

**BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON  
ENERGY AND ENVIRONMENT**

**TESTIMONY OF THE HONORABLE DAVID C. COEN  
COMMISSIONER, VERMONT PUBLIC SERVICE BOARD**

**ON BEHALF OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

**ON**

**“The Future of the Grid: Proposals for Reforming National Transmission Policy”**

**June 12, 2009**



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**Summary of Testimony from  
Commissioner David C. Coen  
on behalf of the  
National Association of Regulatory Utility Commissioners**

It is the long-standing position of NARUC that Congress should not expand Federal authority over transmission siting, either through amendments to the Federal Power Act or through other Federal legislation, should Congress choose to expand FERC's current authority over the siting and construction of new interstate transmission lines, we recommend that Congress incorporate the following principles into such legislation:

- Any such additional authority granted to FERC by the legislation allow for primary siting jurisdiction by the States, and provide that FERC's "backstop" siting authority be as limited in scope as possible;
- In no event should FERC be granted any additional authority over the siting or construction of new intrastate transmission lines;
- In no event should FERC be granted any additional authority to approve or to issue a certificate for a new interstate transmission line that is not consistent with a regional transmission plan developed, in coordination with affected State commissions or other designated State siting authorities, and other regional planning groups, that covers the entire route of the proposed project;
- In no event should FERC be granted any additional authority to approve or to issue a certificate for a new interstate transmission line unless there is already in place either (1) a cost-allocation agreement among all the states through which the proposed project will pass that governs how the project will be financed and paid for; or (2) a FERC-approved cost-allocation rule or methodology that covers the entire route of the proposed project;
- In no event should any such legislation allow FERC to preempt State authority over retail ratemaking, the mitigation of local environmental impacts under State authority, the interconnection to distribution facilities, the siting of generation, or the participation by affected stakeholders in State and/or regional planning processes; and
- In no event should any such legislation preempt existing State authority to regulate bundled retail transmission services.

Good morning Chairman Markey, Ranking Member Upton and Members of the Subcommittee:

My name is David Coen, and I am a member of the Vermont Public Service Board (PSB). I also serve as First Vice President of the National Association of Regulatory Utility Commissioners (NARUC). Today I will be testifying on behalf of NARUC and where noted, the Vermont PSB. I am honored to have the opportunity to appear before you this morning and offer a State perspective on “transmission” in general and specifically on federal siting, regional transmission planning, and cost allocation.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Our membership includes the State public utility commissions serving all States and territories. NARUC’s mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. Our members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to ensure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to ensure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory.

There are many challenges to resolve prior to the development of the much-needed growth in the transmission system that is so vital to reliable electric service, our economic growth, and our national security. Without increased capacity in the

transmission grid, our ability to develop the energy resources necessary to meet current and future demand may be jeopardized, particularly as many States and the federal government implement policies that limit greenhouse gas emissions and increase our reliance on renewable generation. Even with robust energy efficiency efforts, such as those in Vermont, significant upgrades will be necessary in order to meet growing demand and to improve access to renewable generation. Solutions to the current transmission challenges facing us are not quick, simple, non-contentious, inexpensive, nor, in some cases, obvious. Finding and implementing solutions will require cooperation by, not confrontation among, the various stakeholders.

NARUC recently adopted an updated resolution on transmission policy and I have attached it to this testimony. The discussions leading to this policy resolution were difficult and I bring this to your attention in an effort to illustrate that the nation's utility regulators are well aware of the issues and complications surrounding transmission policy. These issues are extremely sensitive within our organization precisely because they do not lend themselves to simple or even consensus solutions. The debate on these issues tends to follow regional differences and NOT partisan or ideological divisions. Siting, cost allocation, and planning issues are often controversial because in many situations someone's gain comes at someone else's expense.

While it continues to be the long-standing position of NARUC that Congress should not expand Federal authority over transmission siting, either through amendments to the Federal Power Act or through other Federal legislation, should Congress choose to expand FERC's

current authority over the siting and construction of new interstate transmission lines, we recommend that Congress incorporate the following principles into such legislation:

- Any such additional authority granted to FERC by the legislation allow for primary siting jurisdiction by the States, and provide that FERC’s “backstop” siting authority be as limited in scope as possible;
- In no event should FERC be granted any additional authority over the siting or construction of new intrastate transmission lines;
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- In no event should any such legislation allow FERC to preempt State authority over retail ratemaking, the mitigation of local environmental impacts under State authority, the

interconnection to distribution facilities, the siting of generation, or the participation by affected stakeholders in state and/or regional planning processes; and,

- In no event should any such legislation preempt existing State authority to regulate bundled retail transmission services.

