BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENERGY AND AIR QUALITY

TESTIMONY OF THE HONORABLE MARILYN SHOWALTER
PRESIDENT, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
CHAIRWOMAN, WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ON

"The Energy Policy Act of 2005"

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Summary of Remarks by
The Honorable Marilyn Showalter
National Association of Regulatory Utility Commissioners
Before the
U.S. House of Representatives
Energy and Commerce Committee, Subcommittee on Energy and Air Quality

- NARUC strongly supports the reliability language found in the Conference Report (108-375).

- NARUC respectfully opposes section 1221 of the Conference report, regarding transmission siting, due to the FERC backstop provision that is included.

- Native load customers should be held harmless with respect to such issues as their priority of service, quality of service, and allocation of joint and common costs.

- NARUC supports a pricing policy which allocates transmission costs in two ways. First, those costs needed to maintain the reliability of the existing transmission system should be recoverable through rates paid by all transmission customers. Second, the cost of upgrades and expansions that are necessary to support incremental new loads or demands on the transmission system should be borne by those causing the upgrade or expansion.

- NARUC opposes language in section 1253 which would pre-empt State jurisdiction by granting FERC authority to order the recovery of costs in retail rates or to otherwise limit State authority to require mitigation of PURPA contract costs.

- Congress should reform the Public Utility Holding Company Act (PUHCA), but in doing so, should allow the States to protect the public through maintaining effective oversight of holding company practices and expanding State access to holding company books and records, independent of any similar authorities granted to the Federal regulatory bodies.

- The Conference Report does not address the critical concern of providing for a State regulatory role in market monitoring. States can provide a "first responder" view of energy markets. However, in order to be an effective market monitor, the State regulators must have access to all necessary data, including but not limited to, production for generating plants, transmission path schedules and actual flows.

- Comprehensive energy legislation should include a section to reclassify fees paid by utilities to the Nuclear Waste Fund as discretionary offsetting collections equal to the annual appropriations from the Fund or by other means that achieves the result of having appropriations match Fund revenue.

Mr. Chairman and members of the Subcommittee, I am Marilyn Showalter, Chairwoman of the Washington Utilities and Transportation Commission and President of the National Association of Regulatory Utility Commissioners (NARUC). On behalf of NARUC, thank you for this opportunity to share our views with you today.

NARUC is a quasi-governmental, nonprofit organization founded in 1889. Its membership includes the State public utility commissions for all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. NARUC's members regulate the retail rates and services of electric, gas, water and telephone utilities. We have the obligation under State law to ensure the establishment and maintenance of such energy utility services as may be required by the public convenience and necessity, and to ensure that these services are provided at rates and conditions that are just, reasonable and nondiscriminatory for all consumers.

NARUC has commented many times on the various energy proposals and drafts that have been reviewed by the members of this Committee during the preceding Congresses. The positions expressed in this testimony are

consistent with the positions expressed by NARUC during the energy deliberations that occurred in the 108th Congress.

Conference Report 108-375 (to accompany H.R. 6), which was passed by the House of Representatives in the 108th Congress, includes many positive provisions which NARUC strongly supports including, the reliability section, LIHEAP and weatherization authorization of appropriations, Price – Anderson reauthorization, support for clean coal technologies, renewable energy production incentives, efficiency programs, and enhanced penalties under the FPA, to name but a few. However, our comments today will be focused on the electricity title (Title XII) of the Report language.

Reliability Standards

NARUC has consistently held that reliability should be addressed in any Federal energy legislation. NARUC has been a strong and consistent supporter of legislation that establishes a more robust, mandatory model for the enforcement of compliance with mandatory technical reliability standards, provided, however, that States are not preempted on resource adequacy, safety, security, and planning issues and can form voluntary

regional bodies to advise FERC on implementation of the standards within their regions. Therefore, NARUC believes that Congress should mandate compliance with industry-developed reliability standards on the transmission system and preserve the authority of the States to set more rigorous standards when in the public interest.

To that end, Congress should include in any reliability legislation a savings clause to protect existing State authority to ensure reliable power delivery service, and a regional advisory role for the States. Additionally, Congress should ensure that States continue to have the authority to establish effective price signals that allow consumers to choose alternative levels of reliability and power quality. Accordingly, NARUC supports the electric reliability provision found in Subtitle A of the Conference Report passed by the House last Congress.

