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Legislative Hearing on H.R. ___, "Building United States Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act of 2023"

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Chairman Westerman, Ranking Member Grijalva, and members of the Committee, thank you for the opportunity to testify today. My name is John Carr, and I am the Vice President for Strategic Growth of Dairyland Power Cooperative. Electric cooperatives like Dairyland play a leading role in the ongoing transformation of the electric sector, and often need to obtain permits or other authorizations from federal agencies to construct and maintain electric generation, transmission, and distribution infrastructure. I appreciate the opportunity to testify on the "BUILDER Act" and offer a perspective on behalf of both Dairyland and the National Rural Electric Cooperative Association (NRECA).

About Dairyland Power Cooperative

Dairyland is a not-for-profit generation and transmission cooperative headquartered in La Crosse, Wisconsin, providing electricity to 24 distribution cooperatives and 27 municipal utilities, who in turn provide power to more than half of a million people in Wisconsin, Minnesota, Illinois, and Iowa. Dairyland is a critical service provider, and we are responsible to our members, local communities, and future generations. Our mission is to grow, innovate, and deliver value as a premier member-driven energy cooperative through safe, reliable, and sustainable solutions.

We are governed by a Board of Directors comprised of one representative from each of our 24 cooperative members. Our member cooperatives are in turn governed by locally elected boards. The cooperative model means that every dollar we receive from our members is directed to the operation of our projects. If excess revenue is collected, it does not go to investors; rather, it is sent back to our members. This model helps electric cooperatives keep rates affordable – an important consideration, because co-ops serve 92 percent of the country's persistent poverty counties.

Permitting Modernization is Essential to Meet Community Needs

Dairyland and other electric co-ops support the appropriate consideration of potential environmental impacts of energy projects during the permitting process, but the existing process impedes our ability to deploy clean energy to meet the current and future needs of our consumers

and communities. We simply must reform the process to enable the transition that is already underway, and to ensure it can be done reliably and affordably for our customers.

Electric cooperatives across the country are committed to meeting our members' changing energy demands. Since 2010, co-ops have more than tripled their renewable capacity to more than 13 gigawatts, with another 7 gigawatts of additional renewable capacity planned through 2026. Since 2005, co-ops have reduced their sulfur dioxide emissions by 82 percent, nitrogen oxide emissions by 68 percent, and carbon dioxide emissions by almost 20 percent. Dairyland supports a transition to lower carbon energy generation in a way that doesn't compromise the safety and reliability of the grid. In 2021, we completed the retirement of our coal-fired Genoa Station #3, which had reliably powered the region for more than five decades. We worked closely with the 80 impacted employees to provide skill development programs, special retirement options, and internal placement opportunities to assist in the transition, and we worked hand-in-hand with the community to fulfill our commitment to maintain a presence in the area.

Our commitment to supporting local communities and the environment is an important part of our work as a cooperative. Dairyland collaborates with non-profit organizations and provides funding support on initiatives and policies that benefit area residents, schools and businesses in the communities we serve. In La Crosse, where we are headquartered, we partner with an elementary school identified as serving one of Wisconsin's most impoverished populations with supportive nutrition and programming needs.

Our numerous environmental stewardship projects include the establishment of 50 acres of pollinator habitat, fish habitat improvements in the 2,000-acre Dairyland Reservoir near our Flambeau Hydro Station, as well as Peregrine falcon and osprey nesting structures. Dairyland and our member cooperatives are also national leaders in the establishment of electric vehicle (EV) charging infrastructure. Since 2018, Dairyland has supported the installation of over 150 EV chargers throughout our service territory.

Dairyland's Energy Future

We were able to close the Genoa power plant while maintaining the integrity of the grid. However, any potential future coal plant closures would require us to have alternative generation in place. This includes more renewable resources, battery storage, lower-emissions natural gas facilities to firm up intermittent resources, and transmission to get this generation from project site to load centers. A recent long-term reliability assessment by the North American Electric Reliability Corporation (NERC) highlights the critical need to maintain baseload generation, particularly given increasing levels of intermittent renewable generation.[1]

Two of Dairyland's essential projects, a combined-cycle power plant and a regional transmission line needed to deliver renewable energy, are prime examples of why modernization of the current permitting process is needed.

