

**SUMMARY OF THE TESTIMONY OF THOMAS R. KUHN  
ON BEHALF OF THE EDISON ELECTRIC INSTITUTE  
BEFORE THE SUBCOMMITTEE ON ENERGY AND AIR QUALITY  
COMMITTEE ON ENERGY AND COMMERCE  
U.S. HOUSE OF REPRESENTATIVES  
FEBRUARY 10, 2005**

- EEI supported the energy bill conference report in the 108<sup>th</sup> Congress, and we urge the House to approve a similar bill as soon as possible this year.
- Fuel diversity should be a cornerstone of our national energy policy as an important hedge against supply disruptions and price volatility. The conference report promotes the full range of electricity generation options, including coal, nuclear, natural gas, hydro, and renewables.
- Reliable electric service and regional electricity markets depend on strong transmission systems to move power instantaneously to where it is needed. We support the conference report's provisions to ensure reliability and to eliminate disincentives to investment in critical transmission infrastructure, including (1) mandatory and enforceable reliability standards, (2) granting FERC backstop siting authority, (3) improving coordination of the federal permitting process, (4) reforming FERC transmission rate policies, and (5) repeal of PUHCA.
- The conference report includes other important electricity reforms that we also support, including (1) PURPA reform, (2) FERC lite provisions, (3) FERC refund authority, (4) FERC merger authority, and (5) native load protection.
- The conference report includes many valuable provisions to promote energy efficiency and wise energy use, particularly improvements in federal agency energy efficiency programs such as permanent extension of the Energy Savings Performance Contract (ESPC) program, though we have concerns about new limitations that might be imposed on the program.
- While not within this committee's jurisdiction, EEI supports inclusion of several tax provisions in the conference report that will help increase investment in, and strengthen, our energy infrastructure. These include accelerated depreciation for electric transmission assets, amortization for certain pollution control equipment, clarification of the production tax credit, and updating the tax treatment of nuclear decommissioning.
- While the conference report does not include a mandatory nationwide renewable portfolio standard (RPS), we reiterate the strong opposition of the majority of our member companies to an RPS.

**TESTIMONY OF THOMAS R. KUHN  
ON BEHALF OF THE EDISON ELECTRIC INSTITUTE  
BEFORE THE SUBCOMMITTEE ON ENERGY AND AIR QUALITY  
COMMITTEE ON ENERGY AND COMMERCE  
U.S. HOUSE OF REPRESENTATIVES  
FEBRUARY 10, 2005**

Mr. Chairman and Members of the Subcommittee:

My name is Tom Kuhn, and I am President of the Edison Electric Institute (EEI). EEI is the association of U.S. shareholder-owned electric utilities and industry affiliates and associates worldwide. We appreciate the opportunity to testify on energy policy legislation. The House Energy and Commerce Committee deserves a great deal of credit for its years of effort to produce legislation to address this nation's long-term energy needs.

EEI supported the energy bill conference report approved by the House of Representatives in the 108<sup>th</sup> Congress, and we urge the House to approve a similar bill again as soon as possible this year.

We recognize that every stakeholder would probably change something in last year's H.R. 6 conference report, which we understand will serve as the basis for the House bill this year. However, the conference report is the product of years of hearings, debate and negotiations. While we continue to talk about energy issues, high energy prices continue to be a heavy burden on American consumers and businesses. We need an energy bill now more than ever. The most important thing now is for Congress to move forward and finish the job as soon as possible.

## **Promote Fuel Diversity**

Fuel diversity should be a cornerstone of our national energy policy. Having a broad array of fuel resource options available – including coal, nuclear, natural gas, hydro, and renewables – is an important hedge against supply disruptions and price volatility, thus benefiting consumers, the economy and the environment. It is critically important to our industry to have all of our fuel resources as viable, affordable options. The H.R. 6 conference report will promote the full range of energy supply options, so it should be supported.

