscure costs or to shift costs in order to affect market outcomes. We believe that efficient development of renewable and other clean energy resources at the lowest reasonable cost to consumers is important and that getting transmission cost allocation right is a key ingredient to that objective. Getting it right means that where projects are needed to meet applicable reliability requirements, costs should be paid by customers in those areas where the requirements would otherwise be violated. For transmission projects that are needed to help a state or utility meet public policy requirements, such as renewable energy standards, or projects that provide economic benefits to customers, costs should be paid for only by the customers on whose behalf the project is being developed and who would be expected to benefit (or meet the applicable renewable standard).

With respect to transmission planning, the Coalition believes that transmission planning should be conducted in a manner that relies on existing successful, coordinated, open and transparent regional transmission planning processes inclusive of all stakeholders. Regional and inter-regional transmission planning must be initiated at the local utility and state level, in a bottom – up manner, based on and driven by the needs of the customers who bear the burden and receive the benefits of new transmission. Or in other words, geographically large planning

² The Coalition's members include ConEdison, Consumers Energy, DTE Energy, Progress Energy, PSEG Corporation, SCANA Energy, and Southern Company.

processes involving multiple states and utilities should be a complement to, and not a substitute for planning decisions made at the state and local levels.

FERC Order 1000 is deficient not so much for what it says, but more for what it doesn't say. Under the Order, the Commission delegates to regions the ability to determine how transmission planning will be conducted and how costs will be allocated, with very little if any guidance on the parameters of such important decisions. In both Initial Comments and in a Petition for Rehearing, the Coalition has pointed out that the Commission has a legal responsibility to ensure that rates are just and reasonable under the Federal Power Act (FPA). Accordingly, there are limits on how much flexibility the Commission can delegate to the regions to develop planning and cost allocation processes.

Order 1000 Fails to Properly Define "Benefits"

For example, the Commission rightly observes that the Federal Power Act requires that costs should be allocated commensurate with benefits, but does not attempt to define the "benefits" in question or limit what may be considered as a benefit by regions. The Commission's failure to limit in any way what individual regions may consider as benefits for which costs may be allocated is a fatal flaw of the Final Rule. By failing to specify limits that discipline permissible definitions of "benefits" or "beneficiaries," the Commission implicitly allows individual regions to adopt definitions that could go far beyond what would be considered just and reasonable under the Federal Power Act and could still result in the socialization of costs for new transmission projects not needed for reliability for which there are no real benefits commensurate with the costs being allocated.

Because Order 1000 sets no real limits, it could result in very broad definitions of what constitutes benefits resulting from transmission projects driven by economics or public policy requirements. For example, regions under the rule would presumably be allowed to assert that certain types or classes of projects have regional environmental or social benefits that are not even encompassed in current state or federal policy requirements, and therefore conclude that the costs should be widely socialized. Consumers neither needing nor benefiting from the new transmission facilities would be required to pay a share of the costs.

The failure by FERC to limit the kinds of benefits that can be considered in cost allocation decisions will have results that potentially damage competitive wholesale markets and will certainly place local renewable resources at a competitive disadvantage relative to renewable resources located distant from customers. This will occur simply because potential customers of the remote resources will not face the total costs of those remote resources (both generation costs and transmission costs) because other customers are subsidizing a major component of those costs. Local renewable resources, such as rooftop solar or even offshore or local onshore wind, will not benefit from the same subsidies and thus will appear to be more costly even if they are the better alternative. FERC policy promoting cost socialization also makes it more difficult for state and local governments to use clean energy as a tool for creating jobs and local economic development, as local clean energy resources are placed at a disadvantage to large projects in remote areas.

The Coalition supports both the development of renewable resources and the expansion and upgrading of our nation's transmission systems. We believe, however, that both should be done at the lowest possible cost to customers, meaning that we need to ensure that all costs are considered when customers, or utilities making decisions on their behalf, make resource choices. And competitive wholesale markets for electricity across the country rely on price

signals to give generators and transmission developers guidance as to the most economic places to locate. Neither the Commission, nor regional entities acting on the Commission's authority should require subsidies for transmission projects that interfere with these competitive market price signals and preclude the development of the most efficient and low cost renewable resources and transmission.

My own state, Michigan, provides a good example of our potential concerns. The Michigan Legislature has enacted a Renewable Energy Standard that unlike some others around the country focuses on the local development of resources. The Legislature promoted this policy as an economic development and jobs creation measure for the State. Many of Michigan's utilities are members of the Midwest Independent System Operator (MISO) and pay transmission costs of that organization under FERC-approved rates. In one of the more recent decisions by FERC on transmission cost allocation, the Commission approved a MISO proposal to allocate costs for what they have referenced as Multi-Value Projects (or MVPs). These projects are those believed by MISO to be needed to help states within the MISO region meet public policy requirements. But whose public policy is being promoted? The approved MISO tariff rewards those states that seek to build remote renewable generation and long distance transmission at the expense of states such as Michigan who adopted an alternative approach.

A bipartisan coalition of Michigan leaders noted in a rehearing petition to FERC on the MISO Order that Michigan would be required to pay 20 percent of \$16 billion for transmission lines across 13 Midwestern states that deliver virtually no benefits to Michigan consumers. Every major auto company's electricity bill could skyrocket by more than \$10 million a year and each major university will pay an extra \$2 million. Municipalities such as Ann Arbor, Grand Rapids and Lansing will pay hundreds of thousands of dollars extra for their power. Michigan should

not be forced to subsidize wind developers in South Dakota and pay for transmission lines that deliver little electricity to its homes and factories.

While FERC has not yet said whether its FERC MISO MVP Order is consistent with Order 1000, the very problem with the MISO Order is that benefits are very loosely defined – and Order 1000 does nothing to improve that shortcoming. If the FERC should find that the MISO Order falls within the scope of Order 1000, it appears that the Commission's statement that costs must be roughly commensurate with benefits will have little meaning in practice.

This concern about cost allocation is further exacerbated by the Commission's decision in Order 1000 requiring that regions provide that utilities not even taking service from the transmission facilities for which costs are being allocated or having no transmission agreements with the project's owners can be assigned costs of the project. In our view, the FPA precludes such involuntary assignment of costs. And as a matter of policy, utilities or other beneficiaries should not be involuntarily assigned costs for projects for which they have no need, even if there is some incidental, amorphous "benefit" ascribed by those seeking broad cost socialization.

Order 1000's Planning Requirements Could Conflict with Utility and State Policies

We also have significant concerns regarding the transmission planning components of Order 1000. The Coalition agrees with the Commission's finding that transmission planning processes should have the ability to reflect both federal and state public policy requirements. However, the Coalition believes that the Final Rule has authorized regional transmission planning processes to include procedures that would pre-empt resource decisions by electric utilities made under state regulatory and statutory guidance.

The manner in which regional transmission planning processes address federal and state public policy requirements is critical to ensuring that state regulatory prerogatives are not pre-empted and that local needs are satisfied based on the policy choices of state legislatures and regulators. The Coalition believes that maintaining reliability is the first priority. Local and regional transmission planning processes and interregional transmission planning coordination should be based on meeting mandatory reliability requirements established by the North American Electric Reliability Corporation (NERC) and other applicable reliability standards. Secondly, such processes and coordination should examine cost-effective transmission solutions so that states, customer-serving utilities and competitive retail suppliers can access power from their generation resources, including those generation resources needed to meet any public policy requirements. Specifically, with respect to consideration of public policy requirements, the only efficient way to ensure public policy requirements are properly incorporated into the process is to use a "bottom-up process" within the appropriate geographic area relying on information provided by transmission owners, operators and users that actually are subject to the public policy obligations driving the demand for transmission facilities or services.

While such bottom-up transmission planning processes are allowable under Order 1000, they are not required. The Commission affirmatively states that top-down or other transmission planning processes may be proposed as long as they meet other requirements of the Final Rule. Under a "top-down" transmission planning regime, the regional planning group, which is not accountable to state regulators or individual utilities within the region, would be placed in the position of making assumptions that affect how utilities and other entities with the responsibility to meet public policy requirements would meet those requirements. In fact, Order 1000 authorizes submission of regional transmission planning processes that would reduce both

utilities charged with meeting public policy obligations and state regulators to mere stakeholders in the regional transmission planning process.

The delegation of authority given to regional planning entities to decide what resources and transmission should be utilized to meet reliability, economic or public policy requirements is the essence of Order 1000 and will allow regional planning groups (with Commission sanction) to usurp state regulatory prerogatives. Neither the Commission, nor regional transmission planning processes, will have direct responsibility or accountability to the state legislatures and regulatory authorities that have jurisdiction over implementing energy and environmental policy within their states. And in our view the Federal Power Act gives no authority to the Commission to mandate a process that produces this result or to determine what non-transmission resources may or should be used by load-serving entities to meet their state regulated service responsibilities.

A regional transmission planning process should also not be allowed to make assumptions as to how the states intend to satisfy their public policy requirements and then require development of transmission projects based on those assumptions because conflicts are certain to arise. For example, many state renewable resource portfolio standards designate set-asides for specific supply resources or resource types. Often, as is the case in Michigan, there is a statutory or regulatory policy to encourage development of local supply and demand response resources for economic development purposes. Some states may favor particular technologies, or favor conservation initiatives over long-distance importation of renewable energy supply. Coastal states may have a legitimate desire to develop close by offshore wind. Other states may have statutes or regulations to promote in-state development of other types of generation, policies promoting the use of local fuel sources, or other public policies related to energy development within the state. These legitimate preferences (often embodied in state law or regulation) would

result in potential conflicts if a regional process is allowed to impose a single top-down plan for a region. All of these are considerations that can only be made at a more local level and then "rolled-up" to be included in the regional planning process as the preferred resource choices of the load-serving entities and states within the region. Absent a requirement for such bottom-up planning, regional planning processes could adopt "top-down" planning processes where assumptions are made that will be imposed on states and on utilities with the responsibility to serve customers and satisfy state statutory and regulatory mandates. The regional transmission planning process cannot, on its own, make resource choices on behalf of electric consumers and it should not attempt to anticipate what those choices may be.

The regional transmission planning processes can and should review the information provided by load-serving utilities and coordinate individual plans to ensure that reliability meets NERC standards and that local and regional transmission plans do not conflict with one another. The regional transmission planning processes and interregional coordination may identify opportunities for cost savings through projects that meet the needs of multiple entities within the region. But Order 1000 allows regions to develop processes which would interfere with existing state planning processes – some of which require utilities to plan based on achieving the lowest cost mix of resources taking into consideration generation and transmission costs and demand-side alternatives (integrated resource planning) - and other utility and state regulatory processes. It makes no sense to us to allow a regional planning entity that has no regulatory responsibility to states to make assumptions that could lead to resource decisions that conflict with state law and regulation.

Closing Considerations

Finally, the Coalition has significant concerns about how Order 1000 can and will be implemented, particularly outside of areas served by regional transmission organizations. And

there are numerous questions remaining as to the boundaries of the Commission's legal authorities in the areas covered by Order 1000 and the lack of a factual basis for its regulatory mandates. There were over 60 rehearing petitions filed in response to Order 1000 that now are before the Commission, suggesting that there are quite a few concerns. We believe it is entirely appropriate and timely for the Congress to conduct this hearing and to consider the broad implications of Order 1000 for the reliability and economics of our nation's electric systems as we continue to adjust the types of generation resources that we use and expand the transmission system to meet changing needs of our economy and our consumers.

Once again, I thank you for the opportunity to appear before you today and look forward to your questions.

Mr. WHITFIELD. Thank you.

Mr. Brown, you are recognized for 5 minutes.

STATEMENT OF NICHOLAS A. BROWN

Mr. BROWN. Thank you, Chairman Whitfield, Ranking Member Rush and members of the committee. My name is Nick Brown. I am President and Chief Executive Officer of Southwest Power Pool, whose mission is helping our members work together to keep the lights on today and in the future. I want to emphasize helping our members work together. We don't do it for them, we don't do it to them; we help them work together to resolve these issues.

We are a FERC-recognized regional transmission organization and in fulfilling our mission we administer an open-access transmission service tariff and we do serve as the planning entity for our members who serve customers in all or parts of the States of New Mexico, Texas, Oklahoma, Kansas, Nebraska, Missouri, Arkansas and Louisiana, 370,000 square miles service territory, over 57,000 miles of high-voltage transmission lines interconnecting over 850 generating units.

We appreciate the opportunity to visit with you today about Order 1000. It has been our experience in fulfilling our strategic plan over the last several years of building a more robust transmission network that the single largest impediment to building a robust transmission network is how to allocate costs for needed transmission expansion in a fair and equitable way, and we have met that challenge in multiple ways. Last year, we received approval from the Federal Energy Regulatory Commission on a completely new integrated transmission planning process that looks at our needs on an iterative basis focused on a 20-year period, then a 10-year period, then a near-term period, and we have coupled that transmission planning process with cost allocation methodologies that do in fact pair the costs with the beneficiaries through a new highway-byway cost allocation methodology where the extra high-voltage facilities, the costs for which are shared very broadly across the entire footprint because our studies have shown and our States have agreed that everyone benefits from that extra high-voltage transmission. The lower-voltage facilities are paid for more on a local basis.

It is important to note when we were approved as a regional transmission organization in 2004 that SPP delegated to our regional State committee the responsibility for determining the methodology to allocate costs for new transmission. The regional State committee consists of a commissioner from each of the States in which our members service. We brought them together. We determined how to calculate benefits for new transmission. Once that methodology for calculating benefit was determined, we ran studies, and the cost allocation methodology that we have in place that was approved by the FERC last year is a result of all of that very collaborative approach.

Our experience again is that the single toughest issue is dealing with cost allocation, and our view of Order 1000 is that the commission got it right with the requirement for regional planning. It is just not sufficient to build the type of transmission infrastructure that our country needs on looking at an individual company

basis. So the requirement for regional planning was right on the mark.

We also strongly support Order 1000's requirement that links cost allocation with transmission planning. It is a necessary step to move forward.

We also strongly support Order 1000's requirement to construct transmission considering Federal and State public policy needs, and we appreciate the flexibility that Order 1000 gave regional planning authorities to consider the diverse needs of those public policy requirements within each region. We also strongly support Order 1000's requirement for interregional coordination and cost allocation, and while many believe the commission went too far, our region believes the commission could have gone further. To allow little guidance on how to allocate costs for transmission facilities that have interregional impacts will just cause more delay and more confusion. We had to tackle that within our own region, and to expect that it can be voluntarily tackled on an interregional basis I believe will take a much more significant time than the 18 months in which we were given. The stakeholders within each region are diverse and the regions are diverse. It will simply take longer than 18 months to work through a collaborative process to reach consensus on those issues.

And I look forward to your questions.

[The prepared statement of Mr. Brown follows:]

**STATEMENT OF NICHOLAS A. BROWN
PRESIDENT AND CHIEF EXECUTIVE OFFICER
SOUTHWEST POWER POOL, INC.**

BEFORE THE

**U.S. HOUSE OF REPRESENTATIVES
ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON ENERGY AND POWER**

The American Energy Initiative: Electric Transmission Issues

October 13, 2011

Southwest Power Pool, Inc.
415 North McKinley, #140 Plaza West
Little Rock, AR 72205
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**Summary of the Testimony of Nicholas A. Brown, President and Chief Executive Officer
Southwest Power Pool, Inc.
October 13, 2011**

Southwest Power Pool, Inc. is a FERC-approved Regional Transmission Organization whose mission statement is: helping our members work together to keep the lights on today and in the future. SPP is responsible for administering open access transmission service and regional transmission planning across the SPP Region, which includes the states of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

In SPP's experience, the most significant barrier to development of new transmission facilities is having effective methodologies in place that allocate their costs in a fair and reasonable manner to all beneficiaries while providing investment certainty to the developers of those facilities. SPP generally supports FERC's recent Order 1000 and believes that its regional transmission planning, interregional coordination, and cost allocation requirements will promote much needed investment in transmission infrastructure. While SPP would have preferred additional detailed guidance on interregional cost allocation, SPP believes that Order 1000 is an important step in encouraging greater collaboration among individual transmission owners and transmission planning regions to promote cost-effective investment in needed transmission grid expansion.

SPP believes that it is logical for the Department of Energy to delegate its authority to designate national interest electric transmission corridors to FERC. Congress previously granted FERC the backstop authority to approve the siting of transmission facilities in national interest electric transmission corridors in certain circumstances, and granting FERC the additional authority to designate the national interest corridors will simplify and perhaps expedite the process of siting large-scale, multi-state transmission facilities.

**STATEMENT OF NICHOLAS A. BROWN
PRESIDENT AND CHIEF EXECUTIVE OFFICER
SOUTHWEST POWER POOL, INC.**

BEFORE THE

**U.S. HOUSE OF REPRESENTATIVES
ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON ENERGY AND POWER**

The American Energy Initiative: Electric Transmission Issues

October 13, 2011

Good morning Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee on Energy and Power. My name is Nick Brown and I am the President and Chief Executive Officer of Southwest Power Pool, Inc. SPP is a FERC-approved Regional Transmission Organization whose mission statement is: helping our members work together to keep the lights on today and in the future. We are responsible for administering open access transmission service and regional transmission planning across the SPP Region, which includes the states of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. SPP serves more than 6 million households in a 370,000 square mile area, and is committed to developing a robust transmission grid and creating competitive electricity markets to serve the needs of our members and customers. I appreciate the opportunity to address the Subcommittee today regarding FERC's recent Order 1000 and the Department of Energy's recent proposal to delegate its authority to establish "national interest electric transmission corridors" to FERC.

Over the past several years, SPP has worked diligently with its stakeholders to address regional transmission planning and cost allocation issues, with the goal of promoting the development of a robust SPP transmission system focused not only on maintaining the reliability

of the transmission grid but also providing economic opportunity and the infrastructure to enable compliance with public policy. In 2010 we adopted the SPP Integrated Transmission Plan process, an iterative regional transmission planning process that examines the transmission facility needs for the SPP Region on a 20-year, 10-year, and near-term basis and develops a regional transmission plan focusing on cost-effective solutions to meet the varied electric reliability, economic, and public policy needs impacting the SPP Region.

SPP also adopted a new cost allocation methodology in 2010, the SPP Highway-Byway methodology, which allocates the costs of large-scale, extra-high voltage regionally-beneficial transmission facilities broadly to those who benefit, while allocating the costs of smaller facilities in a manner that reflects the need for and benefits derived from those facilities. It is important to note that, in its process of obtaining FERC recognition as a Regional Transmission Organization in 2004, SPP delegated the responsibility for determining the methods for allocating the costs of new transmission facilities to the SPP Regional State Committee. The SPP Regional State Committee has embraced that responsibility and worked together to establish successful cost allocation policies that are widely supported by SPP members and stakeholders. SPP continues to work with its members, state regulatory commissions, and other stakeholders to address transmission planning and cost allocation issues in the SPP Region.

In our experience at SPP, the most significant barrier to the development of new transmission facilities is having effective methodologies in place that allocate their costs in a fair and reasonable manner to all beneficiaries, while providing investment certainty to the developers of those facilities. We believe that Order 1000's requirement that all public utility transmission providers participate in a regional planning process that adopts regional cost allocation mechanisms is an important step toward promoting the level of investment in

transmission expansion that many experts believe will be necessary in the coming decade. As they consider energy policy issues in this and future sessions, Congress and this Subcommittee should support FERC and DOE in their efforts to promote investment in needed transmission infrastructure.

SPP supports FERC's adoption of regional planning requirements that build upon FERC's existing Order 890 requirement that all transmission providers engage in regional coordination with neighboring transmission providers. Requiring all transmission providers to engage in regional planning with their neighbors that results in a regional transmission plan will shift the focus of transmission planning from separate local needs assessments to identifying more cost-effective regional transmission solutions to the benefit of ratepayers. SPP strongly supports Order 1000's regional transmission planning requirements.

SPP also strongly supports FERC's link between cost allocation and transmission planning, and the Order 1000 requirement to adopt regional cost allocation methods that allocate the costs of new transmission infrastructure in a just and reasonable manner recognizing the broad benefits that high voltage transmission facilities provide. Without effective regional cost allocation methods, investors may be discouraged from investing in regional transmission projects even when those projects are more cost-effective and provide more benefits to consumers than separate local facilities. FERC was correct in mandating the adoption of regional cost allocation mechanisms that comply with the just and reasonable standard of the Federal Power Act and the cost allocation principles established in Order 1000 and FERC and judicial precedent.