## **Background**

The Energy Policy Act of 2005 (EPAAct 2005) required the Department of Energy (DOE) to conduct a study of electric transmission congestion one year after the legislation was enacted, and every three years thereafter (language was included in the recently signed “stimulus” legislation modifying the DOE congestion study process). After considering alternatives and recommendations from interested parties, DOE must issue a report, based on the study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a National Interest Electric Transmission Corridor (NIETC).

The first DOE Congestion Study was issued on August 8, 2006. On April 26, 2007, the DOE issued two draft NIETCs: the Mid-Atlantic Area National Corridor (some or all counties in Delaware, Ohio, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia); and the Southwest Area National Corridor (seven counties in southern California, three counties in western Arizona, and one county in southern Nevada). On October 2, 2007, DOE finalized the designations of both NIETCs: the Mid-Atlantic Area National Interest Electric Transmission Corridor

(Docket No. 2007-OE-01); and the Southwest Area National Interest Electric Transmission Corridor (Docket No. 2007-OE-02). DOE affirmed the NIETC designation orders on March 10, 2008.

EPAct 2005 gave federal backstop siting authority of certain electric transmission facilities, based upon the process outlined above, to the Federal Energy Regulatory Commission (FERC). Upon NIETC designation by DOE, FERC may issue permits to construct or modify electric transmission facilities if FERC finds that:

- (1) A State in which such facilities are located does not have the authority to approve the siting of the facilities or to consider the interstate benefits expected to be achieved by the construction or modification of the facilities;
- (2) The applicant is a transmitting utility but does not qualify to apply for siting approval in the State because the applicant does not serve end-use customers in the State; and
- (3) The State with siting authority takes longer than one year after the application is filed to act, or the State imposes conditions on a proposal such that it will not significantly reduce transmission congestion or it is not economically feasible.

To issue a permit, FERC must find that proposed facilities:

- (1) are used for interstate commerce;
- (2) are consistent with public interest;

- (3) significantly reduce transmission congestion in interstate commerce;
- (4) are consistent with national energy policy; and,
- (5) maximize the use of existing towers and structures.

## **Siting**

A major impediment to siting energy infrastructure, in general, and electric transmission, in particular, is the great difficulty in getting public acceptance for needed facilities. This tells us that no matter where siting responsibility falls – with State government, the Federal government, or both, as prescribed in the EAct 2005 – siting energy infrastructure will not be easy and there will be no “quick fix” to this situation.

During the EAct 2005 debate, NARUC opposed the “backstop siting” provision. NARUC’s position prior to passage of EAct 2005 was, and continues to be, that to have the greatest economical and environmental benefits transmission facilities should not be nationalized but rather should be approached on a regional basis. Just as States have a role in the siting of interstate highways, States need to continue having an active role in transmission decisions.

As Congress considered EAct 2005, NARUC expressed deep concern with the language that eventually became Section 1221. At that time, NARUC opined that the language could in essence overrule legitimate State agency concerns and laws with regard to how a State ruled on a transmission project. The language would then permit FERC to

overturn, or indeed, ignore the decision and preempt State law and actions. As reflected in recent litigation, our initial observations and fears were accurate. In *Piedmont Environmental Council v. FERC*, the Fourth Circuit overturned FERC’s expansive interpretation of its backstop siting authority in NIETCs. The court followed FERC Commissioner Suedeon Kelly’s dissent to Order 689, and held that section 216 of the Federal Power Act (which gives FERC backstop siting authority if a State “withheld approval for more than one year”) clearly does not give FERC siting authority when a State affirmatively denies a siting permit application within the year. Now, members of Congress and FERC, and their supporters, see the current energy and climate legislation as an opportunity to reverse the Court’s decision by providing FERC blanket authority to overturn well-reasoned State decisions made in good faith.

In our comments on the FERC rulemaking which inspired the court action, NARUC said it expected the backstop siting authority to have limited applicability because the majority of the State commissions have the authority to approve or deny proposed transmission projects within their jurisdictions and State commissions are frequently allowed to address the interstate benefits of proposed projects. Furthermore, many State statutes require a petitioner to obtain a certificate of public convenience and necessity, or some other similar certificate, from a State commission before constructing transmission facilities regardless of whether the applicant provides electric service to end-use customers. In its comments, NARUC proposed that:

1. FERC clarify that federal backstop siting authority under FPA Section 216 is only triggered when the State Commission fails to or cannot act in a timely manner;
2. FERC clarify how it will apply the federal backstop criteria;
3. The proposed rule be revised to implement the due process requirements of the statute; and,
4. The Final Rule adopted should incorporate a reference and deference to extensive siting records developed at the State level to prevent duplication and confusion.

