November 22, 2019

House Select Committee on the Climate Crisis
H2-359 Ford Building
Washington, DC 20515

Re: Response to Select Committee on the Climate Crisis Request for Information

Dear Chairwoman Castor and Ranking Member Graves:

The Transmission Access Policy Study Group ("TAPS") appreciates the opportunity to respond to the Committee's Request for Information regarding policies that would be required to achieve the goal of meeting or exceeding net-zero emissions by mid-century. TAPS' response focuses on policies necessary to support the electric grid's transformation in a manner that avoids unnecessarily burdening American consumers and the competitiveness of American businesses.

TAPS represents "transmission-dependent utilities" in thirty-five states that have obligations to serve customers over the long-term with reliable and affordable electricity, and rely on service over the transmission facilities owned by others to meet those obligations. TAPS has a long history of strong advocacy for open and non-discriminatory access to a robust transmission grid and competitive wholesale electric markets that bring real benefits to consumers. We recognize the crucial role of interstate transmission—a natural monopoly service regulated by the Federal Energy Regulatory Commission ("FERC")—in the interconnection and delivery of renewable or other low-carbon resources to address climate change, and have long advocated for an enhanced federal backstop siting authority for transmission facilities.

The significant transmission expansion needed to support the Committee's goal to achieve substantial and permanent reductions in greenhouse gas pollution amplifies the need to make sure that Congress enacts policies to assure that we build the right transmission system to meet a changing resource mix and do so at a reasonable cost. Even in the absence of adoption of the federal climate change policies now being considered by the Committee, transmission investment—and transmission rates—have been rising rapidly. The Energy Information Administration graphically depicted that "[s]pending on infrastructure to deliver power to homes and businesses has increased steadily over the past 10 years," in charts showing dramatic increases in transmission spending on a national and regional basis.[1] This is not surprising. Few other investments offer the assurance of cost recovery through formula rates that include a FERC-regulated return on equity, with the opportunity for project-specific incentives (if warranted by its risks and challenges) as well as additional return incentives for regional transmission organization participation. No wonder transmission owners highlight their increasing transmission investments

[1] U.S. Energy Information Administration, *Utilities Continue to Increase Spending on Transmission Infrastructure*, Today in Energy (Feb. 9, 2018), https://www.eia.gov/todayinenergy/detail.php?id=34892.

when communicating with investors, which in turn tout these investments' "recession-resistant earnings."[2]

Every penny of the returns granted to transmission owners by FERC, however, is paid for by customers; and the rising cost of the transmission system has direct financial consequences for residents and businesses across the country. Any federal policy that requires expansion and transformation of the transmission system, therefore, must be accompanied both by measures to assure that consumer dollars are spent wisely—e.g., by prioritizing construction of the most efficient and cost-effective facilities—and by measures to assure that the costs of grid transformation are no more than needed to get the job done.

## GETTING THE RIGHT TRANSMISSION BUILT WITHOUT UNNECESSARILY BURDENING AMERICAN CONSUMERS AND BUSINESSES

1. Enhancement of FERC-Required Open and Transparent Transmission Planning Processes

Congress recognized the importance of transmission planning when it adopted Section 217(b)(4) of the Federal Power Act ("FPA") as part of the 2005 Energy Policy Act.[3] That provision directs FERC to exercise its FPA authority to facilitate the planning and expansion of the grid to meet the reasonable needs of load-serving entities (including transmission-dependent utilities like TAPS members) and their ability to secure long-term transmission rights to support delivery of their existing and planned power supply resources to their customers.

Consistent with that directive, FERC has sought to promote transmission planning for more than a decade—first at the individual transmission-owning utility level, and then at the regional and interregional level. In 2007, FERC issued Order No. 890, which concluded that to make FERC's landmark open access transmission tariff effective in providing non-discriminatory transmission service, jurisdictional transmission owners must adopt a transmission planning process that adheres to principles requiring openness, transparency, and the opportunity for transmission customer input.

In 2011, FERC found it necessary to build upon that foundation to address "[t]he need for additional transmission facilities … driven, in large part, by changes in the generation mix" due to "existing and potential environmental regulation and state renewable portfolio standards."[4] To better ensure that "the *right* transmission facilities" get built to meet these challenges,[5] FERC issued Order No. 1000, which requires a regional planning process that produces a regional plan,

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[2] *See* Berkshire Hathaway Inc., *2017 Shareholder Letter* at 12 (2017), http://www.berkshirehathaway.com/letters/2016ltr.pdf (essentiality of electricity service and steady demand as ensuring Berkshire Hathaway Energy's ability to service debt under all circumstances).

[3] 16 U.S.C. § 824q(b)(4)

[4] Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, 136 FERC ¶ 61,051, P 45 (2011), *reh'g denied*, Order No. 1000-A, 139 FERC ¶ 61,132, *on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (per curiam).

