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April 12, 2021

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, natural gas, and home services to approximately six million residential, small business, and commercial and industrial customers through our diverse portfolio of brands. Our business model based on customer choice, has also led to the contracting of 1.8GWs of renewable generation. 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. For example, our shareholders—not our customers or the taxpayer—bear the risks associated with capital we invest.

NRG is committed to lowering the carbon intensity of electricity we sell, both through reducing the absolute level of emissions from our own dispatchable generation, and by purchasing additional renewable resources to the market for the benefit of our present and future customers.

Regarding NRG's own dispatchable generation, in 2019 the Company announced the acceleration of our science-based greenhouse gas emissions reduction goals to align with prevailing climate science, which seeks to limit global warming in the post-industrial era to 1.5 degrees Celsius. NRG is targeting a 50% reduction by 2025 from its current 2014 baseline, and net-zero emissions by 2050. In 2020, the Company's CO_2 emissions were 28 million metric tons, down from 63 million metric tons in 2014, *representing a cumulative reduction of 55% over this period*. Of course, 2020 was an anomalous year for electricity demand due to the COVID-19 pandemic. We continue to target reductions by 2025 that put us on track to be permanently at least 50% below our carbon emissions measured in 2014.

NRG's overarching comment on the 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: auction-based compliance as it relates to a clean electricity standard, customer choice for procuring clean energy, and the importance of organized wholesale electricity markets to enable this clean energy future. Each of these 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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Travis Kavulla
Vice President, Regulatory Affairs
NRG Energy, Inc.

ATTACHMENT: Detailed Comments

CLEAN ELECTRICITY STANDARD

Auction-Based Compliance

NRG applauds the thoughtful work across many Congressional offices that has resulted in the Clean Electricity Standard ("CES") proposed in Title II, Subtitle A of the CLEAN Future Act.

The hallmark of the CES is the use of tradable credits ("ZECs"), which are bought and sold to demonstrate compliance with decarbonization requirements by electricity suppliers and to furnish a stream of revenue to carbon-abating resources. These credits exist both because of the government's mandate under a CES, but also because many consumers want to buy a product that demonstrates that their energy supply is matched to an equal quantity of clean resources. How a marketplace for credits is structured by law is extremely important for the long-term efficiency of any CES. Consequently, one of the most important sections of the legislation to "get right" from the outset is the "credit trading program" established by Sec. 203 of the legislation.

NRG agrees that the establishment of a transparent and liquid auction is indispensable for a national CES. Sec. 203(a). An auction can:

- allow buyers and sellers to come together without the transaction costs associated with bilateral contracting (though that will remain an option under the proposal)
- allow buyers and sellers to liquidate surplus and fill deficits, and so perform an important balancing function for the nation's supply and demand of ZECs; and
- provide a routine and visible benchmark for what a competitively derived price for ZECs is, which can impose cost discipline on procurement of ZECs wherever and however it happens.

Such an auction, if it dovetails with pre-existing auctions for energy and capacity, can also be a useful tool to ensure the reliability of the grid, because it can be coordinated or even co-optimized with the physical elements of the nation's power supply that are needed to keep the whole system reliable.[1]

The establishment and oversight of an auction credit trading mechanism that works alongside a highly complex physical electricity system requires an economic regulator with authority and expertise relative to the nation's power markets. NRG respectfully submits that this regulator be the Federal Energy Regulatory Commission ("FERC") — and not the Environmental Protection

[1] NRG has spent considerable time examining this issue and in 2019 worked with the Brattle Group to develop a clean energy market design that could be implemented at the federal, state, or regional levels, although it does not believe the CLEAN Future Act needs to over-specify design features of a CES auction.

Agency ("EPA"). While EPA can and should verify compliance and conduct enforcement on non-compliant entities, NRG submits it would be appropriate for FERC to be tasked with requiring existing marketplaces to establish CES auctions—or in those places that lack organized wholesale electricity marketplaces, for FERC to require their establishment. This paradigm would also serve to establish segregation of duties, a fundamental building block of sustainable risk management.

SEC. 203. ZERO-EMISSION ELECTRICITY CREDIT TRADING PROGRAM.

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the ~~Administrator~~ *Commission* shall establish a zero-emission electricity credit trading program under which—

(1) the ~~Administrator~~ *Commission* shall record, track, auction, and transfer zero-emission electricity credits; and

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

(A) any auction established under the zero-emission electricity credit trading program;

(B) direct sales; or

(C) other transactional arrangements that sell electric energy or generating capacity either separately or combined with the transfer of zero-emission electricity credits, including transactions that pair zero-emission electricity credits with the demand of the retail electricity supplier.