[1] North American Electric Reliability Corporation. 2022. *2022 Long-Term Reliability Assessment.* https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2022.pdf

- **Nemadji Trail Energy Center**
  Nemadji Trail Energy Center (NTEC) is a collaborative project involving Dairyland, Basin Electric Cooperative, and ALLETE. NTEC will be a combined-cycle natural gas plant capable of delivering up to 625 MW of baseload power to the electric grid**,** supporting the growth of wind and other intermittent resources. Numerous studies have shown NTEC will help reduce emissions across the grid, reducing CO2 emissions by an average of 964,000 tons per year. This is the equivalent of removing 190,000 internal combustion engine cars from the road each year.

  A thorough National Environmental Policy Act (NEPA) process was conducted, beginning in September 2017 and included robust public involvement. The U.S. Department of Agriculture (USDA) issued an Environmental Assessment (EA) in October 2020 and a Finding of No Significant Impact (FONSI) in June 2021. Thereafter, the USDA Rural Utilities Service (RUS) accepted a petition to rescind the FONSI and to prepare a Supplemental EA.

  RUS is committed to a procedurally sound review, but we are still awaiting a final decision, which we hope is a re-issued FONSI. However, even if the RUS works quickly and diligently to permit this project, we may see the same petitioners challenge the permit in court, which would add further delays.

  Reliability concerns in the regional grid have led two investor-owned utilities in Wisconsin to postpone coal plant retirements that had previously been announced. It is not hard to see how the combination of lengthy reviews and litigation could lead to a project like NTEC being shelved – in our case, we <u>need</u> new, dispatchable clean and lower-emission resources to enable reliable operation of the grid.

Dairyland's participation in regional transmission line projects serve the dual role of ensuring the continued safe delivery of electricity while facilitating the region's transition toward low-carbon energy resources.

- **Cardinal-Hickory Creek Transmission Line Project**
  The Cardinal-Hickory Creek (CHC) Transmission Line Project, co-owned by Dairyland, American Transmission Co. and ITC Midwest, is an essential 345-kV interconnection to our region's renewable energy developments. The new transmission line will reduce energy costs, improve the reliability and flexibility of the region's transmission system, and deliver wind energy from the upper Great Plains to southern Wisconsin.

  Federal involvement in the project is small, but requires approvals and permits from the U.S. Fish and Wildlife Service, the Army Corps of Engineers, and USDA RUS, from which Dairyland intends to seek financing for its 9 percent ownership interest in the project. The 102-mile route from Dubuque County, Iowa, to Dane County, Wisconsin, crosses mostly private and non-federal land, except for approximately 1.3 miles in the Upper Mississippi National Wildlife and Fish Refuge, which has led to costly delays and permitting challenges.

Federal scoping for this project began in October 2016. Following several years of environmental review and extensive opportunities for public involvement, USDA issued the Final Environmental Impact Statement (EIS) in October 2019 and signed the Record of Decision (ROD) in January 2020. The federal government approved the refuge portion, in part, because the CHC line would replace two other existing transmission lines in the refuge, thereby reducing the number of structures in the refuge.

Subsequent legal claims were raised alleging that the EIS and ROD violated NEPA. In March 2022, a Federal District Court vacated and remanded the EIS and ROD, based on those claims. It found that the new transmission line through the refuge was incompatible with the purpose of the refuge. USDA has appealed the decision, and Dairyland and the other project owners are intervenors in the case.

Today, this line is needed more than ever. Its primary benefits continue to include economic savings for energy consumers, support for renewable energy projects and improvement of electric system reliability. As coal-fired plants are retired and the demand for renewable generation increases, energy needs a pathway to travel long distances.

There are currently over 100 renewable generation projects depending upon the construction of the Cardinal-Hickory Creek transmission line. These projects will generate enough electricity to power millions of homes with clean energy. But only if the line can be completed.

Further afield, Dairyland continues to explore cutting edge carbon free energy generation resources. Nuclear will be the backbone of a low-carbon future. If you are for carbon reduction, nuclear needs to be part of the conversation. Nuclear is zero emissions, high reliability, well-regulated, and has an outstanding industry safety record.

- **Small Modular Rectors (SMRs)**
  We recently signed a memorandum of understanding (MOU) with NuScale Power to evaluate the potential deployment of carbon free power from small modular reactors. Under this agreement, Dairyland can explore this technology and evaluate whether it might be a viable long-term alternative to provide our members with safe, reliable and cost-effective electricity in a lower carbon future.

