Summary of Testimony

Testimony of Steve Transeh
On Behalf of the Coalition for Fair Transmission Policy
before the
U.S. House Energy and Commerce Committee
Subcommittee on Energy and Power
Hearing on
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The Coalition for Fair Transmission Policy is a group of geographically and structurally diverse investor-owned electric utilities that have joined together for purposes of promoting legislative and regulatory policies that will lead to customer-focused development of the nation’s electric transmission system in support of the growing demand for clean generation resources.¹

The Coalition believes that the costs of transmission projects must be allocated to customers in a manner proportional to the measurable benefits that customers receive from new transmission projects. Efficient markets require accurate cost allocations and price signals, and transmission cost allocation should not be used to obscure costs or to shift costs in order to affect market outcomes. We believe that efficient development of renewable and other clean energy resources at the lowest reasonable cost to consumers is important and that getting transmission cost allocation right is a key ingredient to that objective.

With respect to transmission planning, the Coalition believes that transmission planning must be initiated at the local utility and state level, in a bottom–up manner, based on and driven by the needs of the customers who bear the burden and receive the benefits of new transmission.

FERC Order 1000 is deficient not so much for what it says, but more for what it doesn’t say. Under the Order, the Commission delegates to regions the ability to determine how transmission planning will be conducted and how costs will be allocated, with very little if any guidance on the parameters of such important decisions. In particular, the Order provides no guidance to regions as to how benefits should be defined, thus leaving open the very real possibility that regions can adopt extremely broad definitions that result in unfounded conclusions that everyone benefits from new transmission and all should pay – thus socializing all transmission costs within a region. We believe such a potential outcome is beyond the bounds of the Federal Power Act and will result in higher costs to customers who will subsidize large remote renewable projects and merchant transmission developers, at the potential expense of local clean resources that may have lower total costs.

Order 1000 also appears to give regions the ability to make assumptions on behalf of utilities and states as to how best to satisfy both state and federal public policy requirements by permitting regions to adopt top-down planning processes. Utilities with responsibilities to satisfy public policy requirements and the state regulators that oversee them may become mere stakeholders in such a process. The Coalition believes that the Commission must only allow planning processes that ensure that individual utility and state generation and transmission resource planning prerogatives are maintained. Regional entities with no responsibilities to state regulators should not be making assumptions that affect the resource choices and costs of utilities (and their customers) that have the responsibility to satisfy both state and federal public policy requirements.

The Coalition has significant concerns about how Order 1000 can and will be implemented, particularly outside of areas served by regional transmission organizations. And there are numerous questions remaining as to the boundaries of the Commission’s legal authorities in the areas covered by Order 1000 and the lack of a factual basis for its regulatory mandates. There were over 60 rehearing petitions filed in response to Order 1000 that now are before the Commission, suggesting that there are quite a few concerns. We believe it is entirely appropriate and timely for the Congress to conduct this hearing and to consider the broad implications of Order 1000 for the reliability and economics of our nation’s electric systems as we continue to adjust the types of generation resources that we use and expand the transmission system to meet changing needs of our economy and our consumers.

¹ The Coalition’s members include ConEdison, Consumers Energy, DTE Energy, Progress Energy, PSEG Corporation, SCANA Energy, and Southern Company.
Good Morning Mr. Chairman, Ranking Member Rush, and Members of the Committee.

I am honored to appear before this distinguished Committee today to present testimony on behalf of the Coalition for Fair Transmission Policy on issues so critical to the economic security of our nation.