Coal is a fuel source for more than 50 percent of the electricity generated in the United States. It is abundant, affordable, and increasingly clean, with significant improvements in pre- and post-combustion emission reduction technology. Clean coal technology development and maintaining coal's ability to compete on costs are key drivers to our future ability to use coal, and the bill includes important provisions to help achieve these goals.

Nuclear energy provides 20 percent of this nation's electricity and offers the environmental advantage of being emission free. The conference report's provisions on Price-Anderson reauthorization and advanced reactor development are among those that will help maintain the viability of the nuclear power option for decades to come.

The electric utility industry shares the concerns that many have about the cost and availability of natural gas. Roughly 18 percent of total current electricity generation is gas-fired, and in the past decade 88 percent of new plants have been gas-fired. Gas offers several advantages for generation, including lower emissions than other fossil fuels, and lower capital costs and regulatory barriers for plant siting and construction. The H.R. 6

conference report included several important incentives for increased domestic gas exploration and production, and we understand this year's bill will be updated with additional measures to promote adequate supply.

Renewables, where available, can also play an important role in fuel diversity. Their most attractive feature is their obvious environmental benefits. While capital costs are currently high, electricity generation from renewables typically depends on "fuels" that tend to be low-cost and abundant in certain regions. Generation from non-hydro renewables in 2002 was 2.2 percent, and it is expected to increase to 3.7 percent by 2025. The conference report includes several incentives for the increased development and use of clean and renewable energy.

In particular I want to focus on the hydro licensing reform provisions in the conference report. Hydro provides roughly 9 percent of our electric generation, but we are concerned about the federal relicensing process, a difficult system that often results in generating capacity reductions and loss of flexibility to operate hydro facilities for electric reliability purposes.

The conference report's provisions will provide a process for achieving a federal land agency's environmental protection goals while at the same time maintaining cost-competitive power production from existing hydropower facilities. Specifically, these provisions would allow an applicant for a hydro license to propose an alternative to the mandatory condition imposed by a resource agency if that alternative would cost less or improve the operational efficiency of the project. Among other things, it would also require the resource agencies to give "equal" consideration to specified factors, such as

energy impacts, when developing mandatory conditions and allow an applicant to receive a trial-type hearing on the record to resolve disputed issues of material fact.

### **Ensure Reliability and Encourage Transmission Investment**

Reliable electric service and regional electricity markets depend on strong transmission systems to move power instantaneously to where it is needed.

While investment in transmission systems has increased recently, with billions of dollars being spent annually, the bulk of the new transmission being built is to help serve local load and connect new generation to the grid. The level of investment in the long-distance, high-voltage wires has not kept pace with the growing demands being imposed on the system.

For a number of years until 1999, investments by shareholder-owned electric utilities in transmission facilities were steadily declining. This could be attributed to a number of factors, including regulatory and financial uncertainties, as well as difficulties in permitting new transmission lines. Since 1999, however, investment in transmission facilities began increasing by about 12 percent annually.

In 2003, total investment was about \$4 billion. Much of the investment growth has targeted local reliability issues and is designed to serve growing population centers around the nation by connecting new power plants to burgeoning electricity demand. Significantly, however, the number of circuit miles of high-voltage and extra-high-voltage transmission lines (188kV and above) owned or operated by shareholder-owned utilities has grown by only 2.5 percent annually since 1999. These are the so-called “trunkline” facilities that move electricity around and between regions of the country.

According to the Energy Information Administration (EIA), consumer demand for electricity is going to increase by roughly 50 percent over the next two decades. To meet this increase in demand, and to assure system reliability and help accommodate wholesale electricity markets, capital investments in upgrades and new transmission lines—especially high-voltage, long-distance lines—must increase from the current level of roughly \$4 billion annually to about \$5 billion.

A number of critical factors actually discourage investment in transmission, including:

- Local opposition to siting new facilities,
- Inability to recover planning and related costs if facilities are delayed or ultimately rejected by siting authorities,
- State retail rate caps that may prevent utilities from recovering their new investments in transmission,
- Uncertainty over transmission ownership and control policies, and
- Uncertainty as to whether beneficiaries will pay for new transmission.