[5] Order No. 1000, P 50 (emphasis added).

as well as interregional coordination. FERC also took significant steps to promote construction of projects selected in those regional and interregional processes as the most cost-effective and efficient to meet reliability requirements, produce economic savings, or support achievement of public policy objectives. It sought to expand the alternatives considered, and minimize costs, by providing opportunities for, and reducing tariff barriers to, competition from "non-incumbent developers" (i.e., developers other than the monopoly transmission owners), and by providing for non-incumbent developer recovery of the costs of regional and interregional projects they are selected to construct.

FERC also recognized that uncertainty as to cost allocation is an impediment to the construction of needed transmission. To enhance the likelihood selected projects will be built, Order No. 1000 requires advance adoption of the regional and interregional cost allocation methodologies that would apply to such projects. Those methodologies must adhere to cost allocation principles, including the basic FPA requirement that costs must be allocated in a way that is roughly commensurate with benefits, as well as corollaries such as the prohibition against involuntary allocation of costs to non-beneficiaries, supported by a transparent method for determining benefits and identifying beneficiaries.

Order No. 1000 can be credited with some successes. For example, where transmission projects have been open to competition, it has been robust: developers have sharpened their pencils and made long-term commitments that reduce the costs that would otherwise be borne by consumers.[6] On the other hand, there are concerns that Order No. 1000 is not achieving its objectives. In particular, Order No. 1000 requires only interregional "coordination" among the planning regions, rather than any consideration of interregional needs; and as Order No. 1000 has been implemented in most regions, the projects subject to competition from non-incumbent developers have been very limited.[7]

It's time for FERC to take a hard look at existing transmission planning processes and revisit Order No. 1000 to better assure adoption of the most efficient and cost-effective upgrades to enable the resource transformation that achieves the Committee's emissions reduction goals. For example, FERC should expand the projects subject to non-incumbent developer competition, and require a robust interregional planning process that eliminates artificial barriers to needed transmission. Any legislation directing FERC to do so should reinforce FPA Section 217(b)(4)'s crucial directive that planning and expansion must meet the reasonable needs of load-serving entities, and thereby the consumers and businesses they serve. While it would be appropriate for

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[6] *See* Johannes P. Pfeinfenberger, et al., *Transmission Competition Under FERC Order No. 1000: What We Know About Cost Savings to Date* at 1, 13, 15, Brattle Group (2018), https://brattlefiles.blob.core.windows.net/files/14786_brattle_competitive_transmission_wires_10-25-18.pdf. For example, such savings are illustrated in Midcontinent Independent System Operator, Inc., *Selection Report: Hartburg-Sabine Junction 500 kV Competitive Transmission Project* (2018), https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf .

[7] Pfeinfenberger, et al. at 1, 10 ("Since 2013, only 2% of all FERC-jurisdictional transmission investments have been subject to competitive processes."). *Cf. ISO New England*, 169 FERC ¶ 61,054, P 7 (2019) (expressing concern that certain RTOs "may be implementing [a limited exemption from Order No. 1000's competition requirements] in a manner that is inconsistent with or more expansive than what the Commission directed").

legislation to trigger FERC's review of Order No. 1000, the details of ratemaking should not be legislated, but left to FERC under the FPA's existing just and reasonable and not unduly discriminatory standard.

2. Joint Transmission Ownership

Participation of public power, cooperative, and other small load-serving entities in grid ownership is an important means to facilitate the grid expansion required to meet the Committee's emissions reduction goals at reasonable cost. Under such arrangements, load-serving entities that are embedded in the transmission system and will bear the cost of transmission additions have the opportunity to invest in their load-ratio share of the grid. They have a seat at the "grown up" table in the planning process, so they can play an integral role in ensuring their load is being properly served with the infrastructure necessary to access renewable and low-carbon resources.

Joint ownership has many advantages. Non-profit load-serving entities have no interest in "gold-plating" the transmission system, so including them in the planning process also helps to assure that the grid is robust and reliable, without imposing unnecessary costs. As shown by their long history and recent successes, joint ownership arrangements bring together diverse interests to expedite state siting and local permitting processes, thereby facilitating the construction of needed transmission. FERC has repeatedly recognized the benefits of joint transmission ownership, and in 2012 it encouraged those seeking transmission incentives to participate in joint ownership arrangements as a risk-reducing measure, finding "such arrangements can be beneficial by diversifying financial risk across multiple owners and minimizing siting risks."[8] Broadening grid investment opportunity beyond monopoly transmission owners also allows others to take advantage of offsetting revenues to mitigate the cost impact of the grid expansion and facilitate resolution of cost allocation issues.

In short, ensuring that public power, cooperative, and other small load-serving entities have an opportunity to invest, on reasonable terms, in major new transmission facilities that are in approved regional and interregional plans is an effective tool in getting the transmission needed to support the Committee's climate change objectives built at reasonable cost, and should be included in supporting legislation.