The Final Order gave the States one full year to consider a transmission line siting application before the federal pre-filing process begins. The intent is to avoid conducting “parallel proceedings” – where a State commission and FERC would be considering a siting application at the same time. If such “parallel proceedings” were allowed, that process would create *ex parte* and prejudgment concerns under State law. Such a situation could potentially result in an applicant “gaming” the siting process by purposefully filing a deficient application to the State with the hopes of starting the one-year federal clock and precluding adequate State consideration of the application. NARUC did not appeal the FERC backstop siting rule and our members have generally been attempting to work within the framework of the EPACT 05 backstop provision.

While the American Clean Energy and Security Act, as reported out of Committee, does not include expansion of federal preemption on siting, our membership is troubled that some in Congress think it necessary to begin consideration of changing the siting provision that was just established in EPLA 05. This provision has not been given an appropriate amount of time to ascertain whether or not it can, will or is working. We are pleased, however, to see that a growing number of House and Senate members are becoming increasingly concerned with the potential for federal government preemption in the siting of electric transmission.

If Congress does anything on siting, it should affirm the Fourth Circuit decision by clarifying that if a State turns down a transmission line proposal for good reason and within a reasonable timeframe FERC should not be able to second guess the State. FERC Commissioner Suedeen Kelly correctly reasoned that it was incomprehensible that Congress intended FERC to override timely State decision. In addition, it only seems fair that the one-year clock for State action needs to be suspended whenever a federal agency is the cause for the State delay in a permitting decision.

## **Planning**

State Commissions are acutely aware of the necessity and process of regionally planning transmission projects. In all sections of the country where there is a regional planning process, State Commissioners and their staffs are participants in the process.

For example, Title IV of the American Recovery and Reinvestment Act of 2009 required the formation of an Eastern Interconnection Planning mechanism, and provided the Department of Energy with \$80 million for this effort and included provisions for State participation in this study. The Western Interconnect has a model for promoting interconnection wide planning under the Western Governors Association and Commissioners in the Eastern Interconnect are developing a similar process.

Commissioners from the Eastern Interconnect met on May 15, 2009, to decide how to create a mechanism for State involvement. The May 15 group determined that it is important for States, regulatory commissioners and Governors' offices, to play a leadership role in Eastern Interconnect planning process. To that end all 39 states and the District of Columbia have been invited to send a delegate from their State Commission and Governor's office to a meeting later this month in Washington to organize State participation in the Eastern Interconnect wide planning process.

Let me to say a few words about Vermont and New England as it relates to transmission planning and investment. I think it underscores the rich environment that can develop as States and regions work to ensure that needed transmission projects get built and can be used to complement State, regional, and national goals for developing clean and renewable energy resources, while preserving and enhancing reliability.

Vermont has a transmission planning process that analyzes potential transmission constraints over a 20-year horizon and considers various alternatives, including

distributed generation and targeted energy efficiency programs that would address any identified reliability issues. The process ensures that solutions to transmission constraints serve the long-term needs of consumers, at the lowest cost. In addition, the Vermont planning process is an integral part of a six-State regional planning framework known as the Regional System Plan. This is a dynamic process and State plans are updated on a three-year cycle and contribute to the ISO New England (ISO-NE) Regional System Plan, which is updated annually. These planning efforts provide a forum for States and participants to collectively analyze regional system needs. This process has proven successful and is delivering needed investment.

In Vermont, after decades without any major transmission investment, the Public Service Board has approved three major transmission projects from 2005 through 2008 with total projected capital investment of over a half a billion dollars. At the regional level, after decades without any major transmission investment, nearly \$4 billion has been placed in service since 2002. These Vermont and New England regional projects were needed to meet system reliability needs.

Going forward, the regional planning efforts are broadening to focus on creating greater access to renewable resources. ISO-NE indicates that the combined New York and New England regions hold more than 100 projects representing over 12,000 MW of new wind resources in their interconnection queues. At the request of the New England Governors, ISO-NE is assisting the region in the development of a regional blueprint for transmission development to access on-shore and off-shore renewable resources. Coordinated planning efforts between ISO-NE and the NYISO are underway to enhance the development of wind potential in the combined region. We expect these planning

efforts to also consider options for accessing the many large renewable and non-carbon resource proposals from neighboring provinces in Canada.

State and regional planning efforts are now focused on using these planning efforts to develop plans and strategies for accessing the bounty of renewable resources that, while often distant from load, are close to New England and hold the promise for affordable delivery of clean and renewable energy resources. State and regional planning efforts are contributing toward both reliability and accessing clean energy resources. Where planning efforts like these efforts in New England are successful and are triggering needed investments, federal preemption authority should be limited.

In summary, Vermont and New England have a robust transmission planning process. On May 11, 2009, the Northeastern governors sent a letter to the House and Senate leadership requesting that any federal legislation on transmission siting preserve State and regional oversight and review. Consistent with the Governors' letter, my testimony supports the concept that our regional and state planning provides a sound framework for addressing our transmission needs.