In addition, SPP applauds the Order 1000 requirement that transmission providers consider transmission needs driven by federal and state public policy requirements, and agrees

with FERC's policy of allowing flexibility in the identification of relevant federal and state public policy mandates and goals. Given the diverse regulatory make-up and varied public policy requirements and goals across the states in the SPP Region, it is important that SPP and its stakeholders have flexibility to define the public policies driving transmission needs in the SPP Region. SPP is pleased that FERC recognized the important role that public policy requirements play in transmission planning, as well as the importance of flexibility in multi-jurisdictional regions like SPP.

During the rulemaking proceeding that culminated in Order 1000, SPP strongly supported FERC's proposal to require greater interregional coordination and interregional cost allocation. SPP believes that the integrated nature of the transmission system necessitates that individual transmission owners, transmission planning regions, and their neighbors work cooperatively to identify interregional transmission facilities that would provide broader benefits than individual transmission owners or regions could develop on their own. We also believe that, without clearly-defined methods for allocating the costs of interregional transmission facilities, even the most collaborative interregional coordination efforts will not result in successful development of large-scale interregional transmission solutions. While SPP applauds FERC for its efforts to promote greater interregional coordination, we believe that Order 1000 did not go far enough in its interregional cost allocation requirements. SPP had encouraged FERC to provide detailed guidance on interregional cost allocation, particularly guidance regarding how to address impacts on one transmission system resulting from transmission upgrades or lack thereof on a neighboring system. The issue of cross-border impacts continues to present challenges to SPP and other transmission providers, and SPP would have preferred to see specific guidance from FERC in Order 1000.

In addition, SPP believes that it would have been appropriate for FERC to authorize interregional cost allocation for transmission facilities located in one region that provide clear benefits for a neighboring region, even if the facility does not cross the regional boundary. Order 1000 does not prohibit neighboring regions from agreeing to allocate the costs of such facilities on an interregional basis; however, SPP would have preferred that FERC provide a stronger statement that such projects can and should be eligible for interregional cost allocation when the distribution of benefits warrants such allocation, in recognition of the integrated nature of the transmission system and the broad spectrum of benefits that large-scale transmission facilities provide. SPP is also concerned that FERC required transmission planning regions to comply with the interregional coordination and cost allocation requirements within 18 months, particularly given the open and flexible approach FERC adopted in lieu of providing specific guidance on interregional coordination issues. In our rulemaking comments, SPP recommended allowing 36 months for transmission planning regions to negotiate with one another to develop mutually-agreeable interregional coordination processes and cost allocation methods, a timeframe that would have allowed greater opportunity to involve diverse stakeholders within each region. On balance, however, SPP is pleased that FERC adopted a requirement for interregional coordination and cost allocation in Order 1000.

One of the more controversial issues presented by the rulemaking process and Order 1000 was FERC's elimination of so-called "rights of first refusal" for incumbent transmission owners reflected in FERC-jurisdictional tariffs and agreements. Transmission owning members of RTOs often undertake an obligation to build facilities at the direction of the RTO, and rights of first refusal in RTO tariffs and agreements were carefully crafted to balance the obligations imposed on transmission owning members with the goal of promoting broad participation in

regional transmission planning and construction. In SPP, for example, our stakeholders developed a limited right of first refusal that requires a transmission owner to exercise its right within 90 days or else risk losing the right to build a project to another transmission owner or nonincumbent transmission developer. This time-limited right of first refusal has worked well for SPP and its stakeholders since its implementation and in fact was suggested by many commenters in the rulemaking proceeding as an alternative to FERC's proposal to eliminate all rights of first refusal. While SPP can certainly modify its construction assignment procedures to comply with Order 1000 and is currently in the process of doing so, we would have preferred that FERC adopt an approach that balances RTO member obligations with open participation in the transmission planning process, like the SPP 90-day limited right of first refusal.

Overall, SPP is very supportive of many aspects of Order 1000 and believes that it is an important step in encouraging greater collaboration among individual transmission owners and transmission planning regions. Once fully implemented, Order 1000 should promote investment in cost-effective transmission grid expansion that will meet the needs of consumers and provide economic opportunity while enabling compliance with ever-changing federal and state public policy goals and requirements. SPP looks forward to demonstrating to FERC that many of its existing transmission planning and cost allocation practices already comply with Order 1000.

Regarding the authority to designate national interest electric transmission corridors, SPP believes that it is logical for this authority to reside within FERC. Congress previously granted FERC the backstop authority to approve the siting of transmission facilities in national interest electric transmission corridors in certain circumstances. Granting FERC the additional authority to designate the national interest corridors will simplify and perhaps expedite the process of

siting large-scale, multi-state transmission facilities where the need for FERC backstop siting authority arises.

While consolidating corridor designation and siting authority at FERC may promote efficiency, transmission siting has not been an obstacle in the SPP Region to date, primarily because the state regulatory commissions in our region have generally been supportive of transmission grid expansion and have been actively involved in both the SPP regional transmission planning process and development of regional cost allocation for high voltage backbone transmission facilities. SPP looks forward to continuing to work with FERC and state regulators over the next several years, as we continue our efforts to develop a robust regional transmission grid that will promote electric reliability and enhance economic opportunity for the SPP Region and beyond.

Again, thank you for providing me the opportunity to speak on these important issues confronting the electric industry. I look forward to any questions that you may have.

Mr. WHITFIELD. Thank you very much.
Mr. Welch, you are recognized for 5 minutes.

STATEMENT OF JOSEPH WELCH

Mr. WELCH. Mr. Chairman, Ranking Member Rush and members of the subcommittee, thank you very much for the opportunity to appear here today. My name is Joseph Welch and I am the CEO and President of ITC Holdings Inc.

Mr. WHITFIELD. Do you have your microphone on?

Mr. WELCH. I do.

Mr. WHITFIELD. OK.

Mr. WELCH. Do I need to get it closer here?

Mr. WHITFIELD. There were people in the audience quite upset that they didn't hear what you were saying.

Mr. WELCH. Well, I am glad to hear that.

ITC, which is headquartered in Novi, Michigan, is the largest independent transmission company in the United States. ITC owns, operates and maintains transmission assets in Michigan, portions of Iowa, Minnesota, Illinois, Missouri, Oklahoma and Kansas, spanning both the MISO and SPP RTOs. Unlike most utilities, ITC is independent, meaning we are not a market participant. We do not generate, buy or sell power. We move electricity across our wires under a Federal tariff at a regulated rate.

It is no secret that our transmission grid is outdated and never has been designed to be a regional-serving grid. Today, 70 percent of the transmission lines are 25 years old or older, 70 percent of our large power transformers are 25 years or older, and 60 percent of our circuit breakers are more than 30 years old and the interconnection between utilities are generally weak. Per capita consumption of energy has doubled in the same time period, and our population has grown by 50 percent. To add to the stress, the aging infrastructure energy demand is expected to increase by 25 percent by the year 2030.

A quick history of the ramifications of underinvestment in transmission. In 2003, at a cost of nearly \$10 billion, the power went out for nearly 50 million people in the Midwest, the East Coast and Canada and highlighted the frailty of the interconnected grid. More recently, we have seen the effects of an outdated and stressed transmission system where southern California, Arizona and Texas have experienced blackouts. Not one of these instances was caused by lack of generation. The Department of Energy estimates that the major power outages and power quality disturbance costs the economy between \$25 billion and \$150 billion annually. In addition to blackouts, lack of investment leads to inefficient markets, energy curtailments, higher congestion and pockets of generation market power, all of which lead to higher energy prices. In response to the 2003 blackout, this committee worked to pass the Energy Policy Act of 2005 and included provisions to help facilitate the investment in new transmission.

FERC has been working with the regions to address the challenges that planning and cost allocation present to transmission expansion. Order 1000 is not perfect but it is an important incremental step forward. Regional planning has been going on for decades to some degree. It is not a new concept. The problem with re-

gional planning is that the participation of regional transmission organizations is voluntary. Not surprisingly, that leaves these organizations hostage to competitive interests of market participants. If an RTO is considering a decision that will impact a market participant above market generation, they threaten to leave that RTO. The RTO then developed a suboptimal regional plan to retain the members.

Order 1000 incrementally improves the regional planning process by requiring stakeholders to determine in advance what criteria the RTO will be using in the planning and requires RTOs to establish a process for interregional projects which do not exist today. Order 1000 also addressed the issue of paying for transmission projects that provide for regional benefits. The commission allows the regions to make proposals following six governing principles designed to protect consumers.

FERC has an obligation to ensure that rates are just and reasonable, that they do not have anti-competitive effects. Rhetoric that FERC is mandating certain methodologies or forcing customers who do not benefit to bear costs is blatantly inaccurate and clearly intended to mislead this committee. In fact, Order 1000 specifically states, and I quote, "Costs may not be involuntarily allocated to entities that do not receive benefits" and must be roughly commensurate with the estimated benefits received from the project. More plainly put, if you do not benefit, you do not pay.

I understand that those who are opposed to the regional transmission are seeking legislative ratemaking through S. 400 or other legislation but I encourage that this committee consider their motives. They want Congress to undermine the agreements the regions, which are comprised of voluntary members, have spent years developing and Federal Government to impose transmission costs on small groups of users to make transmission costs prohibitive, retain captive markets and eliminate competitors. These results do not benefit customers.

I would note that a number of utilities who comprise the Transeth coalition have some of the highest average retail rates in the region and they are here today opposing FERC's efforts to encourage transmission development and more robust competitive wholesale markets. I would suggest to this committee that this is more than a coincidence.

Let me also make note to dismiss the notion that transmission drives up electric bills. According to the U.S. Energy Information Administration, transmission costs account for only 7 percent of an average residential customer's bill while generation accounts for nearly 68 percent in Michigan, and in Michigan, the transmission portion of the bill is lower than the national average. It is only between 4 and 5 percent. Let me say again, in Michigan, where over 8 years ITC has invested \$1.2 billion in the transmission system, we remain below the national average in terms of percentage of delivered energy cost to retail customers. Basically, this is because Michigan is one of the highest electric rates in the region.

This may lead you to ask, if ITC has made such a significant investment in transmission in Michigan, how can we have the highest wholesale rates in MISO if in fact transmission lowers the cost of energy to customers. I want to close with this because the an-

swer highlights the value of independence and explains why rational, independent, regional transmission planning and cost allocation mechanisms that allow these projects to be identified to be built are so vital.

First, the \$1.2 billion was needed to just bring the system to reasonable standards. Next, the State sits on a seam between PJM and MISO, and there is no cross-border planning to identify the projects that would provide for the access of the most competitive generation in either RTO. And finally, the actual transmission projects that would be built to bring more competitive generation into the State lie outside the State of Michigan. The utility that we need to build the transmission to benefit Michigan will not if they do not see value for their customers that they have to charge. This is the perfect example of the problem that FERC Order 1000 addresses.

My time is expired and I look forward to questions. Thank you.
[The prepared statement of Mr. Welch follows:]

**SUMMARY OF TESTIMONY OF
JOSEPH L. WELCH
CHAIRMAN, PRESIDENT AND CEO OF ITC HOLDINGS CORP.
October 13, 2011**

The nation's electric grid is stressed. Decades of underinvestment has saddled the backbone of our electricity system with aging equipment in desperate need of repair. New transmission development has significantly lagged behind energy consumption and population growth. But the primary reason our grid is stressed is because we are using it in vastly different ways than it was designed to be used. The advent of competitive wholesale markets and changes in electricity generation fundamentally altered how the system is utilized. This reality is compounded by the need for greater reliability and enhanced security. All of these factors call for improvements to the nation's transmission infrastructure. However, numerous roadblocks are preventing investments in this infrastructure, and it is time for a new approach to building a modern grid.

The Energy Policy Act of 2005 helped jumpstart needed investment in the grid, however three major categories of impediments remain- planning, pricing (allocation of costs), and permitting. The planning process for transmission is fragmented and participation is voluntary, thereby allowing market participants to manipulate the process to their benefit, and at the expense of customers. Cost allocation varies region by region and can act as a barrier to investment and new energy suppliers. Finally, the permitting process is hostile to interstate transmission projects that cross multiple state jurisdictions because it allows one state veto authority over any project, regardless of the benefits it might provide the entire region.

The Federal Energy Regulatory Commission (FERC) addressed planning and cost allocation barriers through Order 1000. Order 1000 establishes six principles for cost allocation and calls for enhancement to existing regional planning activities to better engage stakeholders. Order 1000 requires regions, through their own stakeholder processes, to develop individual cost allocation plans for certain projects and to discuss what policy drivers should be used as part of their planning process. FERC mandates that costs may only be assigned to those who benefit, and must be roughly commensurate with benefits received. FERC's cost allocation requirements are not perfect. They allow for "free-riders" to benefit from projects by prohibiting costs to be allocated across regional borders without consent from both regions. However, Order 1000's modifications to regional planning will hopefully move regions away from project-by-project debates and help planners identify a set of drivers that can be used to more strategically build the transmission facilities a particular region needs. While Order 1000 is an incremental step, it is a critical step forward in creating a framework for those regions who have not yet addressed these issues, and an opportunity for those who have to revisit existing policies.

Much of the focus on transmission, whether it be on planning or cost allocation, is on costs to customers. Lost in the noise of this heated exchange is the irrefutable fact that transmission is the smallest portion of a customer's bill and is the best means for leveraging customer savings in larger generation costs. Market participants who benefit from a congested transmission system tout concerns for customers. Policymakers need to look past this thin veneer if they truly want to adopt policies that are in the public interest.

Order 1000 did not, and could not, address the siting issue. Congress, through the Energy Policy Act of 2005, sought to provide for backstop siting authority, which has regrettably been undermined by the courts. The Department of Energy is looking at potential changes aimed at revamping federal siting authorities, which ITC supports.



**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON ENERGY AND POWER**

**TESTIMONY OF JOSEPH L. WELCH
CHAIRMAN, PRESIDENT AND CEO OF ITC HOLDINGS CORP.**

The American Energy Initiative

October 13, 2011

Good Morning Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee. My name is Joseph L. Welch and I am Chairman, President, and CEO of ITC Holdings Corp. (ITC). I am honored by the opportunity to speak before you this morning to offer my perspective regarding the importance of investing in transmission for our energy future.

By way of background, ITC is the largest independent transmission-only company in the country and is headquartered in Novi, Michigan. As an independent transmission company, we do not own generation or distribution assets, none of our employees or directors on the board can own the stock of market participants (generation owners and purchasers), and market participant ownership of ITC is strictly limited. ITC's only focus, both financially and strategically, is on providing a reliable and efficient electric transmission grid to meet the needs of the customers we serve. Our goals are to make investments that improve system reliability, expand access to energy markets, lower the

overall cost of delivered energy, allow new generating resources to interconnect to transmission systems, and support national energy independence and security.

We currently own and operate close to 15,000 miles of transmission serving a peak load of approximately 25,000 MW within five operating companies across the states of Michigan, Iowa, Kansas, Oklahoma, Minnesota, Illinois, and Missouri. We are active in both the Midwest ISO (MISO) and Southwest Power Pool (SPP) Regional Transmission Organizations (RTOs). Collectively the ITC Companies have invested over \$2 billion in capital for transmission projects and anticipate another \$3.9 billion of investment over the five year period from 2011 through 2015 to improve the energy backbone of the country. ITC is now the eighth largest transmission-owning company in the U.S., in terms of load served.

Similar to prior years, ITC once again participated in the 2011 SGS Benchmarking Study in order to provide tangible data to evaluate our effectiveness in achieving our operational goals. I am pleased to report that both ITC *Transmission* and METC ranked within the top decile in the study with respect to sustained outages, continuing to validate the performance improvements that have resulted from our capital investment and maintenance plans. In addition, these improvements served as critical factors in delivering reliable service during the recent heat wave experienced both within Michigan and the Midwest region.

It is important to contrast the difference between an independent transmission company and a vertically integrated utility that owns generation and distribution in addition to transmission because it is relevant to today's discussion. In many ways, the vertically integrated utility business model is at the very center for why there has been a 30-year

trend of underinvestment in the grid. Let me explain why. First, the vertically integrated utility faces internal competition for capital. In any given year, it must allocate its capital across the three sections of the industry (generation, distribution, and transmission) and will obviously direct those dollars to the opportunity for the highest return or where investments are mandated or required. Historically, that has been generation.

Further, a vertically integrated utility with significant generation resources and investment may want to build transmission as a means to bring its generation to market while perhaps not providing the same opportunity to other generators. The result is greater wholesale market power and therefore higher prices for generation which is borne by customers. It is for these very same reasons that the Federal Energy Regulatory Commission (“FERC”) decided to encourage the formation of independent transmission companies to promote non-discriminatory transmission access.

The independent transmission model is also of particular importance as it relates to decision-making for field and control room operations, generator interconnections and both local and regional planning. A non-independent transmission owner faces competing interests. As such, independence from the energy market influence is critical in consideration to the electric transmission grid; however, the concept of independence should not be limited to the electric transmission companies. Equally essential is the independence of any regional planning organization with supporting governance and decision-making processes established in a manner that do not provide undue opportunity to thwart transmission development by stakeholders. Independence is the key to an unbiased and efficient electric grid.

Energy Policy

I have been talking for the last 10 years about the need for a national energy policy.

Now, more than any time during my 40 year career in the energy business, is the time that we need to set a clear path to energy independence that will foster economic development and bring the money spent on foreign resources back home to create jobs here. A robust and efficiently planned electric transmission grid is unquestionably a critical component to making that goal a reality.

The need to invest in transmission and the lack of investment over the last 30 years is well known. Today, about 70% of all transmission lines and power transformers are 25 years or older and 60% of circuit breakers are more than 30 years old. A number of influential business groups, such as the Business Roundtable and the Council on Competitiveness that are focused on improving the business climate in the country, also advocate for investment in the transmission infrastructure. In fact, Congress took specific steps to address this under investment in the Energy Policy Act of 2005. The legislation included incentives for transmission investment and federal backstop siting authority, both of which have helped to get the momentum going. Even detractors of regional policies related to transmission development do not argue that transmission development is needed in their state and across the country. So if we all agree that the electric grid needs attention, the question turns to the right way to do it. The answer to that question is the fundamental objective of FERC's Order 1000.

Transmission Benefits

It is important to understand the role of transmission in the industry and the benefits it provides to customers and the economy. In many ways, transmission acts as the highway

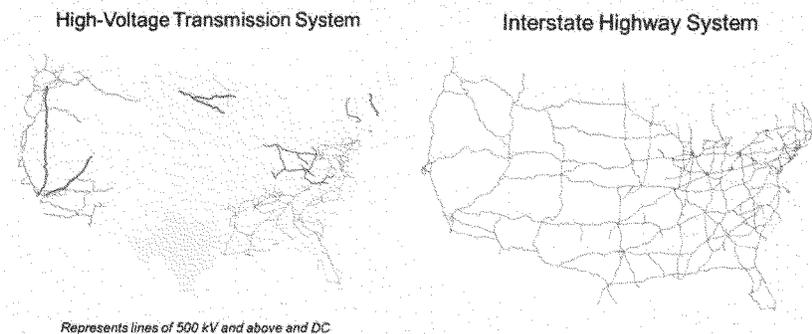
system for electricity. Just like the interstate highway system facilitates commerce throughout the country, a robust, interconnected transmission grid provides access to a greater abundance of resources and customers that make the flow of electricity more efficient. A few of the major transmission benefits are lower costs, greater reliability, and more flexibility to meet our nation's energy needs and goals.

First, access to more diverse and competitive sources of electricity lower the total energy cost to customers by capitalizing on market price fluctuations to utilize the most efficient generation resources. Rising energy costs have historically been inversely related to economic indicators. When people and businesses have to pay more for energy, they have less to spend on other things and therefore hurt economic prosperity. Higher voltage transmission also lowers costs by reducing losses on the system.

Another key transmission benefit is greater reliability. The Department of Energy reported that electricity disruptions cost the country \$150 billion dollars a year.¹ That's \$500 for every man, woman, and child in the United States. The recent blackouts and brownouts in the West highlight the major impact these events have on the economy. If a generator or a line goes down, a robust transmission system will keep the lights on. Furthermore, never in the history of the country has a blackout been caused by insufficient electrical generation capacity. Instead, they have been caused by failures of the high voltage transmission system or lack thereof.

¹
http://energy.gov/sites/prod/files/oeprod/DocumentsandMedia/DOE_SG_Book_Single_Pages%281%29.pdf, pg. 5.

Additionally, a strong grid offers the utmost flexibility to accommodate various policy choices that will be made and revised over time. Whether the industry relies more on nuclear, coal, or renewables - or electric vehicle or other alternative transportation technologies experience growth in the market, transmission supports the most efficient use of the resources by harvesting them at their source and bringing the energy to those who need it. But, we have a long way to go as evidenced by the comparison below between the interstate highway system and the high-voltage (500kV and above) transmission system.



