Testimony of

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Submitted to:
House Energy Committee

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Chair Fiedler and Chair Causer, I appreciate the opportunity to submit testimony on behalf of the Marcellus Shale Coalition (MSC) to the House Energy Committee regarding House Bill 502. This legislation establishes and provides certain authority to a proposed Reliable Energy Siting and Electric Transition Board (RESET Board).

The MSC is a state-wide trade association representing nearly 150 energy companies from the upstream, midstream, and downstream unconventional natural gas sectors, and those who supply goods and professional services to the industry. Our members are fully committed to working with local, county, state and federal government officials to facilitate the safe development of natural gas resources in the Marcellus, Utica and related geologic formations.

Introduction

The MSC appreciates the recognition with the proposal of House Bill 502 that there is an urgent need to help attract capital investment and permit, site and build out additional electric power generation and the transmission infrastructure needed to get electrons to the market and end users. The significant loss of baseload power generation, largely driven by the retirement of legacy coal-fired units, a stagnation of new electric generation in Pennsylvania over the past six to seven years, and forecasts for significant demand growth in both short- and long-term forecasts rightly have raised concerns from policymakers and Pennsylvania's electric grid operator, PJM.

With a recognition of this need and appreciation for focusing on expediting the siting of scalable baseload power generation, the MSC respectfully offers the following observations and recommendations for the Committee's consideration.

Comments

1) <u>Power Siting vs. Environmental Regulation</u>

   House Bill 502 is a power generation siting bill, not an environmental regulation bill. It is important to recognize that any facility that may benefit from the work of the RESET Board is still subject to all state and federal environmental statutes and regulations, including permitting requirements.

   As such, the Committee is urged to have House Bill 502 remain focused on this purpose. For example, reference to Article 1, Section 27 of the Pennsylvania Constitution, is both unnecessary and carries no legal weight within the legislation. The obligations under Article 1, Section 27 are effectuated by implementation of various environmental protection statutes, which as noted already remain in effect. The Committee is urged to delete this and related language referencing environmental regulation as irrelevant to the underlying legislation. This does not discount the importance of environmental regulation; but recognizes that this legislation ought to be focused on the core policy it is trying to further and should recognize its place within the context of already existing statutory requirements.

2) <u>RESET Board Home and Membership</u>

   Under House Bill 502, the RESET Board is housed within the PA Department of Environmental Protection (PA DEP) and chaired by the Secretary of PA DEP. PA DEP is tasked by law with administering the environmental laws of the Commonwealth. It is not an agency with historic responsibility or subject expertise related to electric power generation siting.

   To avoid potential or perceived conflicts, and to align the mission of the RESET Board with subject expertise within the Commonwealth, the Committee is urged to consider a different state agency (e.g. Department of Community and Economic Development) for placement of the RESET Board, and to reconsider the membership of the Board.

Specifically, the Committee ought to consider not including the Secretary of PA DEP on the Board to avoid potential or perceived conflicts given PA DEP's role in permitting any facility that may come before the RESET Board. Additionally, it is unclear what expertise the head of a PA DEP advisory committee would have with respect to facility siting. It is important that any Board which may be established is composed of individuals with the requisite expertise to fulfill its statutory mission.

3) <u>Determining Benefit of Certificate of Reliable Energy Supply</u>

It is unclear what relief or benefit a project developer will receive for successfully being issued a Certificate of Reliable Energy Supply from the RESET Board. Project developers are still required to obtain any local permits, authorizations or approvals that may be in place. The legislation states that such local approvals may not "materially impede" a project, yet this term is not defined. The Committee is urged to strengthen and clearly state what benefit a Certificate of Reliable Energy Supply provides. Absent this benefit, it is difficult to envision this new process being utilized.

4) <u>Establishing Criteria for "Reliable Energy Generating Facility"</u>

The MSC appreciates that the term "reliable energy generating facility" does not discriminate based upon fuel sources.

However, House Bill 502 does not seem to include any criteria of what constitutes a "reliable energy generating facility" beyond a nameplate capacity of 25 megawatts or greater. It is important to underscore that the size of a generating facility's nameplate capacity does not equate to "reliable" energy as the term is generally applied: that the resource can be called upon when needed to meet fluctuating demand, and at a scale that is impactful.