Transmission Siting

We appreciate the efforts that have been made in an attempt to alleviate the concerns raised by NARUC and other State and local government organizations with regard to the siting proposals floated during the last

Congress. However, NARUC must respectfully oppose Sec. 1221 of the Conference report due to the FERC backstop provision that is included. Although efforts have been made to produce a more moderate backstop proposal, the result is the same: FERC will have authority to override State decisions on transmission siting.

NARUC opposes this FERC-override provision. States should retain authority to site electric transmission, generation, and distribution facilities. Congress should support the States' authority to negotiate and enter into cooperative agreements or compacts with Federal agencies and other States, in order to facilitate the siting and construction of electric transmission facilities. And Congress should support the State's authority to consider alternative solutions to such facilities, such as distributed generation and energy efficiency. NARUC is strongly opposed to any role (direct or backstop) for FERC in authorizing or siting transmission lines.

Building additional transmission, distribution and generation can be difficult. 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. Few examples have been documented

however, beyond anecdotal accounts, that a State action (or inaction) is solely responsible for unreasonably preventing a needed transmission project. Further, the limited examples that may exist do not warrant Federal pre-emption. Shifting siting responsibility from State government to the Federal government will not necessarily make siting energy delivery infrastructure any easier. There is no "quick fix" to a difficult siting issue, but States are better positioned to identify and evaluate alternatives to a specific project. For example, a State may determine that a transmission line is not necessary if distributed generation is used instead, saving valuable resources and protecting citizens from unnecessary effects of the transmission project. Additionally, States are better positioned to hear and consider comments from affected citizens and businesses.

Transmission Operation

NARUC is pleased that section 1232 takes a voluntary approach to Regional Transmission Organizations (RTOs). Section 1232 of the Report language allows for more latitude in the development of wholesale power markets than a generic "one-size-fits-all" approach.

Regarding section 1236, NARUC believes that native load customers should be held harmless with respect to such issues as their priority of service, quality of service, and allocation of joint and common costs. These customers have borne the vast majority of the costs of their utility's transmission facilities. Because the utility's obligation under State law or FERC-approved contract is to provide these consumers reliable and affordable service, they should not bear any burden due to an open access transmission regime. Further, NARUC supports Federal transmission policies that assist in the evolution to economically and environmentally efficient regional power markets that provide benefits to all customers.

Transmission Rate Reform

NARUC members are aware of the need for adequate investment in energy sector infrastructure. However, section 1241, which would provide rate incentives for RTO participation, fails to recognize that currently, under State laws, utilities are generally required to obtain State commission approval to participate in RTOs, if RTO membership requires the utility to relinquish control or divest the transmission facilities held in the retail rate base.

With regard to section 1242, NARUC is supportive of transmission cost allocation proposals. NARUC supports a pricing policy which allocates transmission costs in two ways. First, those costs needed to maintain the reliability of the existing transmission system, should be recoverable through rates paid by all transmission customers. Second, the cost of upgrades and expansions that are necessary to support incremental new loads or demands on the transmission system should be borne by those causing the upgrade or expansion. Additionally, any cost allocation proposal 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.

PURPA/Net Metering/Real-Time Pricing/Time of Use Metering

NARUC opposes language in section 1253, which would pre-empt State jurisdiction by granting FERC authority to order the recovery of costs in retail rates or to otherwise limit State authority to require

mitigation of PURPA contract costs. Regarding sections 1251 and 1252, NARUC regards Net Metering, Real-Time Pricing and Time of Use Metering as retail issues that ought to be subject to State jurisdiction rather than Federal legislation. We are pleased that the legislation provides that each State has the ability to determine if the services in sections 1251 and 1252 are appropriate for State implementation. The long-standing NARUC position is that implementation of these programs should be of the States' own choosing, in the States' own time, and not forced on States under timelines and minimum standards of FERC's choosing.

PUHCA

Congress should reform the Public Utility Holding Company Act (PUHCA), but in doing so, should allow the States to protect the public through maintaining effective oversight of holding company practices and expanding State access to holding company books and records, independent of any similar authorities granted to the Federal regulatory bodies. NARUC believes that Subtitle F fits within our criteria for support.

Market Transparency, Enforcement, and Consumer Protection

There is an increased need for oversight of the energy markets in order to protect against market abuse. Electricity price volatility has raised concerns about the integrity of wholesale markets, suggesting a much greater need for monitoring of these markets by regulatory bodies. The legislation does not address a critical concern, the State regulatory role in market monitoring. States can provide a "first responders" view of energy markets.