As you can see, transmission development has not kept pace with the development of the country. Some continue to promote a utility by utility incremental approach that only accommodates the next new customer or generator. But that thinking is what created the fragmented electric grid you see above.

ITC has been a leader in the effort to reduce barriers to transmission development so that the benefits of a strong electric grid can be realized. The three critical barriers have been planning, pricing, and permitting. FERC Order 1000 is certainly a welcome step forward

to support the continued efforts, driven by Congress, to take a broader, more efficient approach to energy procurement and delivery.

While ITC supports FERC's six cost allocation principles, ITC does not believe Order 1000 adequately addresses the issue of allocating costs between regions. Order 1000 prohibits costs to be allocated outside a region unless they voluntarily agree to pay, regardless of whether the neighboring region benefits. Clearly, the result of this policy will be to create free riders. Those who benefit should pay and requiring benefits to stop at the border when benefits are flowing between regions daily fails to meet FERC's own cost causation principle.

Independent Regional Planning

In order to ensure the most efficient grid development, it must be planned with a broad geographic scope and long-term needs in mind. Historically, transmission was developed utility-by-utility just to get the next customer or generator connected. Can you imagine if multiple entities within each state were responsible for building the interstate highway system through separate development in their defined geographic area? It would surely look much different than what we have today and would certainly be less efficiently designed.

To have optimal regional transmission planning there must be a party that has no financial or other stake in the outcome to evaluate the multiple needs driving development and the potential solutions for a broad area. The Regional Transmission Organizations (RTOs) have been established to serve this function and Order 1000 goes further in the direction of achieving that goal, although not as far as ITC has supported.

Improvements are needed to require more participation in RTO planning by parties that are in similar geographic areas. Most importantly, a funding mechanism must be developed to reduce or eliminate the influence of financial generation-related interests in the planning process.

Although Order 1000 begins the process of bringing regions together to pursue more efficient planning, the provisions do not require that they actually coordinate planning activities or pursue the most efficient option between regions. In other words, there is no interregional planning process mandated by Order 1000. Instead, there is a requirement for neighboring regions to discuss potentially beneficial joint projects, but the actual planning is still done at the individual regional level. The framework provided by Order 1000 is an incremental improvement but there is more work to be done to make inter-regional planning a reality that will provide greater benefits and reduced costs to customers.

Pricing/Cost Allocation

There is general consensus, supported by numerous studies,² that more transmission is needed, particularly higher voltage regional transmission, to connect generation, reduce congestion, enhance reliability and facilitate markets. The primary controversy lies not in the need for infrastructure development but rather who pays and how their portion of the

² See North American Electric Reliability Corporation, 2009 Long-Term Reliability Assessment: 2009-2018 (Oct. 2009); The Brattle Group, "Employment and Economic Benefits of Transmission Infrastructure Investment in the U.S. and Canada," prepared for the Working Group for Investment in Reliable and Economic Electric Systems (WIRES), (May 2011) at p. ii, available at: http://wiresgroup.com/images/Brattle-WIRES_Jobs_Study_May2011.pdf; Midwest ISO Regional Generation Outlet Study, available at: <https://www.midwestiso.org/Library/Repository/Study/RGOS/Regional%20Generation%20Outlet%20Study.pdf>; Upper Midwest Transmission Development Initiative (UMTDI) report, discussed at: http://www.pennenergy.com/index/power/display/2311775045/articles/pennenergy/power/transmission/2010/09/umtdi-report_calls.html.

bill is determined. Both customers and transmission developers need a simple, predictable and transparent methodology to recover the costs resulting from prudent investments and to recognize the value it provides. It is difficult with investments, like transmission, that serve a public good to determine the cost and benefits, particularly when you consider that transmission assets can have 40 to 70 year useful lives with an ever changing distribution of benefits. Aligning benefits and costs is further complicated by the fact that many transmission cost allocation decisions are prospective estimates, not after-the-fact calculations.

ITC is a member of two RTOs, SPP and MISO, both of which tackled the difficult task of working with stakeholders to establish cost allocation for regional transmission. SPP's Highway/Byway approach is probably the best example of a simple, predictable, and transparent methodology for allocating costs. Projects developed in the regional planning process to meet the future needs of the region are allocated based on voltage with lower voltages staying with the local customers, the highest voltages allocated to the entire region, and those in between with a mix. Since the benefits received by an individual customer, or even an entire state, vary day-to-day or even hour-to-hour, an allocation methodology can never be perfect. But Highway/Byway is a solid policy that takes this difficulty into consideration and provides the right balance between specificity and simplicity, while also properly aligning costs and benefits.

MISO also developed, through a transparent and involved stakeholder process, a methodology for allocating the costs for specific transmission projects that provide customers with enhanced reliability, improved access to more economic power and

energy markets, and/or supports the shifting generation mix driven by state policies. MISO refers to these projects as “Multi-Value Projects” or MVPs. MISO’s intent is to develop transmission facilities that meet multiple needs as a way to make the most efficient long-term investments possible. The MVP projects under review by the MISO Board of Directors have been shown to provide benefits that well exceed the costs to customers in the region. The benefit to cost ratio ranges from 1.8-3.0 to 1 for each of MISO’s seven sub-regions and provides an average annual economic value of \$1.28 billion over the first 40 years of service.³ The lower peninsula of Michigan alone, one of the sub-regions, receives benefits that exceed costs of 1.7 – 3.0,⁴ primarily because Michigan is the highest-cost state in the MISO region and greater market access will discipline wholesale prices.

The basic tenant of both of these methodologies, only those who benefit should pay, was reinforced by Order 1000. FERC made very clear that this is a threshold requirement for any regional cost allocation plan. Therefore, those who are concerned about being charged for transmission that does not benefit them should be supportive of Order 1000. This policy, in concert with the just and reasonable standard mandated for any transmission rate, gives parties recourse if they believe the costs of a project exceeds the benefits received.

While ITC supports FERC’s six cost allocation principles, ITC does not believe Order 1000 adequately addresses the issue of allocating costs between regions. Order 1000

³

<https://www.midwestiso.org/Library/Repository/Meeting%20Material/Stakeholder/MVP/2011%20MVP/20110919/20110919%20MVP%20Proposed%20Portfolio%20Business%20Case.pdf>, pg. 73.

⁴ *Id.* at pg. 70.

prohibits costs to be allocated outside a region unless they voluntarily agree to pay, regardless of whether the neighboring region benefits. Clearly, the result of this policy will be to create free riders. Those who benefit should pay and requiring benefits to stop at the border when benefits are flowing between regions daily fails to meet FERC's own cost causation principle.

Right of First Refusal

Order 1000 requires transmission providers to remove from Commission-approved tariffs and agreements any right-of-first-refusal (ROFR) for transmission facilities selected in a regional transmission plan for purposes of cost allocation. FERC permits a continued ROFR in specific instances, such as for transmission projects that are not in a plan for cost allocation purposes or upgrades to existing facilities or those on existing incumbent right-of-ways. FERC states this mandate is needed to prevent discrimination in the regional planning process.

While ITC does not believe that ROFR has been a major impediment to transmission development, ITC agrees with FERC that an unlimited right-of-first-refusal could be used to block needed transmission development. This is similar to points made earlier in this testimony about undue influence by market participants in the planning process. That said ITC's experience indicates that the incumbent utility is best situated to undertake needed development and supply long-term maintenance on facilities over their 40-70 year life. This is the reason that ITC has adopted a model of partnering with the incumbent utility to develop outside our traditional footprint.

ITC does not see any intrinsic benefit to introducing competition into what is a cost of service pricing regime where incumbents have very real reliability obligations. Accordingly, as part of the FERC proceeding, ITC supported a time-limited ROFR similar to the policy currently utilized in SPP. This approach would have prevented market participants from failing to build needed facilities without creating new complications. Order 1000 raises many implementation questions and real concerns as to the ultimate impact on the planning process, which is a bottom-up process where, at least in MISO, projects change over time as increased optimization is identified making ownership “rights” less than clear.

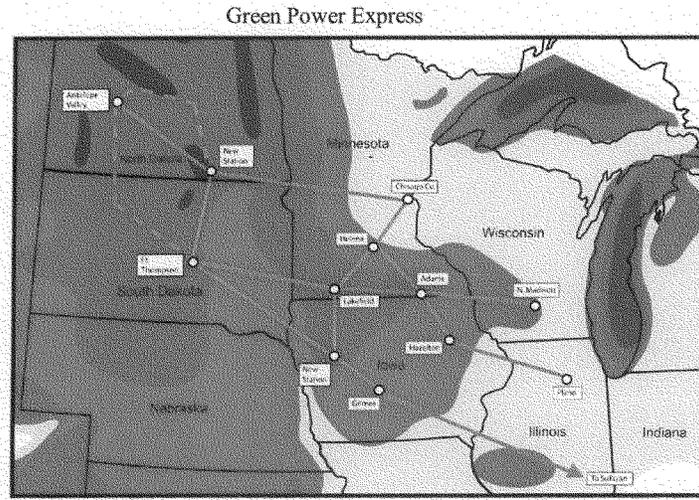
The issue of who builds transmission has always been under state jurisdiction and Order 1000 blurs that delineation. ITC is well situated to be competitive in a post Order 1000 world and is actively working with other stakeholders in our regions to develop compliance plans to minimize disruption for ongoing project development and create clear and reasonable rules for new projects entering the pipeline.

Permitting/Siting

Today, siting authority rests solely with the states. Although Congress included federal backstop siting authority in the Federal Power Act of 2005, that provision has largely been nullified by the courts. This means that a regional, multi-state project could be thwarted if a single state does not grant siting authority.

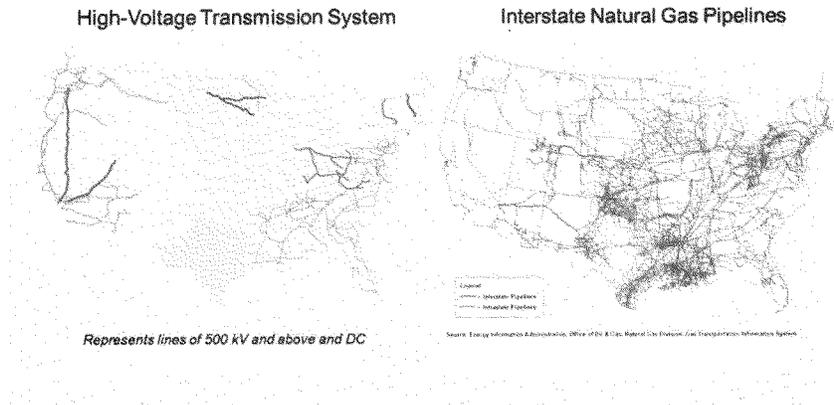
One ITC project illustrates the problem well. The Green Power Express was proposed as a 3,000 mile 765 kV transmission line with the capacity to move 10,000 – 12,000 MWs of power. It crosses 7 states, 20 utility service territories, and 2 RTOs as well as non-

RTO areas with an expected cost of \$10-\$12 billion. The project was intended to harness the vast natural resources in the region and allow power to be delivered to population centers.



In the past 10 years the United States has built roughly 11,000 miles of natural gas pipeline. During the same period, the electricity industry has only added approximately 660 miles of new high voltage interstate transmission. This can largely be attributed to the authority of FERC to site natural gas transmission, but not electric transmission. ITC believes strongly in the role of states and local governments to address local needs, but effective federal backstop siting authority is imperative to achieving the transmission grid needed to support the nation's future energy needs. Action by Congress is needed to reinstate federal backstop siting authority in accordance with the findings of the 4th Circuit Court of Appeals⁵ decision on the issue.

⁵ *Piedmont Environmental Council v. FERC*, No. 07-1651 (4th Cir. Feb. 18, 2009).



Recently, the Department of Energy (DOE) announced it is considering a proposal to delegate some of its authority under section 216 of the Federal Power Act to FERC. Under this proposal, FERC would assume responsibility to prepare the triennial congestion study mandated by Congress and institute project-specific National Interest Electric Transmission Corridors.

Consolidating the federal transmission siting role at FERC should make the siting process more efficient and workable. The bifurcation of the federal role between DOE and FERC is inefficient, requiring lengthy, sequential proceedings at two agencies. Consolidation of the federal role would result in a single proceeding at FERC, with improved environmental review coordination. The proposed delegation would not expand the federal transmission siting role, but only make it more effective. States would retain primary responsibility for siting electric transmission facilities. But limited federal siting will help develop the robust grid the U.S. needs to assure reliability, reduce congestion, and deliver low cost, clean energy.

ITC supports delegation of authority from DOE to FERC. However, ITC believes the Department should place conditions on the delegation order. As discussed earlier, FERC has taken important steps to improve regional planning. Failing to recognize this effort in assigning FERC the new responsibility of proposing project specific National Interest Electric Transmission Corridors would undermine this effort. Therefore, DOE must stipulate that any project seeking federal backstop siting authority must be included in a regional plan under Order 1000. It is essential that these efforts for a robust regional planning process are preserved if DOE decides to delegate its authority to FERC.

Incentives

The 2003 Northeast Blackout demonstrated the effects a lack of investment can have on the transmission system. Recognizing this risk, and to spur needed investments, Congress mandated that FERC develop incentives for investments in transmission facilities. In passing the Energy Policy Act of 2005, Congress recognized the significant lack of investment in needed electric transmission facilities over a period of several decades. To attract needed investment, Section 1241 of the EPACT '05 directed the FERC to establish a rule (Order 679, July 2006) to provide incentive-based rate treatment for transmission investment. The risks and challenges facing transmission infrastructure development today are no less difficult than those faced in 2006 and the preceding decades. That's not to say Order 679 has failed to yield any results. However, while we have seen an increased attraction of capital to transmission projects driven by these incentives, the actual capital investment has yet to be made to put steel in the ground on

many new transmission projects because of the long lead process for planning and permitting.

FERC's policy provides a process under which entities can apply on a case-by-case basis for specific incentives that include risk reducing mechanisms as well as certain financial incentives. These incentives must be considered within FERC's threshold requirement that transmission rates are just and reasonable. The incentives provided by FERC have enabled transmission projects to raise capital, but there are growing competing capital demands in the energy industry. For example, capital is needed to retrofit, or retire and replace, generation in compliance with new clean air, water and waste requirements. Also, the natural gas industry estimates that more than \$250 billion worth of investment will be needed over the next 25 years to gather, transport and deliver natural gas supplies to consumers from new U.S. shale resources.⁶

ITC believes that FERC's incentive policies have succeeded in encouraging capital to flow to the transmission sector over the past five years. Investment decisions are, of course, influenced by many factors; accordingly, Congress should not assume that the regulatory and economic environment that has worked previously with FERC policies to drive investment decisions will continue to work. Electric transmission developers must be able to compete for capital with alternative investment opportunities at a time when even FERC has acknowledged that, despite increased investment levels, there continue to be significant investments needed. A 2011 WIRES/Brattle report estimates that \$240 billion to \$320 billion of transmission investment will be needed over the next 20 years

⁶ ICF International, *North American Midstream Infrastructure Through 2035 – A Secure Energy Future*, June 28, 2011, at p. 66 (prepared for The INGAA Foundation, Inc.), available at: <http://www.ingaa.org/File.aspx?id=14900>.

for a secure, modernized grid that will support reliable, competitive wholesale power markets and interconnect new generation.⁷ As the industry enters a new period of substantial, competing capital demands, the need for transmission incentives is perhaps even greater than in the past.

Earlier this year, FERC initiated a review through a Notice of Inquiry to evaluate whether its existing policy is effective at encouraging investment, whether the levels of incentives being awarded are commensurate with risk, and to generally solicit comments on beneficial reforms. ITC believes that a review to ensure that existing policies are yielding intended results is appropriate.

In closing, creating an environment that supports the development of regional transmission is one of the most important steps policymakers can take to ensure our nation can meet the electricity needs of the 21st century. That process began with Congress in the Energy Policy Act of 2005 and FERC Order 1000 was the latest step in the journey, but there is still a long way to go.

Thank you, Chairman Whitfield, Ranking Member Rush and Members of the Subcommittee. Again, I appreciate the opportunity to provide this testimony and will be happy to answer any questions.

⁷ The Brattle Group, "Employment and Economic Benefits of Transmission Infrastructure Investment in the U.S. and Canada," prepared for the Working Group for Investment in Reliable and Economic Electric Systems (WIRES), (May 2011) at p. ii, available at: http://wiresgroup.com/images/Brattle-WIRES_Jobs_Study_May2011.pdf.

Mr. WHITFIELD. Thank you very much.

I am going to follow Mr. Dingell's admonition of trying to answer yes or no for the first question. How many of you believe that the cost allocation policy in Order No. 1000 is necessary to build new transmission lines in the United States? Mr. White?

Mr. WELCH. I do.

Mr. WHITE. I am going to say no.

Mr. WHITFIELD. No?

Mr. JONES. No.

Mr. DiSTASIO. No.

Mr. TRANSETH. No.

Mr. BROWN. Absolutely yes.

Mr. WHITFIELD. So we have four nos and two yeses. OK. Now, one of you, it may have been you, Mr. Transeth, or maybe it was Mr. DiStasio, stated that you do not believe that the commission has the legal authority to permit transmission developers to recover costs from entities with which they do not have a contract or a service relationship. Was that you, Mr. DiStasio?

Mr. DiSTASIO. It was me, and while I am not an attorney, our attorneys have advised in looking at this that it is a pretty big departure from past precedent of how FERC has looked at this as well as the aforementioned case around cost causation. This really does create at least the opportunity for costs to be allocated to people that don't have a service need or relationship or a contract or a tariff.

Mr. WHITFIELD. So you are obviously concerned about that?

Mr. DiSTASIO. Yes.

Mr. WHITFIELD. OK. Now, Mr. Welch, you are a transmission developer. Do you think that they do not have the legal authority to permit that? I am assuming you do.

Mr. WELCH. They do have the legal authority to permit that.

Mr. WHITFIELD. And your two lawyers have talked to each other about it, I guess, right?

Mr. WELCH. I try not to talk to lawyers.

Mr. WHITFIELD. Now, I guess it was Mr. Transeth, you said that the commission's failure to limit—I asked the question to Mr. Wellinghoff about the lack of clarity on determining what is the benefit, in calculating benefits, and developing these cost allocations, and you say in your testimony that the commission's failure to limit in any way what individual regions may consider as benefits is a fatal flaw of the rule, and also that regions under the rule would presumably be allowed to assert that certain types or classes of projects have certain environmental or social benefits and that that might be used and therefore really socializing the cost. Do any of the other members have the same concerns that Mr. Transeth has on that issue?

Mr. BROWN. I do not, and primarily because of the governance structure within our organization. We are driven by our members. The members and the regional State committee are the stakeholders who are making the decisions on how to calculate the benefits. Some benefits are extremely easy to quantify. Other benefits are much more soft but either way, the stakeholders are working together to identify those benefits and that can occur in every region in the country.

Mr. WHITFIELD. Mr. DiStasio?

Mr. DiSTASIO. I agree with Mr. Transeth on that issue from the standpoint that once we commit to a regional planning process, we may not know what the calculation of benefits will be until we are already committed to cost allocation that could come out from the stakeholders that we would be on the losing end of that argument and ultimately get imposed costs that we otherwise would not have signed up for. So because we don't know the benefits up front, they may be very difficult to calculate, and if they get to FERC with all good intentions, it could end up being for benefits that we wouldn't agree exist.

Mr. WHITFIELD. Well, it seems to me that this Order 1000 certainly lends itself to considering so-called benefits that have never been considered before in order to pursue a social objective or environmental objective or whatever. Mr. Welch?

Mr. WELCH. Let me state too that I agree with Mr. Brown that Order 1000 really gave the flexibility to the regions, and I want to emphasize this one more time, which are voluntary organizations where people have got to come together and they sit at a table and the process in MISO I will talk about which Michigan is a member of, the process took in excess of 2 years for them to come to an agreement of any sort of how to allocate costs. Once you start talking about allocating costs, no one ever wants to pay the bill, but when you can get general agreement, that is as good as it is going to get, and I believe that Order 1000 absolutely sends the message to the regions to come together and do this on your own and gave them the flexibility of what to consider or what not to consider.

Mr. WHITFIELD. Well, yes. It just seems to me that this certainly expands the Federal Power Act of just and reasonable and can go much further than was anticipated at one time, so that is one of the issues we are trying to deal with here.

Mr. WELCH. Can I just add to this? But the fact still remains, whether they consider that or not, there still has to be a benefit-to-cost ratio that exists before you can charge for it. So the fact that you consider the renewable resource or you can further expand that to think about integrating it into the grid. That is one issue. But the second issue is how the cost allocation is allocated, and that cost allocation cannot be allocated unless there are benefits commensurate with the cost. We can sit here and argue about that, but the fact is, it has got to be clear that the benefits line up with the costs.