(b) ADMINISTRATION.—In carrying out the program under this section, the ~~Administrator~~ *Commission* shall ensure that a zero-emission electricity credit may be—

(1) submitted only once under section 202(a); and

(2) only purchased by, transferred to, or otherwise secured by a retail electricity supplier.

(c) DELEGATION OF MARKET FUNCTION.—

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

(A) the administration of a transparent national market for the sale or trade of zero-emission electricity credits; and

(B) the tracking of dispatch of zero-emission electricity generation.

(2) ADMINISTRATION.—In making a delegation under paragraph (1), the ~~Administrator~~ *Commission* shall ensure that the tracking and reporting of information concerning the dispatch of zero-emission electricity generation is transparent, verifiable, and independent of any interests subject to an obligation under this title.

(d) BANKING OF ZERO-EMISSION ELECTRICITY CREDITS.—A zero-emission electricity credit may be used for compliance with the requirements of section 202 for the calendar year for which the zero-emission electricity credit is issued and the subsequent 3 calendar years.

State Programs

The CLEAN Future Act recognizes that many states are well-ahead of the federal government in implementing robust clean energy programs and rightly seeks to preserve those state-level programs. At the same time, the bill acknowledges the challenge posed by double-counting zero-emission electricity credits.

NRG welcomes the explicit prohibition on double counting contained in section 206(c)(3). It is imperative that a zero-emission electricity credit be counted only once – either at the federal or the state level – to safeguard the integrity of the new federal CES program. The federal credit trading program for ZECs is the logical place for ZECs to be registered, even if the "buyer" and "seller" appear to be the same entity (e.g., a state government or a state-regulated utility subject to a higher state standard). Such a statutory protocol will absolutely ensure double-counting does not occur.

Ultimately, the co-existence of federal and state standards, unless coordinated in the manner NRG suggests, will pose significant complications to the efficiency of the policy the CLEAN Future Act proposes. Consider a hypothetical wind farm that must make a decision at the outset of construction to either commit to selling "State ZECs" or "Federal ZECs" based on its speculation of the value of either over time. Or consider an electricity supplier, like NRG, that tries to source clean energy at scale for its customers across many states—many of which purposefully *over comply* with CES requirements. If Congress allows the market to fragment, with no easy recourse to buyers and sellers who simply want to use the "one stop shop" that the national credit trading program can and should be, it will significantly damage the hope that the CES, as proposed, can ever be an economically efficient solution.

Congress can remedy this looming problem very simply by allowing electricity suppliers to purchase ZECs out of the federal marketplace to fulfill state CES requirements, whatever their level of stringency. This accomplishes two purposes:

- Allowing states to set a higher bar than the federal law, while
- Ensuring that states do not frustrate a national trade in clean energy at scale.

SEC. 206. STATE PROGRAMS.

(a) SAVINGS PROVISION.—

(1) IN GENERAL.—Except as provided in 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;

(B) the regulation of a retail electricity supplier; or

(C) greenhouse gas emissions

(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 title.

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

(c) MORE STRINGENT STATE CLEAN ENERGY PROGRAMS.—

(1) DETERMINATION.—

(A) IN GENERAL.—The Administrator, in consultation with States that have State clean energy programs or renewable energy programs in effect, shall determine whether each such State is implementing a more stringent State clean energy program.

(B) DEADLINES.—The Administrator shall make a determination under subparagraph 3 (A)—

(i) not later than January 1, 2022, 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 10 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 Administrator makes a subsequent determination under this paragraph with respect to the applicable State program.

(2) DEEMED COMPLIANCE.—If the Administrator 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 title for the period during which the determination is effective.

(3) PROHIBITION AGAINST DOUBLE-COUNTING.—The Administrator, in consultation with States implementing a more stringent State clean energy program, shall promulgate regulations prohibiting the issuance of a zero-emission electricity credit under this subtitle for an amount of electric energy for which one or more State clean energy credits are issued under, and used for compliance with, a more stringent State clean energy program.

(4) CONSISTENCY.—The Commission, in consultation with States implementing a more stringent State clean energy program, shall develop a protocol to use the Zero-Emission Electricity Credit Trading Program established pursuant to section 203 to ensure that any megawatt-hour of zero-emission 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.