However, in order to be an effective market monitor, the State regulators must have access to all necessary data, including but not limited to generating plant production, fuel sources, heat rates, and both scheduled and actual transmission path flows. State regulators must have the ability to review this type of data in order to be able to detect market gaming and attempts to obtain and exercise unlawful market power. The electric industry restructuring efforts of the federal government and the various States are based on an assumption that wholesale markets are workably competitive. To that end, policy makers must have the ability to provide

confidence to an already skeptical and uneasy public that the market is not being "gamed." This confidence can be provided only if regulators are able to access the data necessary to ensure that the market is functioning in a truly competitive fashion. To the extent that data is currently shared among market participants for purposes of reliability, Congress should ensure that it is also available to regulators and the public.

There is a real concern that the energy markets are vulnerable to manipulation, and there needs to be an improvement in the reliability of the indices used. A minimum set of standards should be established for how price reporting occurs. Regulatory oversight of price reporting and the ability to impose penalties on traders that don't comply with the rules should help ensure that energy companies follow the rules.

The energy industry must adopt a set of practices and benchmarks to increase market transparency and to help restore public confidence in the US energy markets. If the goal of legislation is to ensure that the market participants do not manipulate the market, the policies ought to provide for more transparency, not less. Claims that data-reporting to State regulators will result in competitive disadvantages to those reporting are spurious. To

the extent the necessary data are commercially sensitive, State regulators can provide appropriate protections. States routinely and frequently handle such information without compromising parties' interests.

NARUC is pleased that the Conference Report included a State authority provision in section 1287 to complement Federal consumer protection procedures. NARUC's members have a long-standing commitment to consumer protection. Indeed, State utility commissions were established to ensure that consumers receive essential services without fear of predatory practices and pricing.

The States are capable in dealing with abuses that occur at the retail level. In fact many of the States that have moved to restructure and unbundle their retail electric markets have in place laws and regulations that address the consumer issues found in section 1287.

Merger Reform

The economic efficiencies associated with free and substantial competition may not be realized if mergers have an adverse impact on competition in the generation market. In most instances, State commissions have a responsibility to ensure that mergers do not adversely affect the availability of electricity at just and reasonable rates.

A clear regulatory policy on mergers has several benefits, including (a) giving prospective merger partners more certainty on how regulators will treat their proposals, (b) increasing the likelihood that the actions of the merging parties will be consistent with the public interest, (c) assisting regulators in distinguishing efficient from inefficient mergers and mergers which increase competition from mergers which impede competition, and making the review process more efficient by reducing the need to relitigate generic policy issues in each case. Federal and State regulators should thoroughly evaluate electric utility mergers to assess their impact on competition in the generation market, access to transmission facilities and ultimately on electric rates. Proposed mergers that adversely affect generation competition or create situations in the relevant electric markets

that are inconsistent with antitrust laws should be disapproved. FERC should be required to establish a process for review of a merger application that provides for effective State participation.

Nuclear Waste Fund Reform

NARUC believes that any comprehensive energy legislation should include, at minimum, a section that addresses the issue of the Nuclear Waste Fund. In 1982 the Nuclear Waste Policy Act established policy that the Federal government is responsible for safe, permanent disposal of all high-level radioactive waste, including spent nuclear fuel from commercial power reactors.

Since 1983 ratepayers in States using nuclear-generated electricity have paid over $23 billion in fees and interest, via their electric utility bills, to the Nuclear Waste Fund (NWF) in the U.S. Treasury in what was to have been a self-financed waste disposal program. Unfortunately, Congress historically has only appropriated a small fraction of the amount of revenue going into the NWF to develop the waste repository—resulting in a balance in the Fund, now over $16 billion. Previous attempts to address the gap between

NWF revenue and annual appropriations have been either embroiled in nuclear waste politics or faced other obstacles.

Comprehensive energy legislation should include a section to reclassify fees paid by utilities to the Nuclear Waste Fund as discretionary offsetting collections equal to the annual appropriations from the Fund or by other means that achieves the result of having appropriations match Fund revenue. A good starting point would be the language found in H.R. 3981 or HR 3429, both introduced in the 108th Congress.

Thank you for your attention and the opportunity to comment today. I look forward to your questions.