Mr. WHITFIELD. Well, you know, that is what the hearing is all about because FERC has issued this order, and maybe Congress may decide that it needs to do some legislation because maybe we don't view it the same way that FERC does. But that is why we have the hearings.

Mr. RUSH, you are recognized for 5 minutes.

Mr. RUSH. Thank you, Mr. Chairman.

My question is directed to both Mr. White and Mr. Jones. In the comments made to my office by the Illinois Commerce Commission, the commission noted that FERC did not define the role of State regulators and did not provide a means for States to fully participate in transmission planning as stipulated in Order 890. The question to both of you is, are you satisfied that State regulators

will be able to participate in a meaningful way in the planning process as outlined in Order 1000 or do you share the belief that FERC made a mistake in not prescribing a more substantive role for the States?

Mr. WHITE. Thank you, Mr. Rush. I do believe that the States and State commissions will have a substantive role in the planning process. However, in my view, more of the decision-making authority has been given to the RTOs to the regional process that, you know, should have been better defined, should have more clearly deferred to the States' authority. At the end of the day, we are the ones who have to ensure that the bills that our customers receive are just and reasonable and demonstrate the benefits, and I think that without that better clarification in the order, that is not evident, but I do believe that we will be actively and substantially involved in the planning process.

Mr. JONES. Mr. Rush, I think the tension here is a delicate balance between being very prescriptive and giving flexibility. I think Chairman Wellinghoff really struck it right. I think there is a lot of flexibility to regional organizations in the Midwest, the West and elsewhere, and it is not that prescriptive. As I described in my testimony, I can just speak for the West, we have been doing this, as I said, for 3 decades voluntarily, and so we are used to it. The transmission providers do consult with us. We have these sub-regional groups that have filed open-access transmission tariffs with FERC. FERC has approved them. State commissions are involved in the planning processes for NTTG and ColumbiaGrid, the sub-regional groups.

The only area where I would ask the subcommittee to be mindful of is DOE through taxpayer dollars has funded this very ambitious interconnection-wide planning effort, and the schedules are set to be done by the end of 2013. Taxpayer dollars are being spent. We commissioners are flying all over the country, I can tell you, the Western Interconnect, Texas in ERCOT, we are spending a lot of time in planning processes to take into account renewables, energy efficiency, nuclear, coal, you know, the whole gamut of possible generation technologies, and then integrating those into the modern grid. So the question I would urge the subcommittee to be mindful of is, how do those processes fit into Order 1000 and the compliance filings. Right now, the timelines are 12 months and 18 months, as you know, so 12 months, the transmission providers have to file with FERC on the regional plans, 18 months, they have to file on the interregional cost allocation schemes. That is before they finish all these—before all these plans are rolled up, interconnection-wide and ISPC and in the West in ERCOT. So I would just hope that we are being consistent here. We State commissioners are spending a lot of time, effort and resources going to all these meetings and I just hope the Federal Government agencies, DOE and FERC, as you saw on the first panel really coordinate on this.

Mr. RUSH. In my discussions with Chairman Wellinghoff, he indicated that he wants to stress competition in the market in order to ultimately help reduce costs to customers, and this is a question for the panel. Does anyone want to comment on this and either

agree or dispute the idea that the approach outlined by FERC will indeed increase competition and keep down consumer costs?

Mr. WELCH. I truly believe that it is going to spur competition, as I said in my prepared remarks. Number one, we don't have a grid that was designed to be truly interregional. Number two, we can't get the low-cost power, especially from Michigan into Michigan because the transmission developments lie outside the State, the things that we need to do to get that import capability. You know, there has been a lot of discussions here about, you know, whether we are going to integrate renewables and how that all figures out, but just imagine that—and we will change the discussion now to a different market. Let us talk about something like grain, and you read in the paper that there is this bumper crop in Argentina of wheat and all of a sudden you look at the commodities future in the United States and the price of wheat drops, and why is that? Because there is a low-cost supply coming into the marketplace and it is displacing other entities. And so when these other States start to develop these renewables, they are mandated in those States to come in, but it has the effect of displacing their low-cost generation that was otherwise used to serve their customers and makes it available to the marketplace to be bought. Michigan being a high-cost producer is the first State to benefit from such a marketplace if we can get the transmission built.

Mr. RUSH. Thank you, Mr. Chairman. I yield back.

Mr. WHITFIELD. Thank you.

Mr. Shimkus, you are recognized for 5 minutes.

Mr. SHIMKUS. Thank you, and I really appreciate the panel. For electricity geeks like you all are and some of us have become, this is something we have talked about for a long time going back to the bills and, you know, electricity generation and the public utility commissions were in essence controlled within State lines and we did intend in the 2005 energy bill to expedite siting and transmission, to start having a more vibrant market. Now we have evolved, and this green movement, which I would argue would bring high-cost electricity in, and now we have the debate on how are we going to pay for that and who is going to bear the cost when we as a public policy-wise push green and solar, which is high-cost electricity, and I have said this numerous times. It is credible. I am not making this stuff up. It just costs more.

So now, who is going to pay for that? And then how do we define benefits and who is going to define the benefits? I would—if you stayed with the simplistic financial decision, low-cost power without government bureaucrats and politicians intervening and deciding what is good for the world, then you could do a basic market analysis and price calculation and drive for lower cost. But when we get involved and say we have got to go solar, we have got to go wind, we start taking some cheap coal power offline, we are intervening.

So I think—so the point is, if the definition of benefits is vague, how do we really move forward? Does anyone want to take a shot at that?

Mr. WELCH. Well, I would go first, but I see Nick wanted to grab the microphone, and since he is on the side that has to—I don't think that the benefits are vague. They are cost benefits, plain,

pure and simple in the end. You can't do a cost-benefit analysis with everything being quantified as a dollar bill, and in the end, it is simply money. The question becomes—

Mr. SHIMKUS. But the policy at the State level intervenes with renewable power, that is more expensive, I mean, a mandate of a 10, 15 or 20 percent renewable power position.

Mr. WELCH. Who am I, and candidly, who are you, to tell each State what they want to have for their own—

Mr. SHIMKUS. Who am I to determine on the transmission grid if we have to intervene, you can't define benefits and then you pass it on to States who don't want that.

Mr. WELCH. No, but at the State level, these people are passing laws in their State that they are going to have renewable portfolio standards. My job isn't to dictate whether that is a rational law or an irrational law. My job is to facilitate the marketplace in a way that makes it cost-effective, and when they put those facilities online, those people in that State have made the decision they want that.

Mr. SHIMKUS. And those people in those States should be able to bear the higher utility costs and understand from whence it comes.

Mr. WELCH. And they are paying for that renewable energy. They are paying for that renewable energy. That is not being passed on to some amorphous people.

Mr. SHIMKUS. But if you are in a regional transmission organization and you are expanding the transmission grid, and I think part of this debate is, I mean, really, this is about cost allocation or participant funding.

Mr. WELCH. No, it is about the cost allocation of the transmission—

Mr. SHIMKUS. All right. You disagree. I have some nods that might agree with my position. Mr. Jones, I need some help here.

Mr. JONES. Mr. Shimkus, I will—

Mr. SHIMKUS. Bring in the cavalry.

Mr. JONES. I am a State regulator and I am here to help you.

Mr. SHIMKUS. Just like the government.

Mr. JONES. Let the transmission—just let me make three points. Let the transmission planners do their work. These guys are good, the engineers. We have all these sub-regional plans. SPP is doing work, we are doing work in the West. These are good guys. They know how to quantify the cost-benefit analysis, what we call CBA, but incorporate all these new things that are a little more difficult to quantify but they can do it. So that is number one.

Number two, a State like mine is an—we do 20-year plans called integrated resource plans, and those require least costs, so I am here to make sure that both transmission and generation is provided to my ratepayers at least cost. We update those plans every 2 years. I can tell that for my utility, Puget Sound Energy, the first 300-megawatt wind plant that they put in our State was least cost.

Mr. SHIMKUS. And also have huge hydroelectric, which is very helpful.

Let me go to Mr. White real quick, I mean, just making sure that for full disclosure, Mr. White.

Mr. WHITE. Yes, Mr. Shimkus. Thank you very much. I think you hit the nail right on the head. I think the definition of benefits is

critical here. The devil is in the details. There are assumptions used by certain parties as to what constitutes a benefit, and that may not be shared or may not be accurate across the system.

To Mr. Rush's question, there is no question in my mind that strategically developing transmission will facilitate markets and can deliver tremendous benefits to customers at the State, local, regional level. At the same time, if we are simply focusing on transmission as the answer to all, we are precluding a lot of other more strategic local options that could in fact be significantly less costly because they can connect directly to the distribution system, thereby bypassing the need for very, very expensive long-haul transmission systems, and so my point is, the devil is in the details and I think you are exactly right. The benefits is critical here.

Mr. SHIMKUS. I want to thank the chairman.

Mr. WHITFIELD. His time is expired, but I am going to let you two respond.

Mr. DiSTASIO. I just wanted to respond with an example. First of all, if you look at my State and the States of many of the LPPC members, California has a renewable energy standard that envisions it will be developed in State, and our Governor just added another 12,000-megawatt requirement for distributed generation. So when we look at our resource planning, which we do bottom up, by the way, to get to least cost, we don't see a need to have long line transmissions paid for by our consumers because it really is in conflict with State policy. That said, we have certain occasions right now. We are connected to the Pacific Northwest and northern California, more so than southern California, and so we have a line that was built to access hydro from the Northwest and for us to transmit power when it is cold in the winter there and they transmit down to us when it is hot in the summer in California, but we did it on participant funding and we actually have people that operate on that line with different market models. So there are examples of this occurring, especially in the West, where we effectively don't need additional cost allocation mechanisms to make these kind of investments work.

Mr. JONES. Mr. Shimkus, we do share that low-cost cheap hydro with our friends in California.

Mr. TRANSETH. Just to answer the question about this whole concept of benefits and the lack of definition, I think it goes even further than that. It is not just the benefits, it is who the beneficiaries are that need to be also included in this process. A good example, like I said in my testimony, this is a lot of speculative. We have a case study going on right now with the MISO—that is the Midwest RTO—and what is going on in our—how does Indiana, who does not have an RPS, it doesn't need the value of renewables that are going to come out of these MVP projects yet they are going to be forced because they are part of the region to pay for the cost commensurate to whatever it is that their load is for that new energy. If you don't connect those two, benefits and beneficiaries, you can never have a commensurate measure. You have to decide is this a defined benefit that we can measure, and plus, are those who are going to actually see the benefits receiving it commensurate to what costs you are imposing upon them.

Mr. SHIMKUS. Great panel, Mr. Chairman. Thank you.

Mr. WHITFIELD. Thank you.

Mr. Engel, you are recognized for 5 minutes.

Mr. ENGEL. Thank you very much, Mr. Chairman.

I want to direct a few questions to Mr. Transeth because I understand you are testifying on behalf of the Coalition for Fair Transmission Policy.

Mr. TRANSETH. Yes.

Mr. ENGEL. And includes Con Edison of New York—

Mr. TRANSETH. Yes.

Mr. ENGEL (continuing). As a member. I represent a lot of New York City and Westchester County, and I want to make sure that we understand your concerns. Firstly, do you agree with Chairman Wellinghoff and NERC that we will need significant expansion of our power lines by 2019?

Mr. TRANSETH. I am going to go back to one of the comments I made during my original testimony, and that is, this is not about an obvious need, as Mr. Welch talked about, in terms of improving and upgrading the system and making sure that we are going to be able to meet our energy needs as we are going forward. The question involved in this whole debate is, you know, where are we going to build this transmission, how much are we going to build and who is going to pay for it, and that last one is really the key that we are going to keep stumbling upon as we have got to make decisions, and that is going to my comments just a few minutes ago is deciding what are the benefits, who are the beneficiaries, and somehow or another coming up with some meaningful and supportable proposition of how those are roughly commensurate, as the 7th Circuit put forth in their case.

Mr. ENGEL. Let me give you a chance to expand and talk about cost allocation, because that is what everyone is concerned about here. I understand the current law, once a transmission is approved, I understand the grid operators have fairly broad discretion in determining who ought to pay for the line. It could be all regional customers. Am I correct? Or it could be a subset of consumers directly benefiting from the line? Am I correct about that?

Mr. TRANSETH. Maybe one of the—

Mr. BROWN. It depends on the region and the provisions in each regional tariff.

Mr. ENGEL. OK.

Mr. TRANSETH. I guess I assume that if MISO, which is what we are asking, we would like them to designate Michigan as a separate sub-region. I see no reason why they couldn't amend their tariff and do that, and that is what we are seeking and looking for. So yes, I guess the answer to that is, if they determine that in fact Michigan is not receiving sufficient benefits to warrant 20 percent of the cost of these MVP projects, that they could designate us as a separate sub-region.

Mr. ENGEL. Let me give you a chance to add on to some of what you said.

Mr. TRANSETH. That is always dangerous.

Mr. ENGEL. Only on our side it is.

In your opinion, does Order 1000's cost allocation make transmission cost determinations more or less fair than the current system?

Mr. TRANSETH. The potential is—as I said many times about Order 1000, it is not so much what it says, it is what it doesn't say. I think that the basis is there. It is all going to kind of come out in how this is finally determined. At some point or another, some decisions are going to have to be made, at rehearing or as they go through the compliance filings. That is going to somehow or another wash out and we are going to know more about where they are coming, and I guess it is coming from the chairman's question that I disagree with Chairman Wellinghoff's statement. I think that there is a problem with clarity with this order, and that is what we have to get to. We need to start inserting some clarity into Order 1000 if we are going to get to the point that you are asking.

Mr. ENGEL. Am I right in saying that Order 1000, according to my interpretation of it, the costs need to be allocated at least roughly commensurate with the estimated benefits and those who don't receive benefits should not be allocated costs and no costs should be allocated to another region unless that other region agrees to it?

Mr. TRANSETH. That is the principles in which they establish in Order 1000. I don't know if as you read the 620 pages that that necessarily comes out in the wash in the process, but that is a principle that they stated, and by the way, much of that language comes directly out of the 7th Circuit case, so I assume that that was one of the factors in which why they issued some of the language they did in Order 1000.

Mr. ENGEL. In your testimony, you testified that Order 1000 does not define the term "benefits." Mr. White recently mentioned the benefits. What definition of benefits do you think is appropriate?

Mr. TRANSETH. Well, a \$64,000 question I guess. Well, that is going to be—I suppose if I knew the exact answer to that, I should be sitting on FERC, but I think at the very minimum, we have to make sure that whatever benefits that we are looking at, that they are going to be somewhat measurable. We have got to be able to say this is a benefit and somehow or another this is going to have some measurable impact on certain parties, and that gets to the second part that I talked about where you need also to be able to find who the beneficiaries are.

Mr. ENGEL. Let me ask you a final question under the wire with the chairman's benevolence. Will Order 1000 in your opinion result in New York City residents have to pay more for their electricity, and if so, why?

Mr. TRANSETH. I wouldn't want to speculate on that.

Mr. ENGEL. No hunch?

Mr. TRANSETH. In and of itself, Order 1000 would not do that. It is how that gets implemented is whether that happens or not. If it goes the way that we are afraid, it is probably going to raise your cost. If on the other hand some of our concerns are addressed and there is some clarity brought into the process, no, then I think we get into some of the situations that Mr. Welch was talking about in terms of actually making some kind of meaningful impact with transmission and competitive markets.

Mr. ENGEL. Thank you, Mr. Chairman.

Mr. WHITFIELD. Mr. Pompeo, you are recognized for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman.

Anybody on the panel—by way, Mr. Shimkus said he is an electricity geek. That must make me an electricity geek in training.

Does anybody on the panel think that Order 1000 favors or disfavors any type of power generation either intentionally or in its effect?

Mr. JONES. I would say no with the exception that it has a heavy emphasis on public policy requirements State by State, and you know what has been going on in the States. It is no secret. Thirty States have RPSs.

Mr. POMPEO. Including Kansas.

Mr. JONES. Pardon?

Mr. POMPEO. Including Kansas.

Mr. JONES. Including your State.

Mr. POMPEO. And so you are saying then that it benefits or it is designed to try and take account for and acknowledge those public policies that those States have created?

Mr. JONES. Correct.

Mr. TRANSETH. Representative?

Mr. POMPEO. Yes.

Mr. TRANSETH. I guess I would word it as Order 1000 allows for the opportunity which it did not before to States to establish a public policy that says we want renewables and so it will be developed that way.

Mr. POMPEO. Thank you.

You know, I think things work pretty well in the Southwest Power Pool. I think we have actually done a pretty good job, as I have now had a chance to learn more about it. How many of these—we talked about these interregional planning. How many interregional lines would have been built in 2010? Do these happen once a decade? Do we have one every couple hours? How many of these are we really talking about?

Mr. BROWN. Well, without knowing how to allocate the costs for those lines, I would agree with Mr. Welch, none. In our region, since the Energy Policy Act of 1992, very, very little transmission has been built because no one really knew how to allocate the costs and who was benefiting from the expansion of the transmission network, and so when we tackled the issue of cost allocation and our footprint, now all of a sudden we have notices to construct to our members that exceed \$5 billion worth of transmission over the next 10 years. It clearly was an impediment in our region. I can't speak for the West, because I seem to think they are building all the transmission they need. We were not. We are now. And in terms of understanding the benefit from an engineer's perspective, it is a very simple calculation of adjusted production cost savings, and all of our States are used to dealing with that particular type of calculation. Everyone has used it in regulatory proceedings for decades and it is a very simple calculation. It has worked in our region.

Mr. TRANSETH. Representative, I think that the answer to that is, we have long neglected our transmission system for too long and we are now on the verge of I think seeing a new, I don't know what you want to call it, a renaissance, but we are going to see a lot of transmission built in the coming years. I think that the way we generate, transmit and use energy is going to look completely dif-

ferent 10, 20 years from now, and all of that is going to come into play with some of the decisions like we are making today.

Mr. POMPEO. Great. I have heard some concerns, Mr. Welch, I will direct this to you, that Order 1000 creates the risk over the overbuild of transmission lines and it will create excess capacity either as a national matter or in particular localities or regions. Do you have any thoughts on that?

Mr. WELCH. I do, and as a matter of fact, in my pre-filed testimony, I give to the committee members a couple of maps. One map shows the high-voltage grid in the United States and the other map shows the interstate highway system in the United States and another map shows the interstate gas pipelines in the United States and look at them and ask yourself, especially in States like Kansas, if you think that you are going to have a levelized electric access to competitive markets with totally the absence of a high-voltage electric grid, the map is stark by its own realities that there is none there, so much so that in Kansas when we first came there to do business, we were asked by the State legislature to come and help them out because they were frustrated because in Nick's area, they were still wrestling to the ground this issue of cost allocation, and there were lines there that had such huge benefits to Kansas, they said well, hell, we will just pay for them ourselves, we have to get somebody to build them. Huge price disparities across the State of Kansas. In fact, if memory serves me right, 6 cents a kilowatt-hour difference between the east side of the State and the west side of the State, so if you are on the west side of the State, you are not too happy.

Mr. POMPEO. Yes, I am familiar with that.

Mr. WELCH. And as a result of that, we need to get that regional transmission built, and you have people there that aren't large enough to enjoy the benefits of large power plants. As you know, they are trying to build a large power plant there. Without that transmission system that lets it get to other small regional users in Oklahoma and other States, it won't exist and again you will be captive to that.

So look at the map and ask yourself if this is—if those maps that you see there is the road, the map gives us the future of what is going to be a competitive energy market. It is stark. I don't think in my lifetime based on everything I have seen today, I don't think in my lifetime we can overbuild a transmission grid. It is just virtually impossible by all the things—just to get to the cost allocation, we have been at this about 10 years. Now we are going to address siting. We are worried about giving FERC—first we don't want FERC to say anything or we want them to say everything about the benefits so we can pinpoint that but we don't want them involved in siting, and so this is a system that just isn't set up for us to get where we need to be.

Mr. POMPEO. Great. Thank you. We would love to build that power plant in western Kansas. My time is expired.

Mr. TRANSETH. Mr. Chair, could I just give a counter answer to that, I guess to a certain extent, if I could have just a few minutes?

Mr. WHITFIELD. Then Mr. DiStasio will want to make a comment.

Mr. TRANSETH. I just want to say, I guess I think that there is the potential of overbuild with this because you are removing a lot of the traditional economic factors that would go into decision-making. You don't have a best practice sometimes in play if you are socializing cost over a broad system so I think that there is the potential. We would have to be very careful to make sure that that doesn't happen, but that would be one of the fears I would have that you have gold-plated transmission systems as opposed to what might be that which is adequate.