The conference report provides significant help in removing these disincentives to help strengthen the transmission infrastructure and enhance the benefits of competition for consumers.

▪ **Mandatory and Enforceable Reliability Standards**

Today's electricity market requires a mandatory reliability system, with enforcement mechanisms. The August 2003 blackout was a dramatic reminder of the need for mandatory reliability rules.

The electric industry and the North American Electric Reliability Council (NERC) are addressing the immediate problems that led to the August 2003 blackout.

These include:

- Adding new audit programs;
- Creating guidelines for disclosure of reliability violations;
- Strengthening existing reliability standards and enhancing compliance with reliability rules;
- Improving operator training; and,
- Enhancing vegetation management practices around power lines.

The industry's actions are consistent with the recommendations of the U.S.-Canada Power System Outage Task Force, which studied the blackout and released its final report in April 2004.

All participants in wholesale electricity markets should be subject to mandatory, enforceable reliability standards that are developed or approved by an electric reliability organization, with oversight and enforcement by FERC. Since early 1999, a broad group of stakeholders, including EEI and many of its individual member companies, have supported legislation to achieve this goal. The version of the language that we support is in the H.R. 6 conference report. We strongly urge the inclusion of these provisions in an energy bill.

- **Grant FERC Backstop Siting Authority**

Limited FERC backstop siting authority to help site new transmission lines in interstate congested areas would be a critical aid in developing the more significant transmission infrastructure needed to support regional wholesale electricity markets.

Regional electricity markets require a siting process that has the ability to consider regional and even national needs. FERC has jurisdiction over wholesale electricity markets, but, unlike its authority to site natural gas pipelines, it currently does not have any authority over transmission siting to help ensure that there is sufficient transmission capacity to support those markets.

The H.R. 6 conference report would give FERC very limited backstop transmission siting authority. This authority extends only to helping site transmission lines in “interstate congestion areas” designated by the Department of Energy (DOE) and only if states have been unable to agree or act within a year. We strongly urge its inclusion in the energy bill again this year.

FERC has decades of experience in siting energy facilities. Since 1948, interstate natural gas pipelines have gone to FERC for certificates that grant them eminent domain authority. FERC has permitted hydroelectric facilities since 1920.

Protection of the environment is a top consideration in FERC’s processing of natural gas pipeline certificates. Under the National Environmental Policy Act (NEPA), FERC is required to perform a comprehensive environmental analysis of all gas pipeline construction proposals. The conference report’s transmission siting provision would require the same environmental protection process for any transmission line construction proposal.

We are confident that with this authority in place, states will find it in their interest to become more effective and efficient in siting needed facilities.

- **Improve Coordination of the Federal Permitting Process**

The unnecessarily complicated, time-consuming and difficult multi-jurisdictional federal permitting process to site energy facilities, including authorizations for siting transmission lines across federal lands, is another major impediment to building new transmission. In some areas of the country, this is the principal impediment.

Problems with the federal permitting process include (1) a severely fragmented process, where each federal agency with potential jurisdiction has its own set of rules, timelines for action and processes for permitting; (2) the tendency by federal agencies to require multiple and duplicative environmental reviews; (3) a failure to coordinate with any state siting process; and (4) a lack of harmonized permit terms from one agency to the next.

The federal transmission permitting process needs to be coordinated, simplified and made to work with any state siting process. The H.R. 6 conference report accomplishes this objective by designating DOE as the lead agency to coordinate and set deadlines for the federal environmental and permitting process. In addition, DOE would be responsible for coordinating the federal process with any state and tribal process. A state where a transmission facility would be located could appeal to DOE when a federal decision deadline has been missed or a federal authorization has been denied. To further facilitate siting, the bill sets deadlines for the designation of transmission corridors across federal lands. We strongly support these provisions.