  Part of our evaluation of this exciting project will be focused on the Nuclear Regulatory Commission's review and approval process for advanced reactors, like SMRs, and whether we can count on the federal government to fulfill its permitting responsibilities on a project like this in a timely way at reasonable cost. Building and bringing such a plant into operation in the Midwest will take at least 10 to 15 years.

The BUILDER Act and Other Reforms are a Step in the Right Direction

The complicated federal permitting process under NEPA becomes even more challenging when multiple federal agencies are involved, and even well-researched and thorough federal reviews face the constant threat of litigation. As Dairyland has experienced firsthand, lengthy NEPA reviews and litigation delay the completion of critical infrastructure projects, require significantly more time and resources, and have a direct negative impact on communities served by these projects.

Dairyland and electric co-ops across the country support solutions that provide a pathway for more coordinated, consistent, and timely agency decision-making. NEPA modernization is especially necessary to advance electric infrastructure project development in a manner that strengthens our economy and enhances environmental stewardship. We appreciate the work the House Natural Resources Committee is pursuing this Congress, under the leadership of Chairman Westerman and Ranking Member Grijalva, to identify commonsense and durable improvements that can be made to NEPA and other permitting processes.

Based on experiences like Dairyland's, our national trade group NRECA has identified several NEPA modernization recommendations that we encourage the Committee to consider. Among those areas that would benefit from changes to modernize the permitting process, while maintaining the integrity of a thorough and proper review:

- **Establish firm parameters for environmental reviews.** Originally, EISs were expected to take 12 months or less. Now, the average time to complete an EIS and issue a decision for a project is 4.5 years; and one-quarter of EISs take more than six years.[2] In addition, EISs on average are 661 pages in length, not including appendices.[3] Congress should mandate timelines of two years for EISs and one year for EAs, while providing agencies with authority to extend those deadlines in writing with the input of the project proponent, and mandate page limits so that environmental documents are concise, readable, and focused on relevant issues.

- **Promote greater applicant involvement in the NEPA process.** Greater applicant involvement in developing environmental documents will provide agencies with the information they need to facilitate more efficient and effective reviews and make timely decisions. Congress should allow project sponsors to work in a coordinated way with agencies in the development of environmental impact analyses, while maintaining agency authority over final NEPA documents and decisions. It should also limit agency recommendations on project modifications to those that are technically and economically feasible, are within the agency's jurisdiction, and meet the needs of the applicant.

- **Ensure more efficient reviews for projects with minimal environmental impacts.** NEPA regulations and procedures allow projects and activities that do not have

[2] Council on Environmental Quality, June 12, 2020, *Environmental Impact Statements Timelines (2010-2018),* https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf
[3] Council on Environmental Quality, June 12, 2020, *Length of Environmental Impact Statements (2013-2018),* https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2020-6-12.pdf

significant environmental effects to be reviewed efficiently under a categorical exclusion (CE) instead of requiring an EA or EIS. Having an efficient and expedited process for reviewing these types of projects is beneficial for communities and allows agencies to better focus their time and resources. Individual agencies establish CEs through a notice and comment process which results in inconsistent CEs across agencies and inefficient reviews. Congress should provide government-wide authority for an agency to use another agency's CE if the proposed action fits within the CE to ensure its appropriate use.

- **Limit unnecessary litigation of NEPA reviews.** According to the U.S. Department of Justice, NEPA is one of the most frequently litigated environmental statutes. The constant threat of litigation creates excessive cost and agency documentation and needless delay in the permitting process. Congress should establish reasonable time limits for filing lawsuits after a final agency action. It should also require that any entity filing a lawsuit over a NEPA review has already sufficiently raised their concerns during any public comment period to put the agency on notice of the issues and allow the agency to cure any potential deficiencies in their documents prior to any litigation.

The BUILDER Act, introduced by Representative Garret Graves, includes many provisions that would address these priority recommendations and would greatly improve the NEPA process. As Congress works toward bipartisan solutions and legislation to modernize the federal permitting process, the BUILDER Act should be a central part of those discussions.

We all benefit from the investments prior generations made in our nation's electric system. It is now our turn to build on those efforts for future generations. Meeting current and future energy needs is a major challenge. Rising to meet this challenge will require collaboration, creativity, and flexibility. Dairyland and our electric co-op brethren are ready to work with all of you and your colleagues in Congress and your federal agency partners to meet these needs.

Thank you for the opportunity to testify today and for your attention to the critical issues facing our nation. I look forward to working with all of you.