Mr. DiSTASIO. And I would just echo that in that if the need is not clearly identified and the benefits test isn't clearly articulated, you could end up with a circumstance where there is really not a need for transmission if you go through a typical resource planning process. Clearly, transmission is part of that but some of the cities we represent—Sacramento, Orlando, Phoenix—we don't need additional resources nor do we need additional transmission. The Western Energy Coordinating Council study that was talked about says there is no new transmission needed in the West until at least 2020, and then frankly, they are doing a 20-year study that will look out beyond that, but we have no load growth in our system. We still are struggling with a difficult economy so if some of these lines were to get built under other public purposes, we could end up with stranded investment that would actually compound the issues that are happening in our communities right now by adding cost to consumers for facilities they don't need.

Mr. WHITFIELD. Thank you very much.

Mr. Bilbray, you are recognized for 5 minutes.

Mr. BILBRAY. Thank you very much, Mr. Chairman.

It is interesting to hear some of the discussions from the different parts of the world, and clarification, Mr. Jones, we do not in San Diego, southern California may get the hydro but San Diego doesn't, and I just want to make sure that Mr. Welch understands that southern California and San Diego were blacked out. We never want to be mixed up with Los Angeles, oK? In fact, our slogan is "Better north TJ than south L.A."

But seriously, Mr. Jones, I am going to get down into the grass here if not right into the dirt on some of this stuff because I think it is important. I think we all—and this is one thing Democrats and Republicans should be able to agree on. Conservation avoidance of cost is the most efficient way of providing services as a base, and one of the things that Mr. Jones brought up that I think we need to talk about now while we are talking about who is going to pay what and where is this, you know, immense cost caused by obstruction of the Federal Government in siting alignments.

Now, the Sacramento area may be able to go to renewables, because let us face it, you go out in your suburbs, you have got old farmland, you have got areas to convert. You are not surrounded by gnatcatcher habitat. You do not have to go over mountains to be able to get out of the area so you can legally site some of these facilities. What about the fact that we don't seem to see real general planning or intricate planning on the siting of these alignments to start with?

I will give you an example. You can't go through a national forest. You can't go through an Indian reservation. To get out to our

solar farms in the Imperial Valley, our lines have to be three times longer than the freeway that drives out there. Now, we are a country that says it is fine to run a freeway through an Indian reservation and a national forest but not a power line going out to a clean energy source. Now, Mr. Jones, wouldn't you agree that maybe Democrats and Republicans ought to be talking frankly and openly about what we need to do to change the system to make it easier and most cost-effective to start siting those lines before we even start talk about building them?

Mr. JONES. Yes, absolutely, and I think you need to direct these questions to Lauren Azar. I think she is a troubleshooter and she is supposed to be heading up these rapid response teams dealing with these Federal agency issues that really impede the development of transmission in the West.

But your other point on energy efficiency and demand-side management is well taken too, and I can assure you that the commissioners and the governor representatives were all looking at different scenarios in the West so that we may not have to build that \$5 billion transmission line that connects San Diego with the Columbia River or with wind in Wyoming or wind in Alberta.

Mr. BILBRAY. We would just like to get out to our desert.

Mr. JONES. So my point—

Mr. BILBRAY. By the way, let me point out that we have been trying for 25 years with about eight different alignments to run the gauntlet through the Federal Government to get to be able to make that connection, but go ahead, Mr. Jones.

Mr. JONES. My only point is that we do have NGOs and stakeholders that participate in our processes who feel very strongly about these public values in our national lands, so if we are going to build those transmission lines through these public sensitive areas, as a State regulator, my biggest concern is that they are least cost.

Mr. BILBRAY. OK. Let me stop it right now and just say this. If you run a city and a county, a city basically has a fiduciary responsibility to site easements for water, gas and electric, but when you get outside of the unincorporated areas, we have not required under the Johnson Act for local council of governments, counties, the regional governments to do the same type of siting for transmission lines that every city does, every municipality does in this country, and we have approached it that well, that is the private sector or somebody else's problem. Is there any reasonable argument against the Federal Government finally saying under the Johnson Act we require you to do this, this, this but we are also now going to require that you sit down and figure out where the appropriate easements are and start pre-siting these and be a participant in it preplanning like we do with zoning right away for these alignments like we do other things. Go ahead, jump in.

Mr. DiSTASIO. Can I answer that? First of all, I want to comment because we have been somewhat critical of Order 1000 but specific to siting, we have been very supportive of the efforts. In fact, several lines have been identified just under the same types of conditions that you are suggesting where corridors have been identified. We supported FERC getting backstop authority if the States

couldn't act within a year for FERC to go ahead and assist with siting those lines.

Mr. BILBRAY. Stop, stop. FERC doesn't know the land use, doesn't know the easement, doesn't know endangered species, doesn't know the terrain, and the trouble is, FERC comes in an outsider when you already have local governments, cities and counties serving as a body that could be making a decision on this, they make it on everything else. They make it on military bases, they make it on all kind of easements. Why is this different than what we would do with our roads? We do it with freeways. Why don't we do it with our power lines?

Mr. DiSTASIO. Understood. I was just commenting on the fact that we are very supportive if something does need to get done about siting. Our issues have been relatively narrow to cost allocation when it comes to Order 1000, and I would also like to say, your comments about energy efficiency are very well taken. We have 15 percent energy efficiency we are doing over 10 years, and we are doing that before we look at any other investments.

Mr. BILBRAY. Mr. Chairman, I appreciate that, and I just wanted to point out that if we built our freeway system the way we are trying to put our interlinks not just electricity but also gas and water and a lot of other things, we would still be driving on two-lane roads around this country. We don't ask the private sector or the locals to decide and lay all these out. These are all preplanned and done comprehensively regionally and State-wide, and we need to be aggressive about that, and that is something Democrats and Republicans should be able to work on because it is our fault we have taken leadership there, it is not theirs. I yield back.

Mr. WHITFIELD. Well, you know, transmission cost allocation brings out the passion in all of us.

Ms. Matsui, you are recognized for 5 minutes.

Ms. MATSUI. Thank you, Mr. Chairman, and thank you for allowing me to ask questions on this panel.

I am fast becoming a geek too. This has really been very, very interesting, and I had a bunch of questions I want to ask you but most of them have been talked about. I really want to get to the nub of what we are talking about here. I am from California. SMUD is my local utility and has been having great customer satisfaction, according to J.D. Powers, for at least 9 years. So we understand in a sense SMUD and what SMUD has been trying to do with energy efficiency and renewables and so forth, and sitting here today listening to what you have gone through the Northwest in sharing and helping each other, that to me is a solution to many of the situations that we encounter in the western part of the United States. I guess what I saying is that when we have local solutions and we have policy that actually advocates for energy efficiencies and investments in them and you have cooperation, it is working, and I think what I am looking at from that side is the sense that you still need this national type of outlook on transmission, which I think is important also. But some of it I am looking at is also that it might be something that we generally look upon as something we do historically in the past as we laid out the freeways and the railroads and things of that nature, which may not work out today.

So I guess what I am going to ask you is that I guess the four of you or so on this side who have a wish list about what you would like to see as far as some flexibility moving forward from FERC and from the other side what you can accept from this side because I think there is a solution here, and I think it is how you go about it is what we are talking about today. So kind of quickly, what would you like to see as far as FERC and this order we are talking about moving forward and implementing it?

Mr. WHITE. Thank you very much. I do believe, and we are supporter of FERC Order 1000 in the sense that it does move the ball forward. It helps better focus the planning objectives and the construct for decision-making. What we would like to see is that greater flexibility be given so that we can be part of that decision-making process in terms of how these projects will be paid for and so that there is clearly measurable benefits. We have no problem paying for projects for which we benefit, even if they are located outside of the State that I work in. But the way some of this construct has been developed, it perhaps overgeneralizes or assumes level of socialization of the costs and benefits in a way that creates almost a one-size-fits-all mentality, therefore precluding the ability of local solutions including efficiency, including more strategically placed generation.

Ms. MATSUI. Do you agree also, Mr. Jones and Mr. DiStasio?

Mr. JONES. Yes, I agree with that. I think the Order 1000 struck the balance properly in the execution of it. It is important to continue these regional planning processes that we have in the West between California, the desert Southwest and the Northwest. I think those will continue. The proof in the pudding, though, is going to be in the regional planning, compliance filings in 12 months and then as all of us has mentioned, cost allocation is a key issue, interregional cost allocations. Between California and the Northwest, we have traditionally funded those on participant funding where the benefits are clearly identified and the beneficiaries pay through a long-term contract.

Mr. DiSTASIO. And I agree with that. I think to put a finer point on it, I think Order 1000 was a well-intentioned order but we do need to have beneficiary pays as one of the permissible options for people to share the costs, a willing seller and a willing buyer determining that there is a need for that line.

Mr. TRANSETH. There is not really much I could add other than to once again say this is not really a question. I think we all can agree that we need to be looking at a robust transmission system that is going to meet our future needs but this is really coming down to once again, you know, where are we going to build this, how much and who is going to pay for it, and that is where the difficulty is occurring between—

Ms. MATSUI. Can you help us out there?

Mr. BROWN. The process that Southwest Power Pool has in place takes all of those things into account. The beneficiaries do pay. They are involved in the planning process to ensure that we don't overbuild or underbuild, and the States have total control of the cost allocation methodology.

Ms. MATSUI. So you think that is a model? Do you agree?

Mr. JONES. Yes. That works well for SPP, and actually SPP has been up in the Northwest talking about an energy and balance market for integrating wind, so we like what they are doing.

Ms. MATSUI. All right. I am over, but am I allowed one more comment here? Thank you.

Mr. WELCH. Well, I will just go back to what I said in my prepared comments, and I am going to quote one more time from FERC's order: "Costs may not be involuntarily allocated to entities that do not receive benefits." End of statement. I mean, that is pretty direct. And I said that I supported this, and at the end of the day, I would be remiss to say that, you know, I would never support something to be allocated to the customers that I am entrusted to serve that they didn't get benefits from.

Ms. MATSUI. Thank you very much, and I find this very interesting, Mr. Chairman, because in California we do have these huge water fights too where we talk about the beneficiary and who pays. Thank you very much. I appreciate it.

Thank you, Mr. Chairman.

Mr. WHITFIELD. And thank you all very much. We appreciate your time and your expertise, and I would like to say that Mr. Dingell had to leave but that he did want me to let all of you know that he intends to submit some additional questions to you to answer and get back with us, so we would appreciate that.

Mr. RUSH. Mr. Chairman, I just would like to ask that you keep the record open for the requisite amount of time.

Mr. WHITFIELD. You may keep it open for 10 days. We will keep it open for 10 days.

And we look forward to working with all of you as we move forward, so thank you very much, and that concludes today's hearing.

[Whereupon, at 12:27 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Statement of Representative John D. Dingell
House Committee on Energy and Commerce
Subcommittee on Energy & Power
"The American Energy Initiative"
October 13, 2011



Mr. Chairman, thank you for holding this hearing today.

We have before us a most complex set of issues. FERC has a seemingly simple mission: To assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means. And according to FERC, this means fulfilling two goals: 1) ensure that rates, terms and conditions are just, reasonable and not unduly discriminatory or preferential; and, 2) promote the development of safe, reliable and efficient energy infrastructure that serves the public interest.

I know most of us in the room understand this, but FERC's mission and goals bear thinking about, especially in this political and economic climate.

The calls are getting louder for the need to expand transmission capability due to the increase in renewable energy. I think that is probably true, for we all support the basic premise of getting more renewables on line to not only wean ourselves off foreign sources of energy but also create jobs building that technology here at home.

However, it is important we not do this in a haphazard manner. We do not want to increase capacity to the point that ratepayers overpay for useless capacity. We also want to see that we have an adequate supply to ensure low rates to consumers.

And, of course, we have the particularly sticky question of who pays for new transmission lines.

In addition, we must balance the delicate intersection of federal and state authority over electricity regulation. To date, we have little or no record on which to judge how well the existing Federal Power Act addresses those concerns.

Finally, it is critical that we all understand the effect of any new language on existing law. Otherwise, it will only lead to more litigation and delay, of which we already have quite enough.

I thank the Chairman for holding this hearing so we can explore the issues in depth. I hope this is the beginning of a bipartisan collaboration to protect ratepayers and ensure transmission is expanded in a responsible way. Chairman Upton and I proved such a meeting of the minds can happen as we recently did with the Pipeline Safety legislation

and I believe this is another issue that knows no party label and requires serious consideration.

**Post-Hearing Responses of Chairman Jon Wellinghoff
Federal Energy Regulatory Commission
To the Committee on Energy and Commerce, Subcommittee on Energy and Power
United States House of Representatives
Regarding the Hearing on "The American Energy Initiative"**

The Honorable Ed Whitfield

1. When you testified before this Committee on June 12, 2009, you stated:

"If Congress determines that there are broad public interest benefits in developing the transmission infrastructure necessary to accommodate the Nation's renewable energy potential, and therefore that in some cases it may be appropriate for the costs of transmission facilities needed to meet our renewable energy potential to be fairly spread to a broad group of energy users (for example, *across a region or multiple regions*), then Congress should consider clarifying the Commission's authority to allocate such transmission costs to all load-serving entities within an interconnection or *part of an interconnection* where it is appropriate to do so."
(Emphasis added).

In Order No. 1000, it is asserted that FERC has sufficient authority, even in the absence of a Congressional "clarification." Can you explain what happened between June 2009 and the issuance of Order No. 1000 that changed your mind about needing additional or clarified authority to allocate costs "across a region or multiple regions"?

At the time I testified before this Committee in June 2009, both this Committee and the Senate Energy and Natural Resources Committee were considering legislative proposals that addressed various aspects of transmission planning and cost allocation. As I indicated in my testimony, there is a relationship between the issues. Challenges associated with these issues must be addressed for needed transmission facilities to be constructed in a timely and efficient manner.

With regard to cost allocation in particular, several of the legislative proposals under consideration in June 2009 would have clarified the ability of the Commission to allocate the cost of certain transmission facilities within an interconnection or part of an interconnection. The focus of my testimony was not on whether the Commission already had sufficient authority to require the allocation of transmission costs on a regional basis, but rather the merits of Congress clarifying how transmission costs should be allocated.

It is also noteworthy that in June 2009, the Commission had not yet initiated the

rulemaking proceeding that led to issuance of Order No. 1000. As discussed in further detail below, the scope of the Commission's cost allocation authority under existing law was squarely presented in the Order No. 1000 proceeding. Based on the record in that proceeding, the Commission (with my support) concluded that its authority under the Federal Power Act is sufficient to require public utility transmission providers to develop regional cost allocation methods that satisfy specified principles. That conclusion is consistent with my statement in June 2009. I continue to believe that, to the extent Congress has a view on matters of transmission cost allocation, it would be valuable for Congress to provide input through legislative action. Commission actions in this area frequently face legal challenges that can create uncertainty in the electric industry, which may lead some industry participants to delay new investment in transmission facilities until such uncertainty is resolved. Legislative clarification concerning matters of cost allocation, as well as transmission planning or transmission siting, can facilitate timely investment in and development of new transmission facilities, allowing consumers to experience the benefits associated with improved transmission infrastructure sooner.

For these reasons, I have not changed my mind with respect to the Commission's authority on cost allocation since June 2009, as your question suggests. I do not believe and did not intend to imply in my recent testimony that clarification of the Commission's authorities under existing law is necessary to justify its actions in Order No. 1000. Those actions were undertaken to fulfill the Commission's current obligation under the Federal Power Act to ensure that the rates, terms and conditions of service by public utility transmission providers are just, reasonable and not unduly discriminatory or preferential.

2. When you testified before this Committee on March 23, 2010, you stated:

"I believe that additional federal authority with respect to transmission planning, siting, and cost allocation would significantly increase the likelihood that those needed facilities will be constructed in a timely manner."

In Order No. 1000, you assert that FERC already has this authority. Can you explain what happened between March 2010 and the issuance of Order No. 1000 that changed your mind about needing additional authority for planning and cost allocation?

Like my testimony of June 2009 discussed in response to the prior question, my testimony before this Committee in March 2010 did not address the extent of the Commission's authority with respect to transmission planning and cost allocation under existing law. Therefore, I have not changed my mind on this issue since that time, as your question suggests. In the absence of a clarification from Congress regarding transmission planning and cost allocation, the Commission in Order No. 1000 acted under existing statutory authority to address generically aspects of transmission planning

and cost allocation. As I stated in response to the prior question, to the extent that Congress has a view on such matters, I welcome such input through legislative action.

The Commission's backstop authority with respect to electric transmission siting is discussed in greater detail in my response to your twelfth question. I note here, however, that as construed by the U.S. Court of Appeals for the Fourth Circuit, this backstop siting authority is ineffective.

3. What specific provision or provisions of law give the Commission the authority to require transmission owners to participate in a regional transmission planning process? What specific provision or provisions of law give the Commission the authority to approve, reject or modify any resulting regional transmission plans and cost allocation methodology?

In Order No. 890 and Order No. 1000, the Commission adopted a series of requirements related to transmission planning and cost allocation. Prior to these rulemaking proceedings, some regions had voluntarily begun to implement regional planning and cost allocation for transmission facilities. The Commission's review of these proposals, as well as the adoption of requirements in Order Nos. 890 and 1000, was undertaken pursuant to its authority and obligations under sections 201, 205 and 206 of the Federal Power Act. Specifically, section 201 gives the Commission jurisdiction over transmission facilities and the transmission of electric energy in interstate commerce, and sections 205 and 206 direct the Commission to ensure that rates for that jurisdictional service and any rule, regulation, practice or contract affecting such rate, is just and reasonable and not unduly discriminatory or preferential.

The Commission discussed the scope of its authority to adopt transmission planning and cost allocation requirements at length in Order No. 1000. Order No. 1000 concludes that, for purposes of the Federal Power Act, transmission planning is a practice that affects transmission rates, both directly and through its close connection with cost allocation. The Commission concluded that "the narrow focus of current planning requirements and shortcomings of current cost allocation practices create an environment that fails to promote the more efficient and cost-effective development of new transmission facilities, and that addressing these issues is necessary to ensure just and reasonable rates" under section 206 of the Federal Power Act. The transmission planning and cost allocation reforms adopted in Order No. 1000 were designed to work together to address these deficiencies by better aligning planning and cost allocation.

It is important to note, however, that Order No. 1000 requires public utility transmission providers to have in place *processes* for regional transmission planning and cost allocation methods for those facilities identified in those processes as benefiting the

region. Order No. 1000 does not require regional transmission *plans* to be filed with or reviewed by the Commission, nor does it require the construction of any facilities identified in a regional transmission plan.

4. Order No. 1000 concludes that the Order No. 890 planning processes are not just and reasonable. It is my understanding that the Order No. 890 processes have only been in effect a short period of time and are still working out some of the wrinkles.

- a. Please summarize the facts upon which FERC has reached the conclusion that the existing transmission planning processes (e.g., Order No. 890) are not just and reasonable?**
- b. What is the rush to push through a new set of changes with Order No. 1000?**

Order No. 1000 builds on rather than replaces Order No. 890. In Order No. 890, the Commission adopted limited generic requirements with respect to regional transmission planning and cost allocation. To understand whether this initial action was adequate to address challenges facing the industry, the Commission directed its staff to hold a series of technical conferences around the country in September 2009, at which staff received input regarding how Order No. 890's transmission planning procedures were working. The Commission then followed up with a formal Request for Comments to receive on-the-record input on transmission planning and cost allocation issues.

While respondents generally supported the steps taken in Order No. 890, many commenters argued that additional Commission action was needed in several areas. For example, commenters expressed concern that some regions engage in a regional planning process without producing a transmission plan. Commenters also requested Commission action to enhance regional transmission planning, require regional transmission cost allocation, improve interregional transmission coordination, and address the treatment of nontraditional developers of new transmission facilities. These comments led the Commission to issue a Notice of Proposed Rulemaking, in response to which the Commission received roughly 5,700 pages of additional comment.