- **Reform FERC Transmission Rate Policies**

We believe that FERC and the states should utilize innovative transmission pricing incentives, including performance-based rates and higher rates of return, to attract

the capital necessary to fund needed investment in transmission. Transmission pricing should (1) allow for cost recovery of fixed and variable costs and a reasonable return on transmission investment; (2) eliminate the pancaking of rates within a regional transmission organization (RTO) region; (3) ensure that cost responsibility follows cost causation; (4) minimize the potential for cost shifting; (5) permit the recovery of all prudently incurred transition costs, and (6) promote efficient siting of new transmission and generation facilities.

We support the FERC pricing and transmission technologies provisions in the H.R. 6 conference report, particularly incentives to expand transmission infrastructure, such as the recovery of costs for planning and pre-certification of transmission facilities and the recovery of costs through construction work in progress for transmission facilities. Likewise, we encourage the states to assure that utilities can recover their costs for investments for transmission under state regulation, with a reasonable rate of return.

According to a December 2001 FERC “Electric Transmission Constraint Study,” transmission costs make up only 6 percent of the current average monthly electric bill for retail consumers. On the other hand, generation costs make up 74 percent of the average bill. By reducing transmission congestion, investments in new transmission will allow greater economic dispatch of lower cost generation.

FERC estimates that a \$12.6 billion increase in transmission investment would add only 87 cents to an electric customer’s average monthly bill. But, since increased transmission investment will help reduce congestion and enable lower cost power to reach consumers more easily, FERC anticipates that the net benefits to overall electric bills could be potentially quite large.

For example, FERC estimates that if the reduced transmission congestion resulted in just a 5 percent savings in generation costs, consumers would see more than a \$1.50 decrease in their average monthly bills. If the generation savings from reduced congestion were 10 percent, the average monthly bill for consumers would drop by \$4.00. So, a small increase in transmission investment can reap a much more significant benefit in lower generation costs.

In addition to investments to relieve congestion, investments in new technology to help improve the control and use of existing transmission lines are critically important to promote reliability.

- **Repeal the Public Utility Holding Company Act (PUHCA)**

We also believe that repealing PUHCA will help attract significant amounts of new investment capital to the industry. By imposing limitations on investments in the regulated energy industry, PUHCA acts as a substantial impediment to new investment in energy infrastructure, keeping billions of dollars of new capital out of the industry. As a result, we believe that this outdated statute has contributed to the failure of the electricity infrastructure to keep pace with growing electricity demand and the development of regional wholesale markets.

PUHCA imposes outmoded restrictions on the business activities of electric and gas utility holding companies and acts as a barrier to efficient competition. Furthermore, it prevents consumers from reaping the economic and efficiency benefits that can accrue from having access to products and services offered by companies of national scope and scale.

For instance, under PUHCA, a registered holding company must confine its operations to a “single integrated public utility system” (with certain exceptions) located in a “single area or region” of the country. This outdated “physical integration” requirement prevents utility companies from investing capital outside their geographic region, shutting off a valuable potential source of domestic capital investment in needed energy facilities and, ironically, fostering the very kind of concentration in regional energy markets that FERC is trying to reduce.

Even without PUHCA, utility customers and investors are protected. Retail customers are protected fully by state regulation or oversight of retail electric service, and wholesale customers are protected by FERC oversight and regulation. Utility companies have long been, and will continue to be, among the most heavily regulated businesses there are.

The H.R. 6 conference report contains provisions that would repeal PUHCA and transfer consumer protections to FERC and the states. These provisions are similar to PUHCA repeal language that has been included in every major electricity bill considered by Congress over the last decade, and which have been endorsed by every Administration—Republican and Democratic—since 1982. They should be included in the energy bill again this year.

### **Other Electricity Reforms**

- **PURPA Reform**

The mandatory purchase obligation of the Public Utility Regulatory Policies Act (PURPA) should be reformed. Most significantly, PURPA has subjected consumers to higher electricity prices. Utilities are required to purchase power produced from PURPA

qualifying facilities, regardless of whether that power is needed or whether it is more expensive than alternative power supplies. PURPA's mandated, long-term contracts are costing electricity consumers nationally nearly \$8 billion a year in higher electricity prices.

