

**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
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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.