### **Cost-Allocation**

State regulators are concerned about transmission reliability, adequacy, and the costs required to support the development of robust competitive wholesale markets. The investment that is needed to upgrade the transmission grid in order to support expanded wholesale power markets will cost billions of dollars. Notwithstanding the general

benefit to the wholesale electric marketplace of encouraging the construction of new generating capacity and its interconnection to the grid, it is also important to provide proper price signals to encourage optimal demand response and promote economic and efficient expansion of the grid and siting of generation. The FERC has in the past adopted transmission pricing policies that generally provide for the direct assignment of costs to the parties causing the costs.

FERC Order No. 2000 stated the "[m]arket designs that base prices on the average or socialization of costs may distort consumption, production and investment discussions and ultimately lead to economically inefficient outcomes." FERC has departed, in some instances, from a transmission pricing policy that provides for the assignment of costs to the cost-causative parties. In general, NARUC supports efficient pricing policies that result in the economic use and expansion of the transmission system to support a robust wholesale electricity market. We recognize that investments needed to maintain the reliability of the existing transmission systems should continue to be recovered through rates charged to all transmission users. We advocate that the cost of upgrades and expansions necessary to support incremental new loads or demands on the transmission system should be borne by those causing the upgrade or expansion to be undertaken, except that FERC should not preclude the assignment of interconnection cost to the general body of ratepayers within a State when that State's regulatory body determines that such allocation is in the public interest.

A robust regional electric transmission system is an essential prerequisite to support both reliability and the market function allowing more generators to reach loads and compete directly for wholesale sales to such loads in order to increase competition among generation suppliers and meet national goals for renewable generation and energy independence. A new rate design is needed that will facilitate the construction of the strong transmission backbone required to support the nation's wholesale electric markets, future increases in renewable generation capacity, and reliability.

In conclusion, the electric transmission system must have the capacity to meet the growing energy needs of the nation, regardless of the generation source. The solutions to the challenges will not come quickly or easily. These solutions will require the cooperation of all stakeholders, including State and federal governments, and must not require ratepayers to bear the entire financial burden with the entire reward allocated to the owners of generation and/or transmission. Thank you and I look forward to your questions.

# **ATTACHMENT**



## **Resolution Regarding Possible Federal Legislation Amending the Federal Power Act Addressing Expansion of Transmission Facilities**

**WHEREAS**, the siting of electric transmission facilities has historically been subject to the exclusive jurisdiction of the States; and

**WHEREAS**, it is in the States' interests to ensure that adequate electric transmission facilities are constructed to meet the needs for economic and reliable utility service; and

**WHEREAS**, it continues to be the long-standing position of the National Association of Regulatory Utility Commissioners (NARUC) that Congress should not expand Federal authority over transmission siting either through amendments to the Federal Power Act or through other Federal legislation; and

**WHEREAS**, Section 216 to the Federal Power Act, enacted as part of the Energy Policy Act of 2005, provided the Federal Energy Regulatory Commission (FERC) with limited "backstop" transmission siting authority; and

**WHEREAS**, it is anticipated that within the next few months, Congress will be considering possible amendments to the Federal Power Act that will provide FERC with expanded authority over the siting and construction of new interstate transmission lines; be it therefore

**RESOLVED**, that in connection with any proposed legislation introduced in the current session of Congress that would expand FERC's current authority over the siting and construction of new interstate transmission lines, the Association and its Washington staff recommend that Congress incorporate the following principles into such legislation:

- That any such additional authority granted to FERC by the legislation allow for primary siting jurisdiction by the States, and provide that FERC's "backstop" siting authority be as limited in scope as possible;
- That, in no event should FERC be granted any additional authority over the siting or construction of new intrastate transmission lines;
- That, in no event should FERC be granted any additional authority to approve or to issue a certificate for a new interstate transmission line that is not consistent with a regional transmission plan developed, in coordination with affected State commissions or other designated State siting authorities, and other regional planning groups, that covers the entire route of the proposed project;
- That, in no event should FERC be granted any additional authority to approve or to issue a certificate for a new interstate transmission line unless there is already in place either (1) a cost-allocation agreement among all the states through which the proposed project will pass

that governs how the project will be financed and paid for; or (2) a FERC-approved cost-allocation rule or methodology that covers the entire route of the proposed project;

- That, in no event should any such legislation allow FERC to preempt State authority over retail ratemaking, the mitigation of local environmental impacts under State authority, the interconnection to distribution facilities, the siting of generation, or the participation by affected stakeholders in state and/or regional planning processes; and
- That, in no event should any such legislation preempt existing State authority to regulate bundled retail transmission services.

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Sponsored by the Committee on Electricity  
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March 10, 2009