PURPA also has failed to achieve its objective to promote the use of renewable energy. Today, approximately 80 percent of all power produced by PURPA facilities is generated using natural gas, coal or oil. Fossil fuels, not renewable energy resources, have been PURPA's primary beneficiaries.

In addition, significant abuses have occurred under PURPA, particularly with respect to cogeneration facilities. There is no requirement under FERC's regulations that a cogeneration facility's thermal output be useful or economic. As a result, what are essentially exempt wholesale generators have been allowed to masquerade as PURPA qualifying facilities in order to have a guaranteed market for their power at government-set prices.

The PURPA reform provisions in the H.R. 6 conference report represent a delicate compromise that is the result of long, difficult negotiations among the major PURPA stakeholders. EEI continues to support these provisions, as it expects other stakeholders to do.

- **FERC Lite**

EEI believes that all transmission-owning utilities, no matter what their ownership type, should be subject to the same level of FERC regulation to assure fair, open access for all market participants to the transmission grid. After all, electrons move on the grid

according to the laws of physics, without recognizing changes in ownership type. Thus, we believe FERC rules should apply to all users of the grid.

While they are weaker than we would prefer, the “FERC lite” provisions of the H.R. 6 conference report represent a step toward this ultimate policy goal and should be included in any energy bill.

- **FERC Refund Authority**

The California energy crisis clearly demonstrated that retail electricity consumers would be much better protected by making all electricity suppliers, not just shareholder-owned utilities, subject to FERC refund authority. This would ensure that prices charged for wholesale electric power sales, regardless of the seller, must meet FERC’s “just and reasonable” standard. EEI supports language in the H.R. 6 conference report authorizing FERC to order refunds from the largest government-owned utilities for short-term sales.

- **FERC Merger Authority**

Mergers among electric utilities and with other energy companies can lower operating costs, diversify the products and services companies are able to offer to consumers, and increase efficiencies. However, electric utility mergers are among the most heavily regulated of all industries, and the federal merger review process is costly, time-consuming and duplicative. EEI supports measures to streamline FERC’s current merger review process to eliminate duplicative federal review and bring it more in line with the process used for other industries. The H.R. 6 conference report’s provisions clarifying FERC merger authority, expediting the Commission’s review process, and directing DOE to study additional ways to eliminate duplication and improve the process are consistent with this goal.

- **Native Load Protection**

Under the Federal Power Act (FPA), FERC is responsible for preventing the exercise of market power in competitive wholesale markets and developing the rules for such markets. However, any FERC analysis of market power in wholesale markets should take into account existing commitments and obligations under state law and state policies relating to service obligations, resource procurement, resource adequacy, fuel supply choices and environmental aspects of generation.

Federal regulators should recognize the retail service obligations of utilities and promote policies consistent with those state-imposed obligations. The native load service obligation provision in the H.R. 6 conference report assures transmitting utilities holding firm transmission rights that giving priority to serving this “native load” does not constitute undue discrimination under the FPA.

### **Energy Efficiency**

A balanced national energy policy should also promote the efficient use of energy resources. Using energy wisely is good for the environment, saves money, and helps support energy security. We must continue to seek improvements in energy efficiency, in addition to developing new supplies and infrastructure, in order to achieve our energy and environmental goals.

The H.R. 6 conference report includes many provisions to promote energy efficiency and wise energy use, including higher efficiency standards for a wide range of products that use large amounts of energy, such as commercial refrigerators and freezers, increased LIHEAP funding for low-income households and funding for low-income

weatherization programs, and new efficiency performance standards for public buildings. We support these provisions.

- **Federal Agency Energy Efficiency Programs**

In particular, EEI supports language in the H.R. 6 conference report to extend and improve programs under which private sector companies help federal agencies achieve their energy efficiency goals. The federal government is the world's largest single consumer of electricity, and utility energy service contracts and Energy Savings Performance Contracts (ESPCs) are two means by which EEI member companies help federal agencies conserve energy and save taxpayer dollars.

