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June 16, 2020

Energy & Commerce Committee Chairman Frank Pallone
Environment & Climate Change Subcommittee Chairman Paul Tonko
Energy Subcommittee Chairman Bobby Rush

RE: Comments on the draft, "Climate Leadership and Environmental Action for our Nation's (CLEAN) Future Act."

Chairmen Pallone, Tonko and Rush:

Thank you for your leadership in authoring the CLEAN Future Act and for the opportunity to comment on the policy changes that it would bring to the United States. These comments are focused on the importance of addressing climate change, what we can do as a country to reduce the greenhouse gas emissions that cause it, and the important contribution that the CLEAN Future Act can make to these issues.

INTRODUCTION

At NRG, we're bringing the power of energy to people and organizations by putting customers at the center of everything we do. We generate electricity and provide energy solutions and natural gas to more than 3.7 million residential, small business, and commercial and industrial customers through our diverse portfolio of retail brands. A Fortune 500 company, operating in the United States and Canada, NRG delivers innovative solutions while advocating for competitive energy markets and customer choice, and by working towards a sustainable energy future. More information is available at www.nrg.com.

NRG is not a rate-regulated utility. We do not have captive ratepayers or a guaranteed rate of return on the capital that we invest. We have to earn our customers. And our shareholders—not our customers—bear the risks associated with the power plants we build and other projects that we undertake.

As the country simultaneously responds to the COVID-19 pandemic and grapples with racial injustice, putting the individual needs of customers first is more important now than ever. The same holds true for making our communities more resilient.

NRG is committed to lowering the carbon intensity of electricity production, as well as increasing the deployment of clean generation technologies. In September 2019, NRG accelerated its prior commitments to reducing its greenhouse gas emissions to get to a 50%

reduction by 2025 from a 2014 baseline and achieve net-zero emissions by 2050.[1] Through 2019, NRG had demonstrated progress across all of its previously announced sustainability initiatives, including a 41% reduction in carbon emissions, marking significant progress towards its target of reducing emissions 50% by 2025.

NRG's overarching comment on continued work to advance the CLEAN Future Act is that Congress should strengthen its reliance upon market-based approaches to force energy companies to compete to generate the cleanest electricity at the lowest price—rather than competing against each other for subsidies.

The CLEAN Future Act holds great promise for this kind of an approach to policymaking. Specifically, it contains three important ideas that would help to expedite modernization of the electricity sector, which NRG would like to elaborate upon, including:

- **RETAIL CHOICE –** A right of customers to buy clean energy from a provider of their choice will expedite the rate at which GHG emissions can be reduced and represents a long-overdue policy reform requiring federal leadership (Sec. 217(b)).

- **AUCTION-BASED COMPLIANCE –** An auction-based process where customers and producers can come together for the procurement of clean energy will minimize compliance costs associated with the bill's Clean Electricity Standard (CES) and maximize affordability of clean energy for American consumers (Secs. 204 and 207).

- **ORGANIZED MARKETS –** Eliminating barriers that prevent customers from doing business across utility boundaries – by requiring interconnection to an independent system operator (ISO) or a regional transmission organization (RTO) to form a wider regional grid – will strengthen the underlying markets that many of the electricity provisions in the legislation rely upon for implementation (Sec. 217(c)).

Each of these three important ideas is discussed in more detail in our attached "Detailed Comments," including, in some instances, suggested modifications to the legislative text in order to clarify, strengthen, or otherwise improve the drafting.

Thank you, again, for reviewing and considering these comments. All of us at NRG would gladly provide any additional information that would be helpful to refining the CLEAN Future Act.

Sincerely,

/*Travis Kavulla*/

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[1] https://www.nrg.com/about/newsroom/2019/38151.html.

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ATTACHMENT: Detailed Comments

RETAIL CHOICE

A right of customers to buy clean energy from a provider of their choice will expedite the rate at which GHG emissions can be reduced and represents a long-overdue policy reform requiring federal leadership. In NRG's experience, consumers nationwide want to buy green power. In Texas, where 75% of the state is open to full competition, there are many renewable retail electricity offers available to customers. In Houston for example, where NRG is located, a customer today can choose from 17 different green offers and thanks to competitive market forces, some of these products are even lower than traditional offers. The law should not inhibit consumers' choice to buy clean energy—voluntarily—as a first order priority before any mandates are imposed.

Already, larger buyers have expressed their opinion that clean-energy purchase options are a priority. NRG agrees with these consumers. More than two decades after telecommunications was functionally opened to customer choice, it is essential that the electricity sector be opened as well—especially because this de-monopolization of the industry promotes the wider adoption of clean energy.

