

Testimony of Brian P. Kalk, Ph.D.
North Dakota Public Service Commissioner
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Hearing on Energy Infrastructure Legislation
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Madam Chair, Ranking Member Cantwell, and Committee Members, thank you for the opportunity to testify before you today. My name is Brian Kalk, Commissioner for the North Dakota Public Service Commission (NDPSC). I hold the portfolios for Electricity Generation and Transmission, Pipeline Safety, and Electricity Rate Regulation for North Dakota. I also Chair the Clean Coal Subcommittee for the National Association of Regulatory Utility Commissioners and serve as North Dakota's representative on the Regional Transmission Organizations we operate in.

Over the past three years, the NDPSC has sited over four billion dollars of energy resources, including jurisdictional electric and liquid transmission lines, wind farms, natural gas processing plants and peaking facilities. These expanded energy resources, coupled with our existing generation fleet of coal and hydroelectric power, truly make North Dakota an "all of the above" energy producer. We have also approved numerous updates to our fleet of coal generation to ensure they are in compliance with existing federal laws.

The NDPSC supports all energy markets, but strongly believes the final determination of a state's energy portfolio mix and resulting impact on rates should be left to each state's regulator and not be affected by neighboring states or federal policies.

Let me explain. With a state like North Dakota that truly practices an "all of the above" energy strategy, and holds to the principles of rate regulation (lowest cost and need), certainty is provided to customers regarding rates and stability of the power grid. In contrast, some states have chosen to mandate certain types of electric generation while ignoring lowest cost and need. I understand and respect the rights of these states to make those types of decisions, but I would stress that neighboring states should not bear the burden of higher costs of electricity.

States have different resources and local policy considerations. This reinforces the need for states to be able to determine their own energy mix and need. As this Committee debates the future of energy policy, I urge the Committee to always be mindful of the impact of cost and reliability.

My experience in North Dakota is that all types of energy production are becoming more efficient. Capacity factors for wind are over 50 percent, combined cycle and peaking natural gas plants are ever improving, solar shows promise in some regions, but we must always be mindful of "need and cost" as we grow our generation fleet and the fact that "base load" power will always be critical to the power grid.

Finally, I urge your support for expanding CO₂ utilization research funding to continue development of technologies that preserve and advance the use of coal in our nation. Facilities like the Kemper County Energy Facility show great promise for the future of coal. This facility

uses lignite coal—a strategic resource—captures the CO₂ for enhanced oil recovery, produces ammonia and sulfuric acid and perhaps most importantly, provides 582 mega-watts of much needed “base load” power to the regional utility and their customers.

My remaining time will cover two key areas of energy infrastructure: transmission development and potential changes to the Public Utilities Regulatory Policies Act (PURPA).

1. Transmission Development (Electric & Pipelines)

North Dakota has experienced unprecedented expansion in the amount of transmission siting applications brought before the NDPSC. Our existing processes and statutory framework continue to work smoothly to facilitate growth while maintaining oversight in this area.

Even with North Dakota’s diligence in processing applications, hurdles beyond the state’s control can occur to slow the siting process. An example would be when a “federal nexus” exists triggering implementation of the National Environmental Policy Act (NEPA) for the company building the transmission line. Such analysis can take extended periods of time. It would be imprudent of state regulators to render a final siting decision without the consideration of a complete NEPA analysis. Thus, it is important to consider the various components to transmission planning and siting. Legislation should not be implemented that could force states to render decisions before all necessary information is available or penalize states for expanded time frame of final approval when it is the federal agencies that are the actual delay.

The NDPSC has also experienced the situation where a transmission pipeline has received the final approval in North Dakota but has become significantly delayed in neighboring states. Since we are located next to Canada, we have also experienced delays in federal approval on pipeline border crossings and fully support efforts to streamline and expedite energy infrastructure projects between the United States and Canada.

North Dakota supports existing procedures for granting interconnection to the power grid utilized by the Regional Transmission Organizations operating in our state. In addition, we have in state law the “Right of First Refusal” on electric transmission construction.

2. PURPA Updates and Qualifying Facilities (QF)

Generally speaking, I believe that the states, not the federal government, ought to have jurisdiction over retail rates and services. The states have been and will be the laboratories of innovation for retail electricity supply. Some of the innovations work well for the consumers in one state and do not meet expectations in others depending upon the unique circumstances that exist in each state. While PURPA attempts to address this situation, there have been situations where federal regulators have attempted to use PURPA to undermine traditional state jurisdiction. Additionally, specifically in those states with limited Commission staff and resources, a multitude of PURPA proceedings initiated due to Congressional legislation (as was the case after EPAct 05) creates staffing and resource shortages with regard to the other duties for which a state utility commission is responsible. This can result in delays in the siting and permitting energy infrastructure improvements.

The NDPSOC welcomes the opportunity to exercise our traditional regulatory authority and any new or clarifying authority which allows us to assess our needs and help prescribe ways to ensure secure, reliable and affordable electricity to the people of North Dakota. Therefore, we strongly support individual states' rights to incentivize energy development and infrastructure. However, a state should not be required to subsidize one particular industry or technology over another. The development of the power grid should be done by professionals and remain consistent with traditional least cost planning.

It is important to be able to ensure that North Dakota has the necessary power to provide and maintain base load power and to have sufficient ancillary services to ensure continual operation of our electrical system. By baseload, I mean large-output electric generation facilities that contribute to reliability, not intermittent power or that affected by weather or climate conditions.

While North Dakota utilizes a full range of energy resources, concern exists with integrating renewables and ensuring that system-wide reliability is maintained. North Dakota understands the grid is evolving, but costs are still a vital consideration.

The need for power must always be a key consideration. The construction of QF by companies does not necessarily take into account if there is an actual need for the power in the state. The continuation of the mandatory purchase obligation, as it exists today, can impose significant and unnecessary costs on consumers.

As you know, PURPA requires regulated utilities to buy energy from qualifying renewable generation projects at rates established by state commissions. In North Dakota, we establish them annually as part of our utilities' tariffs. Tariff rates for energy are around 3 cents a kWh, with capacity payments varying depending on the length of the contract. We do not have any significant QFs operating in North Dakota because our energy prices are very low in terms of market energy as well as self-generation.

The North Dakota Legislature recently rejected legislation to create feed-in-tariffs. North Dakota recognizes and supports the ability of each state to determine what is best for its customers and strongly believes this planning should remain at the state level.

North Dakota values establishing and maintaining strong working relationships at all jurisdictional levels including local, state, and federal. North Dakota understands the federal government plays an important role in energy development, and is generally supportive of this role as long as it does not usurp state authority.

Conclusion

Summarize key points.

- North Dakota appreciates continued federal efforts to expedite projects that are multi-jurisdictional.
- North Dakota supports, and practices, an "all of the above" energy policy.
- Cost and need are the bedrock principles of public utility rate making.

- There is a place for renewable energy in the power grid, but we **MUST NOT** forget about the need for base load power.
- As a retired U.S. Marine, I would like to thank this Committee for their work on increasing the energy security of our country. I truly believe that energy security for the United States not only enhances our foreign policy options, but will result in less impact to ratepayers and a more reliable power grid.

Madam Chair, this concludes my written testimony. I would gladly stand for any questions at this time.