On review of this record, the Commission in Order No. 1000 concluded that its existing transmission planning and cost allocation requirements must be enhanced to ensure that the rates, terms and conditions of service by public utility transmission providers remain just and reasonable and not unduly discriminatory or preferential. As the Commission explained:

Public utility transmission providers are currently under no affirmative obligation to develop a regional transmission plan that reflects the evaluation of whether alternative regional solutions may be more efficient

or cost-effective than solutions identified in local transmission planning processes. Similarly, there is no requirement that public utility transmission providers consider transmission needs at the local or regional level driven by Public Policy Requirements. Nonincumbent transmission developers seeking to invest in transmission can be discouraged from doing so as a result of federal rights of first refusal in tariffs and agreements subject to the Commission's jurisdiction. While neighboring transmission planning regions may coordinate evaluation of the reliability impacts of transmission within their respective regions, few procedures are in place for identifying and evaluating the benefits of alternative interregional transmission solutions. Finally, many cost allocation methods in place within transmission planning regions fail to account for the beneficiaries of new transmission facilities, while cost allocation methods for potential interregional facilities are largely nonexistent. [Order No. 1000 at P 3]

The reforms adopted in Order No. 1000 were designed to remedy these deficiencies in the Commission's existing transmission planning and cost allocation requirements and, in turn, ensure that Commission-jurisdictional services are provided at rates that are just and reasonable and not unduly discriminatory or preferential.

The Commission acknowledged in Order No. 1000 that only a few years have passed since the adoption of the limited transmission planning and cost allocation requirements in Order No. 890. The Commission nevertheless concluded it was necessary to act at this time, based on the substantial record developed in the proceeding, to ensure that adequate rules are in place to support investment in needed transmission infrastructure. Reports from the North American Electric Reliability Corporation forecast substantial investments in needed transmission infrastructure in the coming decade. It is therefore critical that appropriate rules be in place to support the planning and development of this infrastructure in an efficient and cost-effective manner.

5. I understand that Order No. 1000 affords regions flexibility to develop cost allocation methodologies as long as the methodology satisfies 6 cost allocation principles?

- a. **Is this an accurate understanding?**
- b. **Is it possible that a region could develop a cost allocation methodology that spreads costs broadly across the region? Please explain why or why not.**
- c. **Does spreading costs broadly across a region run counter to traditional cost allocation principles? Please explain why or why not.**

Yes, it is accurate that Order No. 1000 affords transmission planning regions flexibility to

develop cost allocation methods as long as the methods satisfy six cost allocation principles. It also is possible that a region could develop a cost allocation method(s) that allocates costs broadly across the region, provided that the region is able to demonstrate that the benefits of the associated transmission facilities are broadly shared. A region's decision to propose to allocate costs broadly across its region does not necessarily run counter to traditional cost allocation principles. As the courts have affirmed, the Commission is authorized to approve the allocation of transmission costs in a manner that is roughly commensurate with the benefits of those facilities. To the extent a region seeks to allocate the costs of new transmission facilities broadly in its Order No. 1000 compliance filing, it will have the burden of demonstrating that the proposed allocation of costs is roughly commensurate with the benefits of those facilities. To the extent that participants in a proceeding where the Commission addresses a region's proposal have concerns about the Commission's decision, the Commission's decision would be subject to review in a U.S. circuit court of appeals.

6. I understand that Order No. 1000 affords regions flexibility to define "benefits" for cost allocation purposes.

- a. **Is this an accurate understanding?**
- b. **Does Order No. 1000 provide any limitations on what may be considered a "benefit" for the purposes of regional transmission plans?**
- c. **Is it possible that a region could define the meaning of benefits broadly? Please explain why or why not.**
- d. **Is it possible that a broad definition of benefits would permit a region to spread costs broadly across a region? Please explain why or why not.**

Yes, Order No. 1000 allows each transmission planning region to propose to the Commission how it will determine the benefits of new transmission facilities. Order No. 1000 provided direction to industry by stating that "[i]n determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities . . . provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements." The Commission recognizes that regions may define benefits differently, and that benefits may depend on the type of project at issue. I believe that such regional flexibility is more appropriate in this context than a one-size-fits-all federal requirement.

As a result, it is possible that a region could propose to define the beneficiaries of new transmission facilities broadly and, in turn, seek to allocate the costs of such facilities to those beneficiaries. However, public utility transmission providers in the region would have to demonstrate in their Order No. 1000 compliance filing why such a definition of beneficiaries and associated cost allocation is appropriate. Ultimately, the Commission

must be convinced that a region's definition of benefits meets the statutory requirements to be just and reasonable.

7. Please cite which section(s) of the Federal Power Act authorizes FERC to compel transmission providers to consider "public policy benefits" in building transmission.

Order No. 1000 does not require the consideration of "public policy benefits" – rather, it requires public utility transmission providers to have a process to identify whether there are transmission needs driven by public policy requirements and to evaluate potential solutions to meet those needs. This distinction is important and relates to the scope of the Commission's requirements. Order No. 1000 deals with transmission needs that are driven by public policy requirements established by state or federal laws or regulations (which are defined as statutes and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level). The Commission is not creating or choosing the public policy requirements to be considered, but merely acknowledging that some public policy requirements may affect the need for new transmission facilities and requiring that the transmission planning process provide an opportunity for stakeholders to consider whether any such transmission needs are relevant for consideration.

Because public policy requirements may modify the need for and configuration of prospective transmission facilities, the Commission concluded that transmission planning processes are deficient if they do not provide for an opportunity to consider whether there are transmission needs driven by public policy requirements. As explained in response to your third question, the Commission took this action pursuant to existing statutory authority under sections 201, 205 and 206 of the Federal Power Act.

8. The Commission defines "participant funding" as an approach to cost allocation in which the costs of a new transmission facility are allocated only to entities that volunteer to bear those costs. I understand that this is the approach typically and historically used for transmission cost allocation purposes.

- a. **Would a regional transmission plan filing be rejected on the basis of that region selecting participant funding as their preferred or sole method of cost allocation?**
- b. **Please explain why participant funding is not permitted to be used as a cost allocation methodology for inclusion in a regional plan.**

Participant funding has been used by some utilities in the past. Other cost allocations also have been used, and it would be difficult to say which method is "typical".

Importantly, nothing in Order No. 1000 restricts the ability of any transmission developer

or group of developers from using participant funding to pay for the costs of a proposed transmission project. However, in Order No. 1000, the Commission found that if a region relies exclusively on participant funding, that approach increases the incentive of any individual beneficiary to defer investment in the hopes that other beneficiaries will value a transmission project enough to fund its development. The individual beneficiary deferring investment could become a free rider, receiving substantial benefits from but not contributing to the costs of the transmission project. In turn, such behavior increases the likelihood that needed transmission facilities will not be constructed in a timely manner, adversely affecting ratepayers. As a result, the Commission stated that if proposed as a regional cost allocation method, participant funding will not comply with the regional cost allocation principles adopted in Order No. 1000.

At the same time, an attempt to allocate costs to entities that will receive no benefit is likely to cause those entities to oppose selection of the facility in a regional transmission plan for purposes of cost allocation or to otherwise impose obstacles that delay or prevent the facility's construction. Balancing these concerns, the cost allocation principles set forth in Order No. 1000 ensure that any regional or interregional cost allocation method(s) developed in compliance with Order No. 1000 allocates costs roughly commensurate with benefits.

9. Please describe how Order No. 1000 will impact utilities and stakeholders in traditionally regulated regions, such as the Northwest and the Southeast, as opposed to organized wholesale markets.

Order No. 1000 will support the efficient and cost-effective transmission development in traditionally regulated regions, such as the Northwest and Southeast, as well as the regions with organized markets. Both traditionally regulated regions and the regions with organized markets will have to comply with Order No. 1000, and both types of regions already participate in some level of regional transmission planning under Order No. 890. In the absence of the transmission planning and cost allocation requirements of Order No. 1000, utilities in traditionally regulated regions would be under no obligation to produce a regional transmission plan and may not have adequate means of preventing "free-riders" from escaping payment for new facilities that benefit them.

10. If a region decides how states should meet their renewable resource requirements, and states then make an alternative decision about where to get their renewable resources, won't that end up costing extra money? Who will pay for those decisions and stranded costs?

The goal of transmission planning is to address transmission needs. Just as public utility transmission providers take into account transmission needs driven by reliability or

economic considerations today, Order No. 1000 requires them to take into account transmission needs driven by public policy requirements. As explained above, however, each region is provided flexibility to determine what process it will use to identify whether any transmission needs are driven by public policy requirements. To the extent stakeholders in the region identify a transmission need driven by public policy requirements, Order No. 1000 requires public utility transmission providers to evaluate potential solutions to that transmission need to determine if there are efficient and cost-effective ways to meet the identified need. Nothing in Order No. 1000 requires transmission planners to second-guess state judgments about how the utilities they regulate should meet any public policy requirement.

11. Please explain how you expect to integrate the federal power authorities into Order No. 1000 and any subsequent siting schemes?

Order No. 1000 encourages, but does not require, the participation of non-public utility transmission providers, including the federal power marketing authorities, in transmission planning and cost allocation. In the past, a number of non-public utility transmission providers have filed for Commission review so-called “safe harbor” tariffs, demonstrating a commitment to offer transmission service comparable to that required of public utility transmission providers. A non-public utility transmission provider seeking to maintain a safe harbor tariff must establish that provisions of that tariff substantially conform, or are superior to, the *pro forma* tariff as it has been revised by Order No. 1000. However, it remains up to each non-public utility transmission provider whether it wants to maintain its safe harbor status by meeting the transmission planning and cost allocation requirements of Order No. 1000.

Order No. 1000 does not address siting of transmission facilities. Order No. 1000 specifically states that “nothing in the Final Rule involves an exercise of siting, permitting, and construction authority.”

12. Do you believe the Fourth Circuit decision in impaired FERC’s ability to carry out its duties under Section 216 of the Federal Power Act?

- a. **How does FERC plan to remedy or avoid these problems in the future?**
- b. **Are there legislative options that might help FERC avoid similar problems in the future?**

It is difficult to fully assess the impact of the Fourth Circuit’s decision in the *Piedmont* case, given that the Ninth Circuit, in *California Wilderness Coalition v. U.S. Dep’t of Energy*, overturned the Department of Energy’s orders establishing national interest electric transmission corridors (NIETCs). The Commission only can issue permits authorizing the construction of electric transmission facilities within NIETCs, so the

Ninth Circuit's decision means that, until such time as the Department of Energy designates new NIETCs, the Commission has no ability to site facilities under section 216, regardless of the *Piedmont* decision.

Assuming a future NIETC designation could lead to a siting application under section 216, the *Piedmont* decision restricts the Commission's ability to authorize electric transmission facilities within the Fourth Circuit, given the court's determination that the term "withheld approval" in section 216 encompasses only instances of state delay, and not those involving state denial. Under the ruling, the Commission has no jurisdiction in cases where a state vetoes a project, a result that I do not believe is consistent with Congress' intent, as expressed in section 216.

The Commission, of course, will respect the court's decision within the Fourth Circuit. It is possible that, if new NIETCs were designated, the Commission could assert jurisdiction in other circuits over electric transmission facility construction in instances where states had denied authorizations, with the possibility that other courts of appeals or the U.S. Supreme Court might take a different view than the Fourth Circuit. Congress could, if it so chose, clarify that "withheld approval" does include denial.

The Honorable Jay Inslee

1. FERC is required under the Federal Power Act to provide reliable, cheap power. Would you agree that transmission comprises 7 percent of a ratepayer's electric bill and generation accounts for 2/3 of a person's electric bill? If we build and pay for more transmission on a regional basis, and build based on addressing the need for additional capacity – does allowing consumers access to more generation resources help lower costs for ratepayers/consumers?

Yes, the costs of transmission comprised approximately 8% of the U.S. average electricity price in 2010, according to the U.S. Energy Information Administration's 2011 Annual Energy Outlook, and the costs of generation made up about 60% of the U.S. average electricity price.¹ Allowing consumers access to more economic generation resources through the development of efficient and cost-effective new transmission infrastructure can have benefits for electricity consumers.

2. I introduced a bill in the last Congress that addressed transmission planning, cost allocation, as well as siting. I also had a provision that I raised during the

¹ U.S. Energy Information Administration, *Annual Energy Outlook 2011*, Reference Case, Table 8: Electrical Supply, Disposition, Prices, and Emissions at <http://www.eia.gov/forecasts/aco/data.cfm#summary>.

Committee's consideration of energy and climate legislation during the last Congress to ensure that we take into account energy efficiency, demand response, distributed clean energy resources, smart grid, and energy storage and the like, to ensure we build only the high voltage transmission lines that we need and take full advantage of other low- and no-cost resources. Can you comment on whether these resources or factors were taken into consideration in issuing Order 1000?

I agree that it is essential to take resources such as energy efficiency, demand response, distributed clean energy resources, smart grid, and energy storage into account in the transmission planning process. Accounting for these resources in the transmission planning process helps to ensure that only needed, efficient and cost-effective transmission is constructed. Order No. 890 recognized the importance of these resources by requiring that public utility transmission providers consider proposed non-transmission alternatives on a comparable basis when evaluating the merits of alternative transmission solutions in the regional transmission plan, and Order No. 1000 did not change that requirement.

Order No. 1000 does not address siting of transmission facilities. I would note, however, that as construed by the U.S. Court of Appeals for the Fourth Circuit, the Commission's backstop authority with respect to electric transmission siting is ineffective.



Department of Energy
Washington, DC 20585

December 16, 2011

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On October 13, 2011, Lauren Azar, Senior Advisor to the Secretary, testified regarding "The American Energy Initiative".

Enclosed are the answers to seven questions that you submitted to complete the hearing record.

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Lillian Owen, at (202) 586-2031.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Davis", written over a horizontal line.

Christopher Davis
Deputy Assistant Secretary
for House Affairs
Congressional and Intergovernmental
Affairs

Enclosures

cc: Representative Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

QUESTIONS FROM CHAIRMAN WHITFIELD

Q1. What legal grounds was DOE relying upon to justify the proposed NIETC delegation to FERC?

A1. The Department of Energy (DOE or the Department) elected on policy grounds not to go forward with FERC's proposal on the delegation of National Interest Electric Transmission Corridor (National Corridor) designations. Although attorneys at the Department had begun to review FERC's proposal, no final determination was made or required on all the legal issues raised by that proposal.

Regarding the Secretary's general authority to delegate: pursuant to Section 642 of the DOE Organization Act (DOE Act) (42 U.S.C. 7252), the Secretary of Energy has authority to delegate any of his functions to officers and employees of the Department. Under Section 401(a) the DOE Act (42 U.S.C. 7171(a)), the Federal Energy Regulatory Commission (FERC) is an independent agency within the Department of Energy. In addition, Section 402(e) of the DOE Act provides that FERC shall have jurisdiction over any matter that the Secretary may assign to FERC after public notice (42 U.S.C. 7172(e)). The Secretary's authority to delegate functions to FERC has been exercised on numerous occasions over the years, starting with Delegation Order No. 0204-1, which was effective December 23, 1977, through the current FERC delegation, Delegation Order 00-004.00A.

Q2. DOE's joint statement with FERC regarding Secretary Chu's decision not to designate certain authority to FERC states that "the Department of Energy will be working more closely with the Federal Energy Regulatory Commission in reviewing proposed electric transmission projects under Section 216 of the Federal Power Act (FPA), as an alternative to delegating additional authority to FERC." The statement goes on to

identify several areas where “DOE and FERC will be working together to prepare drafts,” including drafts of “[t]ransmission congestion studies mandated by Congress.”

- a. Please detail how this joint effort will function, including an identification and explanation of each agency's roles and responsibilities.

- A2a. First, and most importantly, the Secretary of Energy will continue to decide which areas of congestion are identified in the 2012 Triennial Congestion Study and to designate any National Interest Electric Transmission Corridors (“National Corridors”). Recently, FERC has offered to act in a consulting role for the 2012 Triennial Congestion Study. Upon request, FERC will provide advice to DOE.

- Q2b. Why does DOE need to “coordinate” with FERC on the Congestion Study in the corridor designation when DOE could just do that themselves as provided in this EPC Act 2005?

- A2b. While DOE staff could conduct the analysis for and prepare recommendations to the Secretary on areas of congestion and National Corridors as they have done in the past, the initial intent of coordinating with FERC staff was to speed the process and capture available expertise and economies. However subsequently, it was decided that FERC’s level of involvement in the 2012 Congestion study will be limited to providing advice upon request.

- Q2c. Please explain how this proposal to perform the Section 216 duties jointly with FERC differs from delegating the Section 216 powers to FERC?

- A2c. It is fundamentally different. Under the current process, the Secretary of Energy continues to make all decisions concerning which areas DOE will identify as congested and which areas will be considered for designation as a National Corridor. The Secretary

declined to delegate those authorities to FERC, which would have placed the decision-making authority with the five FERC Commissioners. As a result, the five FERC Commissioners will not be involved in the decision-making over congestion or National Corridors.

- Q2d. Will FERC complete some of the work related to the required transmission Congestion Studies? If so, please explain how performing the work jointly is not *de facto* delegation, in whole or part.
- A2d. The Secretary of Energy has complete authority over how the 2012 Triennial Congestion study will be completed. With the Secretary of Energy continuing to be the decision-maker over congested areas and the designation of National Corridors, and the five FERC Commissioners not being involved in any of these decisions, it simply is not a "*de facto* delegation".
- Q2e. Does allowing FERC to work on the Congestion Studies undermine Congress' intent that DOE is to independently determine areas that are "suffering transmission capacity constraints or congestion that adversely affects consumers"?
- A2e. The 2012 Triennial Congestion Study will be orchestrated by DOE and the Secretary of Energy will be the decision-maker regarding congested areas and any subsequent designation of National Corridors. It is anticipated that FERC staff participation will bolster the federal government's ability to identify areas in the United States that are congested. I cannot speak to Congress's intent.
- Q3. DOE's joint statement with FERC regarding Secretary Chu's decision not to delegate certain authority to FERC explains, in part, the DOE plans to allow project developers to

indicate their interests in developing transmission lines and that the developers' interests will inform the designation of National Interest Electric Transmission Corridors.

- a. Please describe how this process will work.
- A3a. The specifics have not yet been developed. At this time, it is anticipated that some type of request for information or request for a statement of interest would be published in the Federal Register, asking stakeholders to submit to the Department of Energy their interest/intent to resolve problems located within a congested area. This would include not only developers of transmission lines but also providers of other types of services that could reduce congestion, such as aggregators of demand response or installers of distributed generation.
- Q3b. Will this process allow for all stakeholders including state and local interest to participate?
- A3b. Absolutely. Anyone interested in solving a problem identified in the 2012 Triennial Congestion Study would have the opportunity to submit comments to the Department of Energy.
- Q4. Do you believe the Ninth Circuit decision in *California Wilderness Coalition v. DOE* impaired DOE's abilities to carry out its duties under Section 216 of the Federal Power Act?
- A4. No, for the reasons explained below.
- Q4a. How does DOE plan to remedy or avoid these problems in the future?
- A4a. Pursuant to Section 216(a) of the Federal Power Act, DOE conducted and published a study of electric transmission congestion in 2006 (2006 Congestion Study). Based on the

study, in 2007, DOE designated two National Corridors – one in the Mid-Atlantic region and one in the Southwest. In *California Wilderness Coalition v. DOE*, the United States Court of Appeals for the Ninth Circuit vacated the 2006 Congestion Study on the grounds that DOE had not consulted adequately with the affected states in preparing the study. It also vacated the two National Corridors on the grounds that DOE had not designated them in compliance with NEPA requirements.

In preparing the 2012 Congestion Study, DOE has already sent letters to all governors, chairs of public utility commissions, heads of regional transmission organizations, and heads of reliability organizations announcing the initiation of the study. DOE is in the process of holding a series of pre-study workshops discussing DOE's analytic approach with these stakeholders. DOE is seeking participants' comments and recommendations on the analytic approach and on matters related to transmission congestion in their respective geographic areas. Further, DOE intends to release a draft of the 2012 Congestion Study for public comment and to hold additional workshops with stakeholders in all identified areas of concern. The final study will then be prepared and released to the public.

If DOE elects to designate one or more areas as a National Corridor, it will do so in accordance with all applicable laws, including NEPA.

Q4b. Are there legislative options that might help DOE avoid similar problems in the future?

- A4b. DOE believes that it would be best to defer consideration of such options until it has benefited from the experience of designating National Corridors in accordance with the opinion in the *California Wilderness Coalition* case.
- Q5. In your testimony you described that it can take 10 or more years to build transmission and approximately 3 years to build new generation facilities.
- a. What implications do these differing development periods have on resource planning?
- A5a. Assuming that “resource planning” refers to plans for building new generation, these differing development periods can have a significant impact on generation proposed for areas that do not have sufficient transmission and are located far from electric customers. Proposed generators must be assured that a transmission line will be built before they can commit to developing their own facilities. Consequently, if the generation facility only takes three years to build, the developer will likely wait to see if the transmission line will be built before committing to starting construction on the generation facility. However, the developer of the transmission line will want some level of commitment from proposed generators to build the line. It is a classic “Catch-22.” In short, having differing development times creates challenges for both the developers of the generation facilities as well as the developers of the transmission lines.
- Q5b. Could the difference between the time it takes to build new generation and construct new transmission impact the reliability of the electric grid? If so, how?
- A5b. When new generators propose to connect to the transmission grid, they are required request interconnection studies, which identify what infrastructure must be constructed to accommodate the new generation. Therefore, the connection of the new generation will not threaten reliability.