My name is Steve Transeth and I am the principal partner of the Lansing, Michigan law firm of Transeth and Associates which specializes in providing legal and consulting services on energy issues. I am a former member of the Michigan Public Service Commission and also have served as the President of the Organization of PJM States (OPSI), which is the organization of state regulators overseeing the PJM Independent System Operator – the nation’s largest regional transmission organization. Prior to my service on the Commission, I served for over 20 years as Legal Counsel on energy issues for the Michigan Legislature. I am testifying today for the Coalition for Fair Transmission Policy, a group of geographically and structurally diverse investor-owned electric utilities that have joined together for purposes of promoting legislative
and regulatory policies that will lead to customer-focused development of the nation’s electric transmission system in support of the growing demand for clean generation resources.\(^2\)

**Overview**

Specifically, we believe that the costs of transmission projects must be allocated to customers in a manner proportional to the measurable benefits that customers receive from new transmission projects. Efficient markets require accurate cost allocations and price signals, and transmission cost allocation should not be used to obscure costs or to shift costs in order to affect market outcomes. We believe that efficient development of renewable and other clean energy resources at the lowest reasonable cost to consumers is important and that getting transmission cost allocation right is a key ingredient to that objective. Getting it right means that where projects are needed to meet applicable reliability requirements, costs should be paid by customers in those areas where the requirements would otherwise be violated. For transmission projects that are needed to help a state or utility meet public policy requirements, such as renewable energy standards, or projects that provide economic benefits to customers, costs should be paid for only by the customers on whose behalf the project is being developed and who would be expected to benefit (or meet the applicable renewable standard).

With respect to transmission planning, the Coalition believes that transmission planning should be conducted in a manner that relies on existing successful, coordinated, open and transparent regional transmission planning processes inclusive of all stakeholders. Regional and inter-regional transmission planning must be initiated at the local utility and state level, in a bottom–up manner, based on and driven by the needs of the customers who bear the burden and receive the benefits of new transmission. Or in other words, geographically large planning

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processes involving multiple states and utilities should be a complement to, and not a substitute for planning decisions made at the state and local levels.

FERC Order 1000 is deficient not so much for what it says, but more for what it doesn’t say. Under the Order, the Commission delegates to regions the ability to determine how transmission planning will be conducted and how costs will be allocated, with very little if any guidance on the parameters of such important decisions. In both Initial Comments and in a Petition for Rehearing, the Coalition has pointed out that the Commission has a legal responsibility to ensure that rates are just and reasonable under the Federal Power Act (FPA). Accordingly, there are limits on how much flexibility the Commission can delegate to the regions to develop planning and cost allocation processes.

**Order 1000 Fails to Define Properly Define “Benefits”**

For example, the Commission rightly observes that the Federal Power Act requires that costs should be allocated commensurate with benefits, but does not attempt to define the “benefits” in question or limit what may be considered as a benefit by regions. The Commission’s failure to limit in any way what individual regions may consider as benefits for which costs may be allocated is a fatal flaw of the Final Rule. By failing to specify limits that discipline permissible definitions of “benefits” or “beneficiaries,” the Commission implicitly allows individual regions to adopt definitions that could go far beyond what would be considered just and reasonable under the Federal Power Act and could still result in the socialization of costs for new transmission projects not needed for reliability for which there are no real benefits commensurate with the costs being allocated.
Because Order 1000 sets no real limits, it could result in very broad definitions of what constitutes benefits resulting from transmission projects driven by economics or public policy requirements. For example, regions under the rule would presumably be allowed to assert that certain types or classes of projects have regional environmental or social benefits that are not even encompassed in current state or federal policy requirements, and therefore conclude that the costs should be widely socialized. Consumers neither needing nor benefiting from the new transmission facilities would be required to pay a share of the costs.

The failure by FERC to limit the kinds of benefits that can be considered in cost allocation decisions will have results that potentially damage competitive wholesale markets and will certainly place local renewable resources at a competitive disadvantage relative to renewable resources located distant from customers. This will occur simply because potential customers of the remote resources will not face the total costs of those remote resources (both generation costs and transmission costs) because other customers are subsidizing a major component of those costs. Local renewable resources, such as rooftop solar or even offshore or local onshore wind, will not benefit from the same subsidies and thus will appear to be more costly even if they are the better alternative. FERC policy promoting cost socialization also makes it more difficult for state and local governments to use clean energy as a tool for creating jobs and local economic development, as local clean energy resources are placed at a disadvantage to large projects in remote areas.