At present, customers in two-thirds of the country must battle powerful regional monopolists who fight to keep their stranglehold on the customer relationship. These utilities have no inherent incentive to close uneconomic power plants, even if less expensive options are available. As the think tank Energy Innovation has observed, utility customers are paying for billions of dollars in uneconomic coal plants because their owners face no incentive to replace them or even to procure fuel and dispatch them in an economically efficient manner.[2] Beyond giving customers a pathway to further adoption of clean energy by their voluntary actions, opening these markets to competition would expose these monopolies to cost discipline that has not previously existed. Moreover, it would set off a competition *between* suppliers of clean energy to reduce the cost of clean energy. A failure to pick a side in this fight would see Congress—through inaction—siding with monopolies over customers, and making the decarbonization of the power sector more expensive than it needs to be.

The best part of this provision in the CLEAN Future Act is that enabling enhanced customer choice doesn't cost taxpayers a penny. Putting the power to choose in the hands of more consumers presents a tremendous opportunity to let Americans take control of their own carbon footprint and for innovators to offer options to drive meaningful change.

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[2] Michael O'Boyle, "Utilities Running Uneconomic Coal Plants Cost Consumers $3.5 Billion from 2015-2017," *Forbes* (Dec. 3, 2019). https://www.forbes.com/sites/energyinnovation/2019/12/03/utilities-running-uneconomic-coal-plants-cost-consumers-35-billion-from-2015-2017/#1a013d27342d

We propose some targeted revisions to the text contained in the CLEAN Future Act draft. First, the bill should make clear that utilities cannot circumvent the efficiency gains of a clean energy transformation merely by offering a so-called clean energy product themselves. Recently, in Virginia, one utility has offered a "clean electricity" product that includes coal, for the sake of shutting down rival offerings of a 100% renewable product.[3] That kind of gamesmanship should not be permitted—but it could be under the bill's text, if it is understood to read that customers need only have access to a single clean electricity product.[4] Ultimately, the customer should be in charge of selecting a supplier of their choice—and our proposed language merely clarifies that the customer has that power.

NRG also recommends that the text include a provision expressly allowing the local utility to charge rates for distribution at a just and reasonable rate, subject to local state public utility commission (PUC) authority. This provision makes clear that the local PUC retains all jurisdiction to set rates associated with the safe and reliable maintenance of the low-voltage distribution grid, which is essential to deliver clean electricity to customers, including residential customers, who may request it. However, the inclusion of this provision also makes clear that a PUC may not attempt to impose their uneconomic generation costs on consumers who have selected another supplier. It similarly clarifies that any high-voltage transmission charges these customers would face would be under the rate schedules that large customers and transmission-dependent utilities face, set by the Federal Energy Regulatory Commission (FERC). This unbundling allows transparent pricing to face the suppliers of clean electricity that would ultimately serve customers.

Sec. 217. MARKET BARRIERS TO CLEAN ENERGY DEVELOPMENT.

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(b) RIGHT TO CLEAN ENERGY.—Notwithstanding section 212(h) of the Federal Power Act, no State may establish or enforce any law or regulation that prohibits or unreasonably burdens the purchase of clean electricity in interstate commerce by an ultimate consumer from a supplier selected by the consumer. A State may establish just and reasonable rates and charges for utility distribution service for any consumer who chooses to purchase clean electricity from a supplier other than the utility. Nothing in this subsection may be construed to affect any contract in effect on the date of enactment of this section.

[3] Sarah Vogelsong, "Facing backlash, Dominion says it's willing to have coal plant removed from green energy package," *Virginia Mercury* (Nov. 25, 2019). https://www.virginiamercury.com/2019/11/25/facing-backlash-dominion-says-its-willing-to-have-coal-plant-removed-from-green-energy-package/

[4] NRG understands that the inclusion of "in interstate commerce" is likely to indicate that customers may select a supplier of their choice, rather than only the bundled product offered by their local utility. In our view, it should be made more explicit.

AUCTION-BASED COMPLIANCE

An auction-based process where customers and producers can come together for the procurement of clean energy will minimize compliance costs associated with the bill's CES and maximize affordability of clean energy for American consumers. Such a market should be run by FERC pursuant to the Federal Power Act, to allow coordination with related wholesale markets for energy that FERC regulates.

NRG sees head-to-head competition between all zero-carbon resources as the lowest-cost means of achieving ambitious GHG emission reduction targets. Today, there exists no transparent, liquid auction where similar credits, which are the compliance instrument for state RPS and CES programs, and ultimately a federal CES, can be traded. This stands in contrast to the allowance auctions that provide price transparency for other major environmental policies.