3. Enhanced Federal Backstop Siting Authority

Today, transmission line siting is generally a matter for states the line traverses. As part of the 2005 Energy Policy Act, Congress enacted FPA Section 216, which directed the Secretary of Energy, after studying congestion (and consulting with affected states) and considering alternatives and recommendations from interested parties (including affected states), to designate National Interest Electric Transmission Corridors that meet specified criteria. FERC was given backstop authority to issue a federal permit authorizing construction or modification of a transmission line in such corridors if, among other things, a relevant state withholds siting approval for more than a year after submission of an application for such approval.

[8] *Promoting Transmission Investment through Pricing Reform*, Policy Statement, 141 FERC ¶ 61,129, P 24 (2012) ("2012 Policy Statement").

FERC has never successfully exercised its backstop siting authority. In 2009, the Fourth Circuit held that FERC's siting authority under Section 216 could only be used if a state fails to act on an application for siting approval for one year—*not* if the state denies such an application[9]—effectively eliminating FERC's ability to override individual state decisions that block construction of needed interstate transmission lines.

As part of facilitating development of a grid capable of supporting the Committee's emissions reduction goals, FPA Section 216 should be amended to address that decision and to coordinate with regional and interregional plans. Federal backstop siting authority should be expanded and clarified to include facilities in approved regional and interregional plans if a relevant state fails to promptly implement approved plans through its siting authority.

4. Cost Containment and Incentive Rates

FERC's 2012 Policy Statement refined the "risks and challenges" approach to project-based incentives authorized by FERC's rule implementing FPA Section 219. The Policy Statement emphasized the use of risk-reducing incentives (that increase the attractiveness to investors by alleviating project risks) as opposed to return-on-equity incentives that can significantly increase costs to consumers.[10] By focusing on addressing risks and challenges not covered by the base return on equity or mitigated by risk-reducing incentives, the 2012 Policy Statement targets return-on-equity incentives to where they are needed to attract investment and produces just and reasonable rates as FPA Section 219(d) requires. And it works— despite the relatively few project-based return-on-equity incentives that have been requested or granted since adoption of this Policy Statement, transmission investment is robust.

Last spring, FERC issued a notice of inquiry that suggests it may dramatically change its approach to incentives. Among other things, FERC is questioning whether to award project-based return incentives based on FERC evaluation of claimed project benefits, or by using project characteristics as a proxy for estimated benefits. TAPS has filed comments demonstrating that such an approach, which would substantially increase the cost of transmission projects and end-run the planning process, would violate the FPA's just and reasonable standard.[11] And industry experience with regional competitive development processes confirms that such incentives are unnecessary: where competition to develop new transmission facilities has been permitted by existing regional planning processes, non-incumbent developers are submitting cost-contained bids that exclude rate-of-return incentives in an effort to win the opportunity to construct the facilities.

Rather than increasing the cost of needed transmission by adding on incentives unnecessary to induce investment, Congress should direct FERC to focus on harnessing

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[9] *Piedmont Envtl. Council v. FERC*, 558 F.3d 304 (4th Cir. 2009), *cert. denied*, 558 U.S. 1147 (2010).

[10] 2012 Policy Statement P 16.

[11] *See* TAPS Comments in FERC's Notice of Inquiry Regarding the Commission's Electric Transmission Incentive Policy, FERC Docket No. PL19-3: TAPS Initial Comments, https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=15283791 (filed June 26, 2019) and TAPS Reply Comments, https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=15334730 (filed August 26, 2019).

competitive forces to increase alternatives considered and reduce costs. Thus, in revisiting Order No. 1000, FERC should expand the role of competition in the transmission planning process to mitigate the cost of the significant transmission build-out required to support the Committee's emissions reduction goals, as urged above.

In addition, Congress should modify FPA Section 219 to prohibit above-cost incentives where joint ownership has not been offered to public power, cooperative, and other small load-serving entities on a reasonable basis, and to permit such incentives only where essential for construction of facilities in approved regional or interregional plans, taking account of the risk reductions achieved through the siting improvements, risk-reducing incentives, and cost allocation and recovery measures discussed above.

In sum, achievement of the Committee's ambitious emissions reduction objectives—which entail dramatically increasing reliance on electric power and dramatically changing the resources used to produce that power—will require transmission policies that get the right transmission facilities built at reasonable cost. As it considers legislation to decarbonize the economy, the Committee should also consider and adopt the transmission policies urged by TAPS above to cost-effectively achieve the grid necessary to support that transformation. Failure to appropriately address these transmission policy issues at the same time the Committee considers climate change legislation will greatly increase the risk that the objectives of the Committee will not be met, and needlessly increase costs, reduce reliability, and delay expansion of the grid.

TAPS again thanks the Committee for the opportunity to comment and looks forward to engaging on these important issues.

Sincerely,

John Twitty

cc: House Energy and Commerce Committee