Q5c. Does the development time delta result in stranded transmission investment if technology, fuel, or other variables change generation planning after transmission investment is sunk?

A5c. The United States' transmission grid is divided into three interconnections. Each interconnection is primarily composed of alternating current (AC) lines that are interconnected and interdependent. Any time a new line or new generating facility is built or new load connected to the grid, the flows on that grid change. Theoretically, any of these events could result in any single transmission line being used more or less after the event occurs. The AC grid is dynamic and the power flows change with time.

Generally, in the utility industry, "stranded investment" implies that the facility is no longer used and useful, *i.e.*, it is obsolete. Because of the dynamism described above, an AC transmission line used heavily today may not be used heavily tomorrow, but its mere existence helps to bolster the robustness of the overall grid. Therefore, the question about "sunk investments" may not be appropriate for AC grid.

On the other hand, I could construct unlikely hypotheticals that would render a direct current (DC) line no longer used and useful, but there are only 18 DC lines currently in the United States.

Q6. You explained in your testimony that seven projects have been selected for the "rapid response" designation.

a. Do you expect to add any more projects in the near future?

A6a. The Rapid Response Team for Transmission (RRTT) plans to add more projects after it completes its analysis on the seven pilot projects. While I hope that is the "near future,"

the timing of adding more projects will be driven by the progress accomplished in the seven pilot projects.

Q6b. How are projects selected for inclusion in this pilot program?

A6b. The RRTT relied on the interconnection-wide transmission planning efforts being conducted by the Western Electric Coordinating Council (WECC) and the Eastern Interconnection States Planning Council (EISPC). These two entities provided lists of transmission projects that they thought were worthy of federal attention. From those lists, the RRTT selected a portfolio of diverse projects, having different purposes, geographic diversity and involved different federal agencies.

Q6c. Are all of these projects located on federal lands?

A6c. While most of the pilot projects cross federal lands at some point, all have a federal permitting component.

Q7. What advice would you provide members of this committee with respect to the following barriers to transmission development?

a. Jurisdictional considerations between federal and state/local governments with respect to transmission siting.

A7a. Because of the inherently local nature of siting transmission lines, states are best positioned to make those decisions. However, the states must be willing to make these decisions, which are hard decisions. The federal backstop authority provided by EPACT 2005 will assist in ensuring the state and local governments take seriously the need to build transmission in a timely manner.

Q7b. Delays caused by a lack of federal interagency coordination.

A7b. In 2009, nine federal agencies executed a memorandum of understanding (2009 MOU) for the purpose of expediting the “siting and construction of qualified electric transmission infrastructure in the United States” through interagency coordination. The DOE is currently developing rules intended to codify the terms of the 2009 MOU. Additionally, the RRTT was created to address delays caused by the lack of federal interagency coordination.

Q7c. Siting and construction on federal lands.

A7c. The nine federal agencies who are party to the 2009 MOU have been working hard to facilitate the siting and construction of transmission lines. They are participating in the RRTT and I fully anticipate these agencies will be able to site transmission lines on federal lands.

Q7d. Federal laws that may unduly delay transmission projects (e.g., NEPA, ESA, etc.)

A7d. Federal laws are not delaying transmission projects. The 2009 MOU and the attendant draft DOE rules will assist in this endeavor and the RRTT has been convened to administer those laws more efficiently and more effectively.

**Responses of John DiStasio to Additional Questions for the Record
Hearing on "The American Energy Initiative: Electric Transmission Issues"**

**Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives**

On behalf of the Sacramento Municipal Utility District (SMUD) and the Large Public Power Council (LPPC), I hereby submit the following responses to the Additional Questions for the Record posed by Chairman Whitfield in his October 31, 2011 letter. Please do not hesitate to contact me if you require further information.

(1) Do you believe that Order 1000 will result in increased costs for your consumers?

Yes. We believe that the Order will increase the costs to consumers to the extent that its purpose is to facilitate the construction of expensive, regional and inter-regional transmission without first determining the need for such facilities, and ensuring that the benefits of such facilities outweigh their enormous costs and environmental impacts. Such large construction projects routinely encounter unforeseen problems that may result in substantial cost overruns and the benefit forecasts for such projects are notoriously unreliable.

(2) Do you believe that Order 1000 is necessary to increase efficiency, enhance competition, and ensure just and reasonable rates?

No. We are very concerned that Order 1000 will disrupt the existing planning process. As I stated in my testimony, municipal electric utilities such as SMUD and members of LPPC are not subject to the Commission's jurisdiction for the purposes of establishing rates, terms, or conditions of service. Instead, our local governing authorities, who are directly accountable to the consumers that we serve, set our rates and policies. Nevertheless, we are currently participating in the regional planning process and have done so for years as a matter of good utility practice. Additionally, many LPPC Members modified their planning procedures to be consistent with newly established Commission policy just a few years ago.

Unfortunately, Order 1000 may prevent or limit our further participation. This is because the Order states that as a condition of participation, we will be subject to any costs assessed to us through the regional planning process. Significantly, Order 1000 contemplates that the cost allocation mechanism be developed without reference to any particular project so who will bear the costs and the benefits will not be known in advance. I would like to emphasize a point that was not the subject of great discussion during the hearing, but that should not be overlooked. If the entities within a region cannot decide how the costs of new facilities will be allocated, the issue will go to the Commission to decide for the region. We believe that this threatens to put us in a

position in which the Commission attempts to dictate the transmission costs that we must pay. Such an attempt will ultimately lead to costly, protracted litigation, the costs of which will be borne by consumers. We did not face this risk before the issuance of Order 1000.

As a result, many LPPC members may decide that they can no longer participate in the regional planning process, if the price of admission requires that they agree in advance to pay a proportionate share of any project that may come along without any clear definition of what the costs and benefits will be. Others may conclude that good utility practice and regional reliability standards require that they continue to participate in the planning process. In such a case, the process cannot fairly be characterized as "voluntary", and litigation will soon follow. I fail to see how either of the foregoing results will make regional planning and coordination more efficient.

I further believe that the broad cost allocation mechanism allowed by Order 1000 may have the effect of subsidizing remote facilities, at the expense of less expensive, local options. Spreading the cost of transmission used to access these resources to all entities in the region, hides the true cost of developing these remote resources. It is difficult for me to understand how competition will be enhanced by a transmission policy that appears to favor remote generation resources by allowing the broad allocation of costs while specifically precluding an allocation of costs based on use.

Finally, there is no evidence to suggest that Order 1000 is necessary to ensure just and reasonable rates. The Commission made no finding in Order 1000 that existing planning practices have resulted in rates that are unjust, unreasonable or unduly discriminatory or preferential. Instead, the Commission merely identifies a *theoretical* concern that existing practices *may* be inefficient, and that unless reformed they *may* result in unjust and unreasonable rates. Further, the Commission offers nothing more than the unsupported opinion that new regional planning protocols and a cost allocation mechanism will improve the situation. As explained above, we believe it more likely that Order 1000 will result in an inefficient planning process, which under the Commission's rationale will result in unjust and unreasonable rates for consumers.

(3) Does Order No. 1000 undermine utility efforts to invest in local energy solutions?

Yes. By preventing a regional planning entity from adopting participant funding as the default cost allocation methodology and allowing costs to be allocated to entities in the absence of a service relationship, Order 1000 will allow costs to be broadly allocated. As a result, utilities may be called upon to subsidize remote generation facilities that they do not need or use. This will inevitably divert scarce resources away from local energy solutions.

Using my own utility as an example, SMUD owns and operates 102 MW of wind facilities with plans to more than double this capacity next year. We also operate one of

the nation's largest utility-sponsored solar programs that we plan to grow by 100 MW over the next few years. These local generation investments have required only interconnection and local transmission upgrades – no new long-distance transmission lines have been needed to date. Although these non-transmission investments will increase the rates that our customers pay, we believe that relying on these resources is the more efficient and least expensive way to meet the renewable policy established by our Board. To the extent that SMUD has already invested in these local resources, requiring us to pay for new long-distance transmission facilities that we do not use will result in a form of double payment by our consumers. Going forward, such local options will be foreclosed if we are required under Order 1000 to pay for transmission facilities used to access remote renewable resources even if we have no plans to use them.

(4) FERC claims that Order 1000 preserves the flexibility of a region to select its own cost allocation methodology. We also heard that Order 1000 does not allow costs to be allocated to an entity if that entity does not receive benefits.

(a) Please describe your concerns with Order 1000's cost allocation rules.

Although Order 1000 does provide the regions with some flexibility to select a cost allocation methodology, it fundamentally changes the traditional manner in which costs may be assessed. First, the order prohibits cost allocation based on "participant funding", where the entities that demand facilities must bear their costs. As I previously stated, these are how the costs of transmission projects have historically been assessed. It makes absolutely no sense to me to eliminate this as an option for the regions to consider.

Second, the Commission claims that it has the authority to assess costs in the absence of a service arrangement established by contract or tariff. Few would dispute that it would simply be unreasonable to receive a bill from a contractor installing solar panels on a neighbor's roof based on the claim that they provide benefits to everyone in the neighborhood because they were installed in accordance with a state policy to reduce greenhouse gasses. However, this is the very mischief that the broad cost allocation policy contained in Order 1000 allows when it enables a region to allocate the costs of a proposed facility to non-customers based solely on perceived benefits. These benefits may include such broad notions as reliability or public policy benefits. Our concern, of course, is that this policy may subject us to costs for transmission that we do not require and that will provide no consumer benefit.

(b) What legal authority under current law does FERC have to implement Order No. 1000's cost allocation rules? Please include any specific legal arguments in support of your position.

We do not believe that the Commission has the authority to allocate these costs in the absence of a service arrangement. Section 205 of the Federal Power Act provides the Commission with the authority over rates, terms, and condition of transmission service. The very nature of the statute presumes that a service is actually being provided, and that there is a contract or tariff under which the charges will be invoiced.

Sections 205 and 206 of the Federal Power Act ("FPA") limits the Commission's role to reviewing rates which utilities propose to charge to their customers. This basic structure is apparent on the face of the statute, and it has been a fundamental building block of energy law since the Supreme Court's decisions in *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1955) ("*Mobile*") and *FPC v. Sierra Pacific Co.*, 350 U.S. 348 (1956) ("*Sierra*"), articulating what has become known as the *Mobile-Sierra* doctrine.

Section 205(a) of the FPA establishes the core precept behind FERC's rate-setting authority, specifying that "[a]ll rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission...shall be just and reasonable...." Generally describing the statutory framework, FERC itself comments that sections 205 and 206 of the FPA refer to rates and charges that are "made," "demanded," "received," "observed," "charged," or "collected" by a FERC-jurisdictional utility. Though the Commission asserts otherwise, the natural implication of these provisions is that they pertain to rates assessed to a utility's customers in connection with an agreement to take service.

In the *Mobile* and *Sierra* cases, the Supreme Court long ago made it clear that FERC has the authority under both the Natural Gas Act ("NGA") and the FPA to review rates, but not to establish the right to collect them. A utility's ability to collect rates is fundamentally a matter of its contractual relationship with its customers. Describing the rate review mechanisms established in sections 4 and 5 of the NGA (analogous to sections 205 and 206 of the FPA),¹ the Court in *Mobile* commented that "[t]his is neither a 'rate-making' nor a 'rate-changing' procedure. It is simply the power to review rates and contracts made in the first instance by natural gas companies and, if they are determined to be unlawful, to remedy them."² Further, the Court held that "[i]n short, the Act provides no 'procedure' either for making or changing rates; it provides only for notice to the Commission of the rates established by natural gas companies and for

¹ In *Sierra*, the Court held that the NGA and the FPA are "in all material respects substantially identical" with respect to rate matters under sections 4 and 5 of the NGA, and sections 205 and 206 of the FPA, respectively. 350 U.S. at 353.

² *Mobile* at 341.

review by the Commission of those rates. The initial rate-making and rate changing powers of natural gas companies remain undefined and unaffected by the Act."³

Hence, the Commission lacks the authority presumed by Order No. 1000 to establish a mechanism for the recovery of costs where none otherwise exists. The Commission is wrong in stating that "...nothing in these sections [205 and 206 of the FPA] precludes flows of funds to public utility transmission providers through mechanisms other than agreements between the service provider and the beneficiaries of these transmission facilities."⁴ Directly to the contrary is the *Mobile-Sierra* doctrine, the purpose of which, the court in *Borough of Lansdale v. FPC*, 494 F.2d 1104, 1113 (D.C. Cir. 1974) reminded the Commission is "to subordinate the statutory filing mechanism to the broad and familiar dictates of contract law."

The Commission misapplies *Mobile-Sierra* on the ground that "we are dealing here with conditions under which costs can be recovered in rates, not conditions under which existing contracts can be altered."⁵ The *Mobile-Sierra* principle cannot be so limited, but rather instructs that FERC's oversight of utility rates is subordinate to parties' contractual rights. While FERC may alter terms of an existing service contract under FPA section 206, the FPA, as interpreted by the Court, does not permit the Commission to establish a right to recover costs where no contractual authority exists.

FERC defends its authority on the ground that its jurisdiction under FPA section 201(b)(1) over the "transmission of electric energy in interstate commerce" is sufficiently broad to authorize it to provide for cost recovery by transmission developers without a contractual relationship.⁶ The Commission asserts that its jurisdiction "therefore extends to the rates, terms and conditions of transmission service, rather than merely transactions for such transmission service..."⁷ Further, the Commission recites its jurisdiction over "all facilities" for the transmission of electric energy, concluding that it therefore "has jurisdiction over the use of these transmission facilities in the provision of transmission service, which includes consideration of the benefits that any beneficiaries derive from those transmission facilities...regardless of the contractual relationship that the beneficiaries may have with the owner or operator of these transmission facilities."⁸

This is a fundamental misreading of the FPA because it confuses the statute's expression of jurisdiction with the grant of substantive authority. The jurisdictional provisions of the Act delineate the subject matter over which the Commission has authority, but are not themselves a grant of authority. Put another way, the delineation of jurisdiction does not tell the Commission what it can do with its jurisdiction. If it were otherwise, sections 205 and 206 of the Act would be superfluous because the grant of jurisdiction over transmission would be sufficient to enable FERC to establish rates for

³ *Id.* at 342.

⁴ Final Rule at P 533.

⁵ Order 1000 at P 540.

⁶ Order at 532.

⁷ *Id.*

⁸ *Id.*

transmission. Similarly, section 203 of the Act, granting FERC the authority to approve the disposal of facilities, would be unnecessary. By the same token, it might be presumed that if the grant of jurisdiction carried substantive authority with it, FERC would have general siting authority for electric transmission facilities. But, it does not, and the difference between the NGA and the FPA on that matter underscores the point.

To take things a step further, were the Commission's expansive view of the authority conferred by FPA section 201 adopted, one might very well assume that, if circumstances called for it, FERC might compel entities to sell or to purchase jurisdictional facilities when the public interest so demanded. Of course, FERC lacks such authority. Instead, section 203 provides FERC with substantive oversight, assuming there is a contract to sell jurisdictional facilities. Similarly, if there is a contract for the sale of transmission service, FERC is authorized under FPA sections 205 and 206 to oversee the rates for service.

FERC's further point (P 534) that it cannot be constrained to only implement "voluntary arrangements" if it is to address the "free rider" problem it has identified is a red herring. Certainly, the Commission has approved cost allocation in other settings over parties' objections. That is beside the point. The point, rather, is that in all such settings, to date, the allocation of costs has been to customers with which the transmission provider has a service relationship. In none of the cases cited by the Commission has FERC, or have the courts, considered the allocation of costs to entities with no service relationship to the transmission developer. Accordingly, whatever the merit of the Commission's view that judicial precedent supports the conclusion that the ascertainment of benefits is tantamount to a determination of cost causation, in no case has a court or, for that matter, has the Commission, approved an allocation of costs outside a contractual relationship.⁹

The Commission cannot overcome the absence of a contractual relationship for the recovery of transmission cost development simply on the finding that rates will not be just and reasonable without it. The Commission comments that current transmission rates may not be just and reasonable, on the ground that facilities may be built more efficiently with better coordination, and that that absence of a cost allocation mechanism sets up the possibility that "free riders" may take advantage of transmission development without full cost responsibility. The Commission's core authority in this area is over transmission rates, and that authority is limited. As the D.C. Circuit held in *California Independent System Operator v. FERC*, 372 F.3d 395 (D.C. Cir. 2004) ("*CAISO*"), FPA section 206 limits FERC's authority over practices "affecting rates" to

⁹ SMUD and LPPC, among other commenters on the Notice of Proposed Rulemaking, pointed out that the Commission's citation in the NOPR to cases such as *MISO Transmission Owners v. FERC*, 373 F.2d 1361 (D.C. Cir. 2004) and *Midwest Independent System Operator*, 109 FERC ¶ 61,168 (2004) for the proposition that it has the authority to allocate costs broadly according to benefits was flawed because in no case were costs allocated beyond a single transmission provider's system for recovery from its customers. The Commission's comment in Order No. 1000 that these references miss the point because the allocation of costs beyond a transmission provider's system was not at issue in those cases underscores our point: There is no precedent for the Commission's cost allocation undertaking in Order 1000.

those which affect rates “directly”. It does not permit the Commission to exercise oversight of activities that affect rates indirectly. According to the court:

[S]ection 206’s empowering of the Commission to assess the justness and reasonableness of practices affecting rates of electric utilities is limited to those methods or ways of doing things on the part of the utility that directly affect the rate or are closely related to the rate, not all those remote things beyond the rate structure that might in some sense indirectly or ultimately do so.¹⁰

Effectively requiring utilities to pay transmission developers for investments that utilities do not themselves use in order to affect indirectly the rates for jurisdictional service is beyond FERCs authority just as FERC lacked authority to direct the California ISO to replace its board in the CA/ISO decision.

Finally, the approach taken in the Final Rule to cost allocation for new transmission developments is completely at odds with the manner in which the Commission approaches new interstate gas pipeline developments. In fact, all such projects are self-sustaining, and do not derive any subsidies from existing services. These projects are sustainable if they are supported by sufficient demand to justify the project developers’ costs.¹¹ It has been consistently held that the Natural Gas Act and the FPA should be interpreted similarly and that the Commission must explain substantial discrepancies.¹²

(c) How does Order No. 1000’s approach to cost allocation differ from the historical practice of cost allocation? Is this problematic in your opinion? Please explain.

FERC is authorized to approve the allocation of costs incurred by utilities within its jurisdiction to their customers. The utility recovers these costs through either a filed tariff under which a customer takes transmission service, or through a bilateral contract on file with the FERC. In both cases, in exchange for receiving service, the customer pays the rates specified in the utility’s tariff or in the agreement.

What is unprecedented about Order 1000 is that FERC proposes to allow transmission developers to recover their costs from entities throughout a region whether these entities take service from them or not. As explained above, there is no legal basis for this mechanism. As a practical matter, it remains unclear to me how these costs would ultimately be recovered if there is no contract or tariff that applies and those billed

¹⁰ *Id.* at 403, and citing *American Gas Ass’n v. FERC*, 912 F.2d 1496 (D.C. Cir. 1990), in which the court upheld an earlier decision of the Commission’s hewing to the view that contracts indirectly affecting rates are beyond its authority.

¹¹ See, e.g., *Northern Border Pipeline Co.*, 90 FERC ¶ 61,263 (2000); *Williams Natural Gas Co.*, 79 FERC ¶ 61,055 (1997); *Natural Gas Pipeline Co. of America*, 76 FERC ¶ 61,142 (1996).

¹² See *Granholm ex rel. Michigan Dept. of Natural Resources v. F.E.R.C.*, 180 F.3d 278 (D.C. Cir. 1999).

simply refuse to pay. Broadly allocating the costs of new transmission regardless of actual use or need appears to me to amount to a tax on regional transmission.

(d) Order No. 1000 does not define “benefits,” effectively leaving it up to each region to decide. Does this cause you concern?

Yes. Our concern is that “benefits” will be defined broadly to encompass such vague notions as reliability or public policy benefits, which are extremely difficult to quantify. As explained in response to Question 4(a), we believe that allocating costs based on perceived benefits will result in the allocation of costs to entities for transmission facilities that they do not need or use.