NRG has worked with the well-respected economists Drs. Kathleen Spees and Sam Newell of the Brattle Group to develop a competitive clean energy attributes market that could be implemented at either the federal, state, or regional levels. The market design is laid out in a detailed whitepaper, published last Fall and released when this Committee first called for stakeholder comment.[5] NRG believes this could be the basis for the auction that the Commission (or Secretary of Energy) would be charged with implementing under the CLEAN Future Act.

Specifically, a competitive auction platform such as the one Brattle Group has conceived has the following advantages, which support the goals of the CLEAN Future Act:

Technology-Inclusive: All zero-carbon resources—nuclear, wind, solar, carbon capture and sequestration, and voluntary emission reduction commitments—are allowed to compete to sell their attributes. Every increment of clean electricity, regardless of technology, is paid the same clearing price because every carbon-free megawatt has the same value to fight climate change. Everyone competes. Lowest-cost resources win.

Quantity Matches Desired Carbon-Free Electricity Content: The market is designed to procure carbon-free energy in the quantities specified by regulators in each delivery year.

Moves Carbon Price Signal into the Forward Timeframe: Forward market clearing moves the carbon investment price signal three years into the future, allowing for new entrants to arrange for financing early in the development cycle.

Financeable Contracts for New Winning Resources: New resources receive financial support (in the form of long-term contracts) that ensures they actually get built.

Assigns Risk Appropriately: Private capital competes, not only on who has the best technology, but on accepting the lowest rate of return. Investors, not taxpayers, shoulder all technology, regulatory, and performance risk.

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[5] https://www.brattle.com/news-and-knowledge/publications/how-states-cities-and-customers-can-harness-competitive-markets-to-meet-ambitious-carbon-goals-through-a-forward-market-for-clean-energy-attributes-expanded-report

As Price Goes Down, Procurement Goes Up: Encourages early achievement of clean energy goals, because total clean energy purchases increase as price-per-megawatt decreases (i.e., a downward sloping demand curve).

Allows Participation from Third-Parties: Opens up lowest cost procurement to third parties (municipalities, private businesses, etc.) on a voluntary basis, encouraging even faster achievement of carbon goals.

NRG proposes two other modifications, to Section 207 involving state programs. First, while it is appropriate that more stringent state programs be allowed to persist, it is important that any clean energy credit only be counted once—either for the federal program or the state program. The federal attribute marketplace is a logical conduit to ensure this consistency. Second, states should not be allowed to limit the clean-energy trade by adopting ostensibly more stringent policies whose real purpose is the promotion of parochial interests, rather than at-scale, cost-effective clean energy deployment. To that end, the CLEAN Future Act should make it clear that entities with a more stringent compliance obligation under state law nevertheless could buy clean energy credits through the auctions established in conjunction with the national marketplace. Such a provision would have the additional advantage of promoting confidence and liquidity in this marketplace, which would have a salutary effect on other states that remained within the national program.

In terms of the legislative text contained in the CLEAN Future Act draft, NRG recommends the following changes to clarify, strengthen, or otherwise improve the bill:

Sec. 204. CLEAN ENERGY CREDIT TRADING PROGRAM.

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the ~~Secretary~~ Commission shall establish a clean energy credit trading program under which—

(1) the ~~Secretary~~ Commission records, tracks, enables centralized auctions for, and enables the bilateral transfer of clean energy credits issued under section 205; and

(2) a generator to whom such clean energy credits are issued may sell or otherwise transfer those credits, as provided or allowed by applicable contracts, through—

(A) any auction established under the clean energy credit trading program;

(B) direct sales; or

(C) other transactional arrangements that sell energy or generating capacity either separately or combined with the transfer of clean energy credits, including transactions that pair clean energy credits with the demand of the re tail electricity supplier.

(b) CLEAN ENERGY CREDITS.—Except as provided in paragraphs (2) and (3) of subsection (c), the Secretary shall issue to each generator a quantity of clean energy credits determined in accordance with section 205, not later than March 1 of the calendar year after the calendar year for which the clean energy credits are issued.

(c) ADMINISTRATION.—In carrying out the program under this section, the ~~Secretary~~ Commission shall ensure that—

(1) a clean energy credit may be—

(A) submitted only once under section 203(a); and

(B) transferred to any entity that is registered to participate in the clean energy trading program including clean energy suppliers, retail customers, traders, and other parties;

(2) a clean energy credit issued for qualified energy generated and sold for resale under a contract in effect on the date of enactment of this Act shall be issued to the purchasing entity, unless otherwise provided by the contract; and

(3) with respect to qualified energy generated in a facility outside of the United States, a clean energy credit may be issued only if the qualified energy is sold for resale in the United States

(d) DELEGATION OF MARKET FUNCTION.—

(1) IN GENERAL.—In carrying out the program under this section, the ~~Secretary~~ Commission may delegate, to 1 or more appropriate entities—

(A) the administration of a transparent national market for the auctioning, sale, and trade of clean energy credits; and

(B) the measurement and tracking of dispatch of qualified energy generation.