(d) QUALIFIED ELECTRICITY GENERATION ELIGIBLE IN BOTH STATE AND FEDERAL PROGRAMS.—The Administrator shall not refuse to issue or accept submission of a zero-emission electricity credit because the same 20 megawatt-hour of zero-emission electricity associated with such credit is also used for compliance with a State law in a State that does not have a more stringent State clean energy program.

(e) DEFINITIONS.—In this section:

(1) STATE CLEAN ENERGY CREDIT.—The term ''State clean energy credit'' means a certificate corresponding to the electricity generated from renewable or other zero-emission electricity sources that is issued under a law enacted by a State.

(2) MORE STRINGENT STATE CLEAN ENERGY PROGRAM.—The term ''more stringent State clean energy program'' means a law of a State that—

(A) is demonstrated to the satisfaction of the Administrator 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 mechanisms, including the imposition of penalties, that are at least as effective in enforcing compliance as the system of enforcement under this title~~.~~*; 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 zero-emission electricity credits in an auction established by the Commission pursuant to section 203.

RETAIL CHOICE AND ORGANIZED WHOLESALE MARKETS

NRG commends the CLEAN Future Act for seeking to eliminate market barriers to clean energy development by ensuring a consumer right to clean energy in section 220. In recent years, end-use customers have made clear their preference for clean energy generation options. Large corporations and other significant electricity buyers have responded to this consumer demand with public commitments to reduce greenhouse gas emissions. As an example, our Renewable

Select product that was created after increasing demand from our business customers for more renewable energy, streamlines purchase power agreements for renewable energy by making them more accessible. This plan, as noted previously, has resulted in the contracting of 1.8 GWs of renewable energy. Now, with this legislation, the House Energy and Commerce Committee is likewise responding to consumer demand. The bill's prohibition on states from blocking clean energy purchases in interstate commerce promises to unleash competitive market options throughout the country and facilitate customer choice.

NRG is also pleased that this section of the bill requires the expansion of the organized wholesale markets by directing public utilities to place transmission facilities under the control of a Regional Transmission Organization or an Independent Systems Operator. Wholesale competitive markets now operate in two-thirds of the country, providing electricity to over 200 million consumers. The integration of clean energy resources like wind and solar in the organized electricity markets are leading to the retirement of older, fossil-fuel generation.

Not only are the organized markets better at integrating advanced technologies like energy storage and demand response, but the competition also results in increased technological innovation and lower electricity prices. The Baker Institute at Rice University studied the ERCOT market where 92% of the people who have retail choice actively shopped. Their research found that rates in the competitive areas of the Texas market have gone down over time, while the rates of those customers who have no choice have gone up. This is the only peer-reviewed academic study that makes finding on the relative success of retail competition compared to utility monopolies operating in the same wholesale market.[2]

Additionally, these competitive wholesale markets are advancing public policy goals by decarbonizing the power sector and delivering a clean energy future now. Importantly, the choice offered by the CLEAN Future Act is voluntary – and one that comes at no cost to taxpayers. Absent this CLEAN Future Act provision, consumers in areas of the country where competitive markets have yet to form – mainly the southeast and much of the west – are at risk of being left behind.

In order to strengthen the "Right to Clean Energy" provision in section 220 of the CLEAN Future Act, NRG proposes the targeted additions below. NRG's suggested edits would clarify a customer—not the customer's utility—is permitted to choose what clean energy option works for the customer. NRG further proposes the inclusion of a "just and reasonable standard" authorization for the distribution level. This provision retains the jurisdiction of the local state public utility commission to set rates for the low-voltage distribution grid, which is essential to deliver clean electricity to customers, while also preventing any shifting of uneconomic generation costs on consumers who have selected another supplier and increasing price transparency.

[2] Electricity Reform and Retail Pricing in Texas (bakerinstitute.org).

SEC. 220. MARKET BARRIERS TO CLEAN ENERGY DEVELOPMENT
(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.

FEDERAL POWER PURCHASE AGREEEMENTS

Lastly, the CLEAN Future Act, in section 246, increases the maximum length for federal power purchase agreements (PPA) from the current 10-year period up to a full 40-year term. NRG notes that much can change over the course of four decades and it is not clear that taxpayers – or the environment – would benefit from power plants using today's technology being able to lock in a 40-year PPA with the federal government. We believe that the existing 10-year authority is sufficient for the federal government to procure the electricity it needs and is consistent with private sector PPAs. If 40-year PPAs were already in existence, the rapid energy sector transformation we've undertaken in the past decade in terms of wind and solar would not have happened. Instead, we'd have the status quo of 40 years ago, and there would be no incentive for emerging, game-changing technologies like storage and green hydrogen.

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.