The Coalition supports both the development of renewable resources and the expansion and upgrading of our nation’s transmission systems. We believe, however, that both should be done at the lowest possible cost to customers, meaning that we need to ensure that all costs are considered when customers, or utilities making decisions on their behalf, make resource choices. And competitive wholesale markets for electricity across the country rely on price
signals to give generators and transmission developers guidance as to the most economic places to locate. Neither the Commission, nor regional entities acting on the Commission’s authority should require subsidies for transmission projects that interfere with these competitive market price signals and preclude the development of the most efficient and low cost renewable resources and transmission.

My own state, Michigan, provides a good example of our potential concerns. The Michigan Legislature has enacted a Renewable Energy Standard that unlike some others around the country focuses on the local development of resources. The Legislature promoted this policy as an economic development and jobs creation measure for the State. Many of Michigan’s utilities are members of the Midwest Independent System Operator (MISO) and pay transmission costs of that organization under FERC-approved rates. In one of the more recent decisions by FERC on transmission cost allocation, the Commission approved a MISO proposal to allocate costs for what they have referenced as Multi-Value Projects (or MVPs). These projects are those believed by MISO to be needed to help states within the MISO region meet public policy requirements. But whose public policy is being promoted? The approved MISO tariff rewards those states that seek to build remote renewable generation and long distance transmission at the expense of states such as Michigan who adopted an alternative approach.

A bipartisan coalition of Michigan leaders noted in a rehearing petition to FERC on the MISO Order that Michigan would be required to pay 20 percent of $16 billion for transmission lines across 13 Midwestern states that deliver virtually no benefits to Michigan consumers. Every major auto company’s electricity bill could skyrocket by more than $10 million a year and each major university will pay an extra $2 million. Municipalities such as Ann Arbor, Grand Rapids and Lansing will pay hundreds of thousands of dollars extra for their power. Michigan should
not be forced to subsidize wind developers in South Dakota and pay for transmission lines that deliver little electricity to its homes and factories.

While FERC has not yet said whether its FERC MISO MVP Order is consistent with Order 1000, the very problem with the MISO Order is that benefits are very loosely defined – and Order 1000 does nothing to improve that shortcoming. If the FERC should find that the MISO Order falls within the scope of Order 1000, it appears that the Commission’s statement that costs must be roughly commensurate with benefits will have little meaning in practice.

This concern about cost allocation is further exacerbated by the Commission’s decision in Order 1000 requiring that regions provide that utilities not even taking service from the transmission facilities for which costs are being allocated or having no transmission agreements with the project’s owners can be assigned costs of the project. In our view, the FPA precludes such involuntary assignment of costs. And as a matter of policy, utilities or other beneficiaries should not be involuntarily assigned costs for projects for which they have no need, even if there is some incidental, amorphous “benefit” ascribed by those seeking broad cost socialization.

**Order 1000’s Planning Requirements Could Conflict with Utility and State Policies**

We also have significant concerns regarding the transmission planning components of Order 1000. The Coalition agrees with the Commission’s finding that transmission planning processes should have the ability to reflect both federal and state public policy requirements. However, the Coalition believes that the Final Rule has authorized regional transmission planning processes to include procedures that would pre-empt resource decisions by electric utilities made under state regulatory and statutory guidance.
The manner in which regional transmission planning processes address federal and state public policy requirements is critical to ensuring that state regulatory prerogatives are not pre-empted and that local needs are satisfied based on the policy choices of state legislatures and regulators. The Coalition believes that maintaining reliability is the first priority. Local and regional transmission planning processes and interregional transmission planning coordination should be based on meeting mandatory reliability requirements established by the North American Electric Reliability Corporation (NERC) and other applicable reliability standards. Secondarily, such processes and coordination should examine cost-effective transmission solutions so that states, customer-serving utilities and competitive retail suppliers can access power from their generation resources, including those generation resources needed to meet any public policy requirements. Specifically, with respect to consideration of public policy requirements, the only efficient way to ensure public policy requirements are properly incorporated into the process is to use a “bottom-up process” within the appropriate geographic area relying on information provided by transmission owners, operators and users that actually are subject to the public policy obligations driving the demand for transmission facilities or services.