The ESPC program, which received a two-year extension last year after lapsing in 2003, would be permanently reauthorized under the H.R. 6 conference report, finally giving it the long-term stability it needs. However, we are concerned about new limitations, which were not included in the conference report, that we understand might be placed on the program in this year's bill – largely, we understand, because of questionable CBO scoring assumptions. We believe the limitations under discussion would have a chilling effect on the energy services contracting market, which is critical to the federal government's efforts to achieve energy and cost savings. As members of a broad pro-ESPC coalition led by the Alliance to Save Energy, we will work with Chairman Barton and others in Congress to resolve this problem in a way that maintains the viability of this successful program.

### **Energy Taxes**

While we appreciate that the tax provisions in the energy bill are under the jurisdiction of another committee, we want to call your attention to critical tax provisions

in the H.R. 6 conference report that will help increase investment in, and strengthen, our energy infrastructure.

The U.S. tax code should be amended to provide enhanced accelerated depreciation (from 20 to 15 years) for electric transmission assets, similar to the tax treatment governing other major capital assets. Currently, transmission assets receive less favorable tax treatment than other critical infrastructure and technologies.

The conference agreement also included a provision that would provide rapid amortization (from 20 to 5 years) for pollution control equipment to electric generating units built after 1975. Under current law, this tax treatment is available only for equipment added to generating plants placed in service before 1976. This tax treatment will be a significant economic incentive for utilities to deploy new environmental technologies on electric generating plants. This would result in emission reductions that would provide real environmental benefits that may not be realized without tax relief.

The tax credit for electricity produced from wind, open-loop and closed loop biomass and other renewable resources should be extended. Currently, electricity must be produced at a facility placed in service before January 1, 2006. At a minimum, the credit should be extended to electricity produced at facilities placed in service before January 1, 2008. This tax credit helps make electricity produced from these renewable sources competitive with other forms of electricity, which will be an important part of the nation's long-term energy supply.

Finally, it is necessary to update the tax treatment of nuclear decommissioning laws to reflect a deregulated environment. The conference agreement included needed

reforms to provide greater assurance of adequate funding, and allow faster growth in the monies set aside in decommissioning trust funds.

EEI supports inclusion of these tax provisions in the energy bill.

### **Renewable Portfolio Standard**

While the H.R. 6 conference report does not include a mandatory nationwide renewable portfolio standard (RPS), we want to reiterate the strong opposition of the majority of our member companies to a federal RPS. A federal mandatory RPS would raise electricity prices for consumers; create inequities among states, electricity generators and electricity suppliers; and threaten electric reliability.

The lack of available renewable energy resources in certain regions, their intermittent nature and the NIMBY problems facing both renewable energy facilities and new transmission lines are significant barriers to increasing significantly the amount of electricity produced from renewable energy resources. These challenges have serious ramifications for electric utilities and their consumers in the context of a federal RPS requirement.

The reality is that many utilities will be forced to purchase renewable energy credits from either the federal government or renewable energy generators to meet an RPS mandate. And, they would still need to generate sufficient power to meet their consumers' demands. In essence, the RPS requirement ends up being a new federal energy tax on traditional energy resources that utilities must pay in addition to the costs of building sufficient reliable and dispatchable generation.

Because renewable energy resources are not uniformly available throughout the country, a federal RPS requirement would create inter-regional “winners and losers”

among electricity suppliers and their consumers. Utilities and their consumers in regions lacking in renewable energy resources would end up sending their dollars to renewable energy suppliers in regions with renewable energy resources.

Promoting renewable energy resources, through tax credits and increased funding for research and development, in addition to existing renewable programs in the states, is a better approach to help maintain our nation's diverse fuel mix and reliable electricity supply.

### **Conclusion**

Congress needs to finish the job and pass an energy bill as soon as possible to help promote fuel diversity, improve energy efficiency and conservation, provide regulatory certainty in energy markets, and encourage investment in critical energy infrastructure. We urge Congress to adopt an energy bill similar to the H.R. 6 conference report in 2005.