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Committee on Energy and Natural Resources
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“Policy Issues Facing Interstate Delivery Networks for Natural Gas and Electricity”

Overview

Thank you for inviting me to testify today on policy issues facing interstate delivery networks for natural gas and electricity. I am testifying on behalf of NextEra Energy, Inc. NextEra Energy is one of the leading energy holding companies in North America, owning through its subsidiaries approximately 46,790 MW of net generating capacity in 33 states in the U.S. and 4 provinces in Canada, as of December 31, 2017. NextEra’s operations are conducted primarily through two business units: 1) Florida Power & Light, a vertically integrated public utility operating in peninsular Florida, and 2) NextEra Energy Resources, the parent company of NextEra Energy’s competitive generating and trading businesses. NextEra Energy Transmission is the parent company of our competitive electric transmission business. NextEra Energy also has a natural gas production business and a natural gas pipeline business, operating an interstate natural gas pipeline in Florida and intrastate pipelines in Texas. We have an ownership interests in two other interstate natural gas pipelines, an operating project in the Southeast and a pipeline under construction in the MidAtlantic.

I commend you for holding this hearing. The relationship between the strength of our energy infrastructure and our ability to achieve other energy policy goals is not widely understood. A strong energy infrastructure is the foundation of competitive electricity and natural markets, essential for delivering benefits to electricity and natural gas customers. Energy infrastructure investments made it possible for our electricity supply mix to evolve in response to changing market conditions and allowed the deployment of new solar and wind technologies. New interstate natural gas pipeline infrastructure enabled the Nation to secure the benefits of the shale gas revolution. A more robust power grid and interstate pipeline network will do more to strengthen energy delivery system resiliency than any other factor.

Regulatory policy plays an important role in securing the necessary levels of infrastructure investment and affects the level of risk associated with that investment.

Regulatory policy also determines how long it takes to site and license or certificate infrastructure facilities. Unpredictability in siting decisions at a minimum involves the risk of significant delays in project operations, resulting in harm to both customers and markets.

It is important that regulatory policy governing investment and siting decisions be highly merits-based and nonpolitical, that there be a reasonable level of regulatory certainty, that decisions be fairly predictable, and that decisions also be timely. FERC is ideally suited to make infrastructure decisions because of its longstanding commitment to merits-based decisionmaking and its status as an independent agency not subject to control by the political branches. FERC's long history of merits-based decisions has helped produce our strong interstate natural gas pipeline network and interstate power grid.

Primary Challenges and Opportunities for Energy Delivery Networks and their Customers

The primary opportunity for energy delivery networks is the significant level of investment necessary to develop the energy infrastructure our country needs. Estimates are that \$90 billion will be invested in electricity transmission projects between 2017-20, and that up to \$100 billion in investment in interstate natural gas pipelines will be needed between 2018-35. The infrastructure improvements that will result from those investments will benefit the customers of electricity and natural gas networks.

Current electricity and natural gas markets are highly dynamic. We are experiencing the most dramatic changes in the U.S. electricity supply in a hundred years, driven by low natural gas prices and steady improvements in solar and wind technologies. Older, uneconomic generation facilities have retired in favor of newer technologies that are more efficient and have superior operational flexibility. These improved technologies have significantly improved the diversity of U.S. electricity supply; we now have more diversity in our electricity supply than at any point in the past.

However, today's electric grid was developed to deliver yesterday's electricity supply. As our electricity supply mix changes, we need a different grid, one capable of delivering more renewables and new, efficient natural gas generation, while accommodating the retirement of older, uneconomic generation facilities. Changes in the U.S. electricity supply mix were only possible because of robust investment in transmission. New investments in transmission must keep pace to support continued evolution of the U.S. generation fleet.

Similarly, the shale gas revolution shifted production into new supply regions and increased domestic production, creating the need for an expanded interstate pipeline network to move gas to markets. Without those investments in energy infrastructure the customers would have lost the benefits of the shale gas revolution.

Indeed, there is a relationship between our changing electricity supply mix and the shale gas revolution, since the availability of plentiful low cost gas put tremendous downward pressure on electricity prices. The driver of the retirement of uneconomic nuclear and coal generation is primarily economic, a consequence of low natural gas prices. The U.S. has been able to reap the benefits of our changing electricity supply mix and the shale gas revolution because of investments in energy infrastructure.

But there are challenges to developing the energy infrastructure our country needs.

Challenges to Interstate Pipeline Development

The challenges facing interstate natural gas pipelines and electric transmission facilities are different. The primary challenge in development of interstate natural gas pipelines is the siting process, a challenge that has increased in recent years. Siting of interstate natural gas pipelines is governed by the exclusive siting provisions in the Natural Gas Act, where FERC is charged with certifying pipelines that it determines are in the public convenience and necessity. Although FERC has exclusive jurisdiction to certificate or license interstate pipelines, usually there is a need for approvals by other federal agencies, such as the U.S. Army Corps of Engineers for Section 404 permits, and state agencies exercising delegated authority under federal laws such as Section 401 of the Clean Water Act.

The pipeline siting process has become highly litigious, involving advocacy groups dedicated to blocking infrastructure development. Opponents of energy infrastructure frequently file stay requests to suspend project construction and to even suspend the operation of completed projects after commercial operations have begun.

Some states have been very aggressive in their use of federally delegated authority to effectively veto certificated projects. There is limited ability to police use of delegated authority by the states in this manner under current law.

Last December, the Commission announced it would conduct a review of its 1999 gas certificate policy statement. I believe there is merit in reviewing Commission policies from time to time to consider whether there is a need for reforms. In my view, the certificate policy statement is sound and no major reforms are warranted. However, I believe the Commission should consider changes to its certificate orders to assure consistency with the certificate policy statement. Under the policy statement, the Commission determines whether a proposed pipeline is in the public interest by balancing project benefits against adverse impacts.