While such bottom-up transmission planning processes are allowable under Order 1000, they are not required. The Commission affirmatively states that top-down or other transmission planning processes may be proposed as long as they meet other requirements of the Final Rule. Under a “top-down” transmission planning regime, the regional planning group, which is not accountable to state regulators or individual utilities within the region, would be placed in the position of making assumptions that affect how utilities and other entities with the responsibility to meet public policy requirements would meet those requirements. In fact, Order 1000 authorizes submission of regional transmission planning processes that would reduce both
utilities charged with meeting public policy obligations and state regulators to mere stakeholders in the regional transmission planning process.

The delegation of authority given to regional planning entities to decide what resources and transmission should be utilized to meet reliability, economic or public policy requirements is the essence of Order 1000 and will allow regional planning groups (with Commission sanction) to usurp state regulatory prerogatives. Neither the Commission, nor regional transmission planning processes, will have direct responsibility or accountability to the state legislatures and regulatory authorities that have jurisdiction over implementing energy and environmental policy within their states. And in our view the Federal Power Act gives no authority to the Commission to mandate a process that produces this result or to determine what non-transmission resources may or should be used by load-serving entities to meet their state regulated service responsibilities.

A regional transmission planning process should also not be allowed to make assumptions as to how the states intend to satisfy their public policy requirements and then require development of transmission projects based on those assumptions because conflicts are certain to arise. For example, many state renewable resource portfolio standards designate set-asides for specific supply resources or resource types. Often, as is the case in Michigan, there is a statutory or regulatory policy to encourage development of local supply and demand response resources for economic development purposes. Some states may favor particular technologies, or favor conservation initiatives over long-distance importation of renewable energy supply. Coastal states may have a legitimate desire to develop close by offshore wind. Other states may have statutes or regulations to promote in-state development of other types of generation, policies promoting the use of local fuel sources, or other public polices related to energy development within the state. These legitimate preferences (often embodied in state law or regulation) would
result in potential conflicts if a regional process is allowed to impose a single top-down plan for a region. All of these are considerations that can only be made at a more local level and then “rolled-up” to be included in the regional planning process as the preferred resource choices of the load-serving entities and states within the region. Absent a requirement for such bottom-up planning, regional planning processes could adopt “top-down” planning processes where assumptions are made that will be imposed on states and on utilities with the responsibility to serve customers and satisfy state statutory and regulatory mandates. The regional transmission planning process cannot, on its own, make resource choices on behalf of electric consumers and it should not attempt to anticipate what those choices may be.

The regional transmission planning processes can and should review the information provided by load-serving utilities and coordinate individual plans to ensure that reliability meets NERC standards and that local and regional transmission plans do not conflict with one another. The regional transmission planning processes and interregional coordination may identify opportunities for cost savings through projects that meet the needs of multiple entities within the region. But Order 1000 allows regions to develop processes which would interfere with existing state planning processes – some of which require utilities to plan based on achieving the lowest cost mix of resources taking into consideration generation and transmission costs and demand-side alternatives (integrated resource planning ) - and other utility and state regulatory processes. It makes no sense to us to allow a regional planning entity that has no regulatory responsibility to states to make assumptions that could lead to resource decisions that conflict with state law and regulation.

Closing Considerations

Finally, the Coalition has significant concerns about how Order 1000 can and will be implemented, particularly outside of areas served by regional transmission organizations. And
there are numerous questions remaining as to the boundaries of the Commission’s legal authorities in the areas covered by Order 1000 and the lack of a factual basis for its regulatory mandates. There were over 60 rehearing petitions filed in response to Order 1000 that now are before the Commission, suggesting that there are quite a few concerns. We believe it is entirely appropriate and timely for the Congress to conduct this hearing and to consider the broad implications of Order 1000 for the reliability and economics of our nation’s electric systems as we continue to adjust the types of generation resources that we use and expand the transmission system to meet changing needs of our economy and our consumers.

Once again, I thank you for the opportunity to appear before you today and look forward to your questions.