(2) ADMINISTRATION.—In making a delegation under paragraph (1)(B), the ~~Secretary~~ Commission shall ensure that the tracking and reporting of information concerning the dispatch of qualified energy generation is transparent, verifiable, and independent of any generation or load interests subject to an obligation under this subtitle.

(e) BANKING OF CLEAN ENERGY CREDITS.—A clean energy credit may be used for compliance with the requirements of section 203 for— (1) the calendar year for which the clean energy credit is issued; or (2) either of the 2 subsequent calendar years.

Sec. 207. STATE PROGRAMS.

(a) SAVINGS PROVISION.--

(1) IN GENERAL.—Subject to paragraph (2), nothing in this subtitle affects the authority of a State or a political subdivision of a State to adopt or enforce any law or regulation relating to –

(A) clean energy or renewable energy; or

(B) the regulation of a retail electricity supplier.

(2) FEDERAL LAW – No law or regulation of a State or a political subdivision of a State may relieve a retail electricity supplier from compliance with an applicable requirement of this subtitle.

(b) COORDINATION.—The Secretary, in consultation with States that have clean energy and renewable energy programs in effect, shall facilitate, to the maximum extent practicable, coordination between the implantation of this subtitle and relevant State clean energy and renewable energy programs.

(c) MORE STRINGENT STATE CLEAN ENERGY PROGRAMS.—

(1) DETERMINATION.—

(A) IN GENERAL.—The Secretary, in consultation with States, shall determine whether each State is implementing a more stringent State clean energy program.

(B) DEADLINES.—The Secretary shall make a determination under subparagraph (A)--

(i) not later than January 1, 2021, with respect to a State clean energy or renewable energy program in effect on the date of enactment of this Act, and every 5 years thereafter, and

(ii) not later than 6 months after the date of the enactment by a State, after the date of enactment of this Act, of a new or modified existing clean energy or renewable energy program, and every 5 years thereafter.

(C) PERIOD.—A determination under this paragraph shall be effective until the earlier of—

(i) the date that is 5 years after the date of the determination; or

(ii) the date on which the Secretary makes a subsequent determination under this paragraph with respect to the applicable State program.

(2) DEEMING.—If the Secretary determines, under paragraph (1), that a State has a more stringent State clean energy program, a retail electricity supplier that is subject to and in compliance with such more stringent State clean energy program shall be deemed to be in compliance with the requirements of this subtitle for the period during which the determination is effective.

(3) CONSISTENCY.—The Commission, in consultation with States, shall develop a protocol to use the Clean Energy Credit Trading Program established pursuant to section 204 to ensure that any megawatt-hour of clean energy electricity shall be used only one time for compliance with either—

(A) the requirements of this Act; or

(B) the requirements of a more stringent State clean energy program.

(~~3~~4) DEFINITION.—In this section, the term "more stringent State clean energy program" means a State law that—

(A) is demonstrated to result in a greater percentage of qualified energy deployment than would be achieved in the State under this subtitle over a 5-year period; ~~and~~

(B) includes compliance mechanism, including the imposition of penalties, that are at least as effective in enforcing compliance as the system of enforcement under this subtitle; and

(C) does not restrict the ability of a retail electricity supplier or another party with a compliance obligation under a State clean energy program to comply with that program through the purchase of clean energy credits in an auction established by the Commission pursuant to section 204.

ORGANIZED MARKETS

Section 217(c) "The Commission shall require each public utility to place its transmission facilities under the control of an ISO or an RTO" within two years of the CLEAN Future Act's enactment. NRG supports this provision of the legislation as written. Eliminating barriers that prevent customers from doing business across utility boundaries—by requiring interconnection

to form a larger, more seamless, regional grid—will strengthen the underlying markets that many of the electricity provisions in the legislation rely upon for implementation.

Electricity markets in the regions of the country that have elected to restructure and minimize the role of monopoly utilities provide billions in annual savings to consumers while delivering reliability. These highly competitive markets, however, are likewise sidelined from the fight against climate change because we have not added carbon considerations into their core missions of ensuring reliability at the lowest possible costs. Section 217(a) would accomplish this end, which we also support. With these provisions combined, Congress would transform RTOs and ISOs into engines of decarbonization.

CONCLUSION

Thank you for the opportunity to present these comments on the CLEAN Future Act. NRG looks forward to continuing to engage with policymakers and stakeholders as the Committee continues its important work.