In practice, this balancing is not very transparent in the certificate orders themselves. Many applicants put evidence in the record about project benefits, such as securing access to new resource basins, lowering gas prices, introducing or increasing competition among

pipelines, reducing the number of captive markets, and providing gas access to unserved markets. However, certificate orders typically do not discuss project benefits, focusing instead on how much of a proposed pipeline's capacity is committed through precedent agreements. There is little doubt that precedent agreements are the best measure of demand for new pipeline capacity, but precedent agreements speak to the need for a project rather than project benefits. There is a need to clarify whether and how environmental impacts should be weighed in this balancing, and whether the Commission's environmental review is under the auspices of the National Environmental Policy Act of 1969 or part of the broader public interest determination in the Natural Gas Act.

Another challenge to natural gas pipeline development is the increasing and unpredictable length of the process. The Commission certificate process takes much longer than previously. For major pipeline projects, the certificate process has two stages, the pre-filing process and the formal certificate process. The pre-filing process, an informal process developed to encourage early resolution of issues such as a project's route, used to routinely take 6-8 months and now takes up to 12 months. The certificate process used to regularly take 9-11 months and now takes 24 months or longer. Altogether, a process that used to reliably take two years or less now takes up to three years. That extra year is a year of lost customer benefits, and an additional margin of risk imposed on pipeline developers. FERC recognizes the importance of timely decisionmaking, and has invited ideas on process reforms to improve timeliness in its notice of inquiry on the certificate policy statement issued earlier this year.

One factor that has contributed to the length of the certificate process is delays in approvals from other federal agencies. If these delays are driven by resource limits at these agencies, the cost incurred by these agencies could be reimbursed by pipeline developers in a manner consistent with how the costs of other federal agencies in the hydropower licensing and relicensing process are recovered from hydropower licensees.

Challenges to Electric Transmission Grid Development

As I noted earlier, the challenges to development of electric transmission facilities are different than those confronting natural gas pipelines. One significant challenge to electric transmission grid development is uncertainty about the level of the return on equity (ROE) that FERC will allow for investments in new electric transmission facilities. This is relatively more important when it comes to electric transmission investments than pipeline investments, since pipeline projects are usually anchored by negotiated rate contracts, relying less on tariff or recourse rates than electric transmission projects that rely exclusively on tariff rates.

It has long been recognized that FERC has a legal duty to allow a reasonable return on investment. But FERC has discretion on how to set ROE in a manner consistent with legal

principles. A few years ago, in response to abnormal conditions in financial markets, FERC reformed the methodology it uses to determine ROE for electricity grid investments, the Discounted Cash Flow methodology (DCF). FERC decisions on ROE have long attracted legal challenges and this new methodology was challenged in court. In April 2017, the U.S. Court of Appeals for the D.C. Circuit ruled in *Emera Maine* that FERC had not adequately explained its new methodology and vacated the orders where FERC adopted its new policy.

To be clear, the current uncertainty in ROE policy is the result of a court decision, not any action taken by the current Commission. However, only the Commission can clarify its policy with respect to ROE and reduce regulatory uncertainty. On remand, FERC could choose to reaffirm its commitment to the two step DCF methodology or choose to make different modifications to its DCF methodology. But it is critical that FERC adopt a methodology that attracts sufficient grid investment and provides certainty to the regulated community.

Another challenge to development of electricity transmission infrastructure in regional transmission organizations (RTOs) is the regional planning process. Regional transmission planning is governed by Order No. 1000, a major FERC transmission planning rule. Electric transmission planning both inside and outside RTOs centers on reliability needs, not economic benefits. The RTO planning process is resource intensive and lengthy, but allows the collective needs of each region to be effectively met by regional solutions. Cost recovery through the RTO tariff involves disputes about cost allocation methodologies.

Concerns have long been expressed that the RTO transmission planning process does not place an emphasis on project cost and there is no effective FERC prudence review to disallow excessive costs. In part due to those concerns Order No. 1000 embraced competition for transmission projects with regional cost allocation, in the belief that competition would police excessive costs more effectively than after the fact prudence review. Some RTOs have embraced competition for regionally funded transmission projects, with demonstrated benefits and cost savings. However, the competitive processes in most regions have been limited by state policies and RTO practices that restrict the scope of projects subject to competition. The result is most projects are subject to minimal cost review, calling into question whether the cost of RTO transmission projects is higher than necessary to meet reliability needs.

One question before FERC is whether it still believes there is a need for some discipline in the cost of RTO transmission projects, and, if so, whether the better course is broader use of competition or resort to after-the-fact prudence review.

The greatest challenges confronting electric transmission development are those faced by new entrants seeking to build competitive transmission projects. In some states, new entrants are not eligible for siting by state and local agencies, which makes it more difficult to

secure land rights necessary to construct new transmission facilities. Some states have raised barriers to new entry, enacting laws establishing a right of first refusal that grant state regulated utilities a preference or exclusive rights in development of transmission projects over new entrants.

Conclusion

Continued development of the U.S. energy infrastructure is important to support the evolution of the U.S. electric generation fleet and secure the benefits of the shale gas revolution. There are challenges facing development of the interstate electric transmission grid and interstate pipeline network, challenges that have grown in recent years. Regulatory policy plays an important role in securing the necessary investment for energy infrastructure and affects the risk associated with that investment. Regulatory policy also governs siting of interstate energy delivery systems. It is important that regulatory policy be highly merits-based and provide a reasonable level of regulatory certainty to attract investment.