(e) Do you believe that Order No. 1000’s cost allocation rules prefer any type of generation resource over another, or provides subsidies to renewables?

Yes. Order 1000’s cost allocation requirement based on a determination of apparent benefits regardless of usage masks the true costs of developing remote resources that require long transmission lines to reach load. By enabling a transmission developer to broadly allocate its transmission costs to all entities within a region regardless of use and based only on a vague benefits test, Order 1000 effectively subsidizes remote projects that may otherwise be uneconomic. Such a policy removes market discipline critical to ensuring efficient investment decisions, and creates an environment in which the developer has little to lose if it abandons plans to build generation projects, which justified these long transmission lines. I firmly believe that planning and constructing transmission based on policy goals instead of demonstrated demand for these facilities is a mistake.

(f) Do you believe that the cost allocation policy in Order No. 1000 is necessary to encourage transmission development?

No, transmission investment has increased significantly over the past several years without the transmission planning reforms called for by Order No. 1000. The Edison Electric Institute (EEI) statistics show dramatic increases in transmission investment over the past ten years, and this trend is not anticipated to decline over the next ten years. EEI’s work reveals transmission investment of \$57 billion for the years 2001 through 2008, and an anticipated \$56 billion in transmission investment for only a portion of the transmission investment for 2009 through 2020.

The Department of Energy’s (DOE) own congestion study belies the notion that an extensive build-out of extra high voltage transmission is required. Specifically, the DOE study shows transmission congestion only from the mid-Atlantic – DC and in Southern California. The study found no regional congestion or inter-regional congestion.

Finally, even if more transmission is needed, we must remember that transmission, local generation, demand response, and energy efficiency initiatives are all substitutes for one another. Each of these resources should be supported by demonstrated demand, not a regulatory determination of need.

- 5. You stated that Order No. 1000 specifically prohibits “participant funding” in regional cost allocation proposals. Please describe this practice and why permitting its inclusion in a regional transmission plan is important for cost allocation purposes.**

“Participant funding” requires those that demand transmission facilities to pay for them. Allowing the regional planning entity to allocate costs based on “participant funding” will help ensure that transmission facilities will not get constructed in the absence of a demonstrated demand for them. Stated another way, those entities that believe that they will benefit from a facility should logically be willing to pay for them. Likewise, if a developer cannot find customers willing to fund a proposed facility, it should be construed that it is not beneficial and, consistent with FERC’s policies for new natural gas pipelines, FERC should not overrule customers’ need determinations.

- 6. Order No. 1000 does not require a contract or direct service relationship between the transmission developer and a customer in order to allocate costs to that customer. What legal authority does FERC have to permit transmission developers to recover costs from entities within which they do not have a contract or service relationship? Please include any specific legal arguments in support of your position.**

Pursuant to the response to Question No. 4(b), we do not believe that FERC has the legal authority to impose costs on transmission customers in the absence of a service relationship.

- 7. Does Order No. 1000 increase the risk of stranded investments? How? What impacts would stranded investments have on consumers?**

Yes. Order 1000 will likely allow transmission facilities to be constructed even if there is no one signed up to use them. This is because Order 1000 would allow costs to be allocated to everyone in the region regardless of use and based only on a broad definition of “benefits”. For example, if the region determines that everyone benefits from a transmission line used to access remote renewable resources because the line will help meet certain public policy initiatives, the cost of the line may be allocated to everyone in the region. The transmission line may be constructed to access the renewable resources even if no one has contracted to receive service over the line. Therefore, transmission facilities may be constructed that would otherwise be uneconomic in the absence of the subsidy allowed by Order 1000.

Order 1000 creates the very real possibility that customers will end up funding transmission lines to “nowhere”. Our planning processes typically consist of contracting for generation *first*, usually by competitive bidding, and then arranging for appropriate transmission facilities. Order 1000 potentially stands this process on its head in so far as it enables developers to build transmission lines to *potential* generation sites while there is little or no certainty about future generator locations, sizes, timing or competitiveness.

Energy markets are dynamic, especially in the world of renewable resources where a project's environmental value can evaporate overnight due to shifting regulatory policy. For instance, wind representatives in the Northwest have cited changing regulations limiting the demand for out-of-state renewable resources under the California renewable portfolio standards (RPS), and the fact that most utilities in the northwest have met their RPS requirements through 2020, as the reason for cancelling 2,000 MW of generation in the Northwest.

Assume that transmission facilities had been constructed under Order 1000 to access those planned generating facilities, and that the costs of those facilities had been allocated to everyone in the region. When the developers cancelled their projects, the facilities built to access them would be stranded. Nevertheless, under Order 1000, those transmission costs would be passed on to consumers for years to come despite the fact that they did not ultimately bring the anticipated public policy benefits. We are concerned that transmission development fueled by speculation of future need, as opposed to demonstrated demand, increases the risk of stranded investments that will impose significant financial and environmental costs on consumers.

The Honorable Fred Upton for Steven A. Transeth

1. Recently, FERC issued a press release following their denial of the requests for a rehearing of the Midwest ISO (MISO) transmission cost allocation tariff. The document included what they termed "Frequently Asked Questions" that included issues involving the MISO tariff, Michigan-specific impacts, and the approved tariff's relationship to Order 1000. Do you agree with the Commission's answers and if not how would you respond to the following questions:

- a) Is this Midwest ISO proposal associated with transmission planning and cost allocation requirements recently adopted by FERC in Order No. 1000?*

Yes. The FERC's answer to this question clearly demonstrates a disconnect between the rhetoric of its statements and the reality of just how damaging the socializing of transmission costs can be without adequate safeguards and review. To state that the tariff was "conceived, drafted, and approved by the members" is a mischaracterization of the process and implies that Michigan had "meaningful" input in the outcome. The overwhelming opposition to the tariff amendments by every sector of Michigan's ratepayers is illustrative that the process did not and does not reflect the input on behalf of Michigan ratepayers. Nor does the claim that the FERC provided "careful review" appear to be borne out by observation. The Commission appears to have completely deferred to the representations of MISO without any requirement to demonstrate the validity of its claims, withstand cross-examination or discovery with respect to its claims, or a hearing on the record concerning whether the process and outcome met the stated requirements of Order 1000.

Whether the tariff was submitted and approved prior to Order 1000 should make little difference on the requirement by the FERC that any cost allocation formula, regardless of date of implementation, meet the basic principle that benefits must be roughly commensurate to the costs imposed.

- b) Will this proposal (MISO tariff) hurt Michigan consumers?*

Yes. Given the difficulties inherent in getting it right, it is understandable but not acceptable that MISO and FERC chose to spread costs as widely as possible across the entire region. The FERC has sent clear signals that socializing costs on a wide basis is its preferred approach to cost allocation. However, the validity of such a socialized cost allocation depends on the benefits from this new transmission being similarly distributed. The FERC has ignored that considerable variance exists between the costs assessed to the states and the benefits received. Here is the question Order 1000 fails to answer: At what point does this differential become so great that the benefits are no longer "roughly commensurate" with the costs imposed?

MISO's socialized cost allocation method approved by the FERC means that Michigan's residents and businesses will pay a disproportionate share of the costs for transmission built elsewhere in the region without realizing commensurate benefit. The reasons are three-fold:

- Michigan will be required to pay 20% of the costs for all new transmission under the MISO tariff. To subject Michigan to 20% of the costs means the ratio of costs to benefits under the MISO scenario is so great that ratepayers in the state will be subjected to rate increases that do not meet the standard of being "just and reasonable" as required under the Federal Power Act (FPA).
- The actual physical interconnections between Michigan and the rest of MISO are quite limited. The situation was only exacerbated with the departure of First Energy from MISO to PJM which resulted in Michigan becoming virtually an island within the RTO. The MISO tariff attempts to apply a uniform policy across a footprint that is far from uniform and will result in Michigan paying a disproportionate share of the costs for the new transmission.
- Michigan is aggressively developing its own renewable energy market including the development of additional in-state transmission capacity to accomplish its mandatory renewable energy requirement. Transmission developed elsewhere in MISO is of little or no benefit to Michigan. It is patently unfair to force Michigan to be a donor state for others to develop transmission and renewables in one of the very industries that is important to Michigan's future. It is wrong for a federal agency such as the FERC to impose a tariff that promotes a national policy not approved by Congress that impedes Michigan from reaching its economic goals.

c) Will Michigan be paying for other states' public policies?

Yes. In mid-December of last year, the FERC approved the MISO tariff which covers 13 states. The FERC order forces Michigan to pay 20 percent of the costs of new transmission in the Midwest in direct conflict to the public policy initiatives implemented by Michigan in 2008. As a result, Michigan's transmission rates will increase by hundreds of millions of dollars annually and will far exceed any nominal benefit gained by the state's electric customers. In essence, Michigan customers will subsidize other states' initiatives to develop renewable energy projects (and other economic development initiatives) that would otherwise be too costly to become viable.

The proponents of the socialization method of cost allocation say it is the only way these new transmission projects will be built and that they are needed to facilitate competitive electricity markets, improve reliability, reduce congestion and get renewable energy onto the grid. Michigan supports efforts to ensure that its customers will have the most reliable electric service at the lowest rates and has participated in the development of new wind generation within Michigan. We believe we should pay our full share of the cost of new transmission but only in reasonable proportion to the benefits that residents of Michigan actually receive. Our state renewable law was passed in 2008 and requires that we rely on renewable resources located and generated in this State. Except for making bold unsubstantiated claims, MISO has failed to demonstrate how Michigan customers will benefit from new transmission built in remote areas

of Montana, North Dakota, South Dakota, Minnesota, or Iowa. The proposed projects for these other states will not create Michigan jobs, lower our rates, or help us meet our state renewable goals.

This is not about the need for new transmission or renewable energy resources as demonstrated by the efforts to build wind generation in Michigan's Thumb. Nor is this about competition in electric markets based on speculative claims of lower rates that do not take into account all the costs associated with subsidized projects. The protest of Michigan is about a specific tariff involving specific projects that will result in Michigan families and businesses paying *unjust and unreasonable* rate increases to fund transmission projects that Michigan will receive little or no meaningful benefit from.

d) *Isn't this going to cost Michigan tens of millions of dollars?*

Yes. The MISO cost allocation tariff will have a devastating impact on Michigan's struggling economy. A conservative estimate, using MISO own figures and projections, puts the price tag for Michigan at \$500 million per year over the next twenty years. Michigan businesses will be hit with unfair and unwarranted de facto tax in the form of rate increases, restricting growth and destroying jobs. Every major auto company's electricity bill for Michigan operations could skyrocket by more than \$10 million a year.

Each major university in Michigan will pay an extra \$2 million and municipalities such as Ann Arbor, Grand Rapids and Lansing will pay hundreds of thousands of dollars extra for their power. Michigan should not be forced to subsidize wind developers in South Dakota or retail consumers in other States by paying for transmission lines that deliver little electricity to homes, offices and factories in Michigan.

Given the harmful implications for the state, the MISO Northeast Transmission Customer Coalition that includes Michigan Attorney General Bill Schuette, the Association of Businesses Advocating Tariff Equity (which represents the largest industrial customers in the State) and the State's major electric utilities (The Detroit Edison Company, Consumers Energy Company, Michigan Public Power Agency, and Michigan Municipal Electric Association) was formed to challenge the tariff. The Coalition has been joined in this fight by Governor Rick Snyder, the Michigan Legislature, Michigan Public Service Commission, US Congressmen Amash, Benishek, Clarke, Huizenga and Walberg, Michigan Chamber of Commerce, Michigan Manufacturers Association, Michigan Teamsters and the Michigan Environmental Council. In addition, the following newspapers have editorialized opposing the tariff: The Wall Street Journal, The Detroit News, The Detroit Free Press, Grand Rapids Press, and The Oakland Press.

2. *Do you have concerns about how the states and utilities will comply with Order 1000?*

Yes. The Commission has left "regions" to their own devices to make a first attempt to identify themselves and develop cost allocation and planning methods without any real oversight by the Commission until compliance plans are filed a year from now. FERC has reserved for itself, however, the right to reject or modify how the states and utilities propose to define regions or how they may propose to allocate costs. Absent any real guidance in Order 1000 on what is

and isn't allowable within the legal parameters of the Federal Power Act, regions will not have sufficient certainty as to what is and isn't permissible before over a year has passed and the FERC has made decisions on compliance filings. Further, without meaningful limits and boundaries, there is little to prevent FERC from imposing definitions of "regions" or to impose cost allocation methodologies that broadly socialize costs across very large geographic areas. The regional concept has validity only to the extent that its members have a commonality of needs and interests and accordingly, shared solutions. Consequently, there are going to be regions for which the Order is going to work and improve the opportunities for its members. But it is impossible to create a cookie-cutter answer that can be applied across all regions and in every circumstance. A review of the MISO footprint and structure provides an example of when a declared region under Order 1000 could include members who are quite diverse and lack none of the requisite criteria that would allow for uniformity in cost allocation. If the FERC is going to permit regions like MISO to form under the Order, then it has to require the region, in structuring its cost allocation methodology, to factor in its members' diversity allowing for any requisite exceptions.

3. *Chairman Wellinghoff stated that the Commission struck the right balance between being too restrictive or vague in defining benefits for which costs could be allocated. Do you agree and if not, how should benefits be defined?*

No. Unfortunately, the problem with Order 1000 is that it is neither vague nor restrictive in defining benefits but rather is void in the provision of even the most basic guidelines to establish reasonable parameters for developing just and reasonable cost allocation methodologies. The FERC cannot entirely delegate its authority to regions without establishing basic standards to enable proper review. At a minimum a region should be required to demonstrate the following regarding any claimed benefits for which the costs will be imposed:

Assessed value. There needs to be at a minimum some critical appraisal for the purpose of understanding, interpreting and making a judgment of the relative value of any claimed benefit. The fact that the new dynamics of building and siting new transmission lines is going to make the quantifying of their benefits difficult does not justify the complete negation of any responsibility to show some degree of the benefit's value to those upon which the cost of the transmission will be imposed. Order 1000 at paragraph 639 requires a region to show only that any claimed benefits are more than trivial and shifts the burden of the nearly impossible task proving otherwise from those imposing the costs to those who will have the obligation to pay. Such an unfettered standard will allow a region, such as MISO, to make vague and unsubstantiated claims without demonstrating a reasonable correlation between the benefit received and the cost imposed.

Proportional value. Under the Federal Power Act, the FERC is charged with the responsibility to ensure "just and reasonable rates". Any cost allocation formula implemented must be able to demonstrate a relationship to and correlation between the benefits received and the amount of the costs imposed. Although the recent Seventh Circuit decision in *Illinois Commerce Commission v. FERC* recognized the difficulty of quantifying benefit to an exact dollar amount, the Court also recognized the need to preserve the principle of "beneficiary pays" by establishing the rule

of “roughly commensurate”. To completely ignore the need to show some connection between the value of the benefit and the amount of the costs imposed makes this rule meaningless.

Need. The concept of need is a legal principle long required in many state and federal jurisdictions before proposed acquisitions, expansions, or creations of public facilities are allowed. The purpose of this concept is to ensure best practices and that public funds are spent only for those projects truly needed. Neither in Order 1000 nor the cost allocation formulas which have been submitted and approved to date by the FERC have adequately applied this principle of need. Even taking into consideration that the development of renewable energy generation over fossil fuel could be considered a “need” to further an established public policy, how it should be implemented has not been adopted or approved by Congress. Instead, under Order 1000 the regions are free to promote one “public” policy at the expense of another. The MISO tariff is an example of how this lack of guidance in Order 1000 can result in one state (Michigan) being forced to subsidize the deployment of policy in another.

4. Do you believe the consumer (ratepayer) is adequately protected under Order 1000?

No. The FERC has the duty, not the option of protecting ratepayers under the Federal Power Act. This is one of the core charges to the agency and under no circumstances should ever be delegated to a third party without safeguards. With Order 1000, the Commission appears to have preferred the interests of renewable energy developers and merchant transmission line developers over ratepayers. The type of structure for transmission planning and cost allocation allowed under Order 1000 potentially leaves too much of that responsibility to nongovernmental regional entities. Although the Commission claims it will exercise oversight, there is no mechanism to ensure adequate review and its actions to date would indicate it intends to do little more than rubber-stamp the region’s filings. In fact, Chairman Wellinghoff testified at the Subcommittee hearing on the 13th that it is going to be the policy of the Commission to let the regions be self-determining. Once again, the concept is not necessarily wrong but how it is being implemented. There will be regions because of their nature and make-up where this will not be a problem but without guidance and structure, there are also going to be situations where a region will be establishing plans and allocation formulas that further the interest of their stakeholders which are not compatible to the interests of the ratepayers.

The socialized cost allocation practices being authorized by the FERC also violates the protections under Section 206 of the Federal Power Act against rates that are discriminatory or preferential. As also discussed in question 5, the debate as to the best means of meeting our goals of clean energy have yet to be resolved. Michigan has decided to develop its own wind projects to meet its own Renewable Portfolio Standards (RPS). The State chose this policy approach for the economic implications and the practical advantages of building the wind closer to the load centers. Contrast that policy to that being pursued by states such as North Dakota, South Dakota, Minnesota, or Iowa which propose to build large wind farms in excess of their need, exporting the excess to the east. Neither approach is wrong and only becomes incompatible when the FERC promotes one at the expense of the other. The only means to fund and build the proposed projects out of the Plain States and other remote areas is to define their benefits very broadly and spread the cost as wide as possible. This cannot be done without

giving preference to this policy approach which will discriminate against states such as Michigan that have chosen a different direction.

5. In your testimony you stated that the FERC through Order 1000 was picking winners and losers. Please elaborate.

The debate regarding the best means to further our development of clean energy has yet to be decided. There are strong advocates for pursuing each of the various types of energy resources, where those resources should be located, how much of the resource is needed, and how they should be paid for. While Order 1000 does not explicitly advance one policy over another, it is complicit in promoting remotely located generation over generation built closer to the load centers. The Commission intends to establish by regulatory fiat a national clean energy policy never endorsed by Congress and wants hard-pressed industries and homeowners to pay a surtax on their utility bills to finance it.

Shortly after Order 1000 was issued Chairman Wellinghoff gave an interview with the Wall Street Journal (July 27, 2011) where he made the following statement, "The new order, adopted Thursday, should particularly benefit wind- and solar-energy projects, which are often located in remote places that are poorly served by existing interstate transmission lines." He went on to state, "The new rules are also intended to ensure that the costs of transmission lines are borne by the utility customers who get the most benefit from them. In the past, rural utilities have objected to projects where their customers would bear the cost of building transmission lines even though most of the electricity would go to customers in cities farther away." In an effort to make his point he concluded his remarks by giving an example of major transmission lines from renewable resources in the Dakotas benefiting consumers in Chicago.

The problem with the Chairman's position is Chicago is in PJM and the Dakota wind in MISO. So while the Chairman may be correct that the real benefactor of the new generation will be the consumers in Chicago, he is mistaken that they will be paying for the new transmission lines. This is in essence one of the major problems with both Order 1000 and the socializing of transmission costs without proper safeguards that account for the different qualities that are going to compose any region. What works in one region will not necessarily work in another. The concept of socialized cost allocation is only defensible on a conceptual level but has the potential to fail when applied to specific circumstances and actual situations because electricity does not recognize regional boundaries.

The FERC is picking winners and losers by unilaterally deciding that national policy demands consumers subsidize wind farms located on the Great Plains and build the expensive transmission lines needed to bring the electricity east. For example, by allowing MISO to self-determine its future transmission projects without meaningful review, the FERC is allowing a faulty stakeholder process to determine that wind shall be the winner in the race for cleaner energy and as a consequence, the location of our wind generation. An imperfect RTO governance process should not be driving the national debate. The problem is this approach incorrectly starts from a position that presumes the validity of the underlining premise and then permits those who will benefit most from the decision to out vote those who will have to carry a disproportionate share of the costs. The Great Plains are not the only location for wind and in fact, as the technologies improve it may not even be the best source of renewable energy.

Several recent studies have been conducted which supports greater viability of wind built closer to the load centers over remotely located generation. (see - *Cost of Wind Energy: Comparing Distant Wind Resources to Local Resources in the Midwestern*, David Hoppock and Dalia Patimo-Echeverri, Duke University, September 14, 2010).

We should not let our policy decisions of today fail to recognize the potential of our technology of tomorrow. Are we investing in a transmission system that will be too big to fail? Are we creating stranded investments that will be impossible to walk away from even if better and less costly clean energy sources exist? It is one thing to have risked investing in a failed solar company that cost the taxpayers millions of dollars, it would be an unrecoverable mistake to invest hundreds of billions of dollars in wind generation and transmission that would be obsolete before even a single kilowatt of electricity is produced.