There are many intermittent sources of energy generation that may meet the nameplate capacity threshold of House Bill 502 but have an actual capacity output that is significantly less than that nameplate capacity.

The Committee is urged to consider a threshold for determining what constitutes "reliable", as was contemplated in the recently considered House Bill 500 (60% performance of maximum nameplate capacity).

5) <u>Include Producers of Reliable Fuel Sources Under Definition of "Facility"</u>

The ability to generate electricity for power is inextricably linked to the ability to produce the fuel needed by the generation facility. Additionally, the ability to produce fuel for generation within Pennsylvania – in a regional proximity to where it will be used – is critically important. As such, the Committee is urged to consider adding "*or a producer of a fuel source for a reliable energy generator*" so that such producer may have the ability to apply for a certificate before the RESET Board.

6) <u>Appeals of RESET Board Action</u>

House Bill 502 states that appeals of RESET Board decisions proceed to the Environmental Hearing Board (EHB). The EHB is charged by law with considering appeals of environmental permit decisions and other actions of PA DEP. Additionally, the EHB would be the current venue for any appeals of permits or authorizations that PA DEP may make with respect to a power generation facility.

Given this responsibility, and a scenario where both appeals of underlying permits for a project and a decision on a certificate by the RESET Board may both come before the EHB, it seems prudent to find an alternative venue for RESET Board appeals.

7) <u>Certification Statement</u>

Section 806 (a)(9) requires a project developer to sign a statement that any facility will be designed and constructed in compliance with all applicable federal and state environmental laws and regulations.

a. This certification statement is unnecessary and serves no purpose. A project developer is already required to adhere to all federal and state environmental laws and regulations.

b. It is also unclear why only environmental laws and regulations are included. There are a host of non-environmental laws and regulations which govern the construction and operation of a myriad of facilities. Why are these not included?

Again, this statement serves no underlying purpose and the Committee is encouraged to delete this from the bill.

8) Project Public Hearing

Section 806(c) requires a public hearing for an application before the RESET Board. During this hearing, the applicant is required to attend – but is not afforded an opportunity to make a presentation to the community or field questions in a manner to better inform the public.

Recent PA DEP public hearings pertaining to environmental justice-related permits often exclude the project applicant – the individuals with the subject matter expertise – from actively participating. This leads to significant confusion and frustration among attendees and fails to fulfill any meaningful public purpose.

The Committee is urged to authorize the RESET Board to conduct a public hearing if the Board determines it is appropriate – and to afford a project applicant the ability to participate if it chooses.

9) Fee Allocation

Section 806(d)(1) imposes a fee of 50 cents "times"[1] the maximum kilowatt electric capacity. This section also imposes an additional 5 cents per maximum kilowatt capacity for projects within a "Pennsylvania Climate Change Connectivity" area. However, while this section speaks to the allocation of this additional 5 cents, nowhere in the section does the legislation speak to the allocation of the 50 cents fee.

The Committee is urged to address how revenue collected under the legislation is utilized.

10) Fee Increases

House Bill 502 authorizes the RESET Board to increase fees by up to 20% annually. However, as previously noted, House Bill 502 offers no direction as to how fee revenue which is collected is to be used, or any criteria to guide what an appropriate increase in the fee should be.

[1] The Committee is urged to utilize the term "multiplied" instead of "times" for purposes of fee calculation.

A 20% annual increase seems excessive. The Committee is urged to revisit the ability to raise fees so substantially, to provide guidance as to what justifies a fee increase, and to speak to the overall use of fee revenue.

11) Pennsylvania Siting Advisory Council

House Bill 502 creates a new advisory council. Respectfully, not every appendage of state government which is created needs to have a corresponding advisory council. They usurp staff time and limited resources. The RESET Board is to be composed of professional administrators, with a professional staff, that should be more than equipped to fulfill its duties. The Committee is urged to delete this provision.

12) Pennsylvania Conservation Opportunity Tool

Section 806(a)(6) requires an applicant that proposes a facility within an area identified as "Pennsylvania Climate Change Connectivity" to explain the specific measures to be taken to mitigate and ameliorate impacts on wildlife habitat connectivity. This section is unnecessary. The underlying environmental permitting associated with the facility is the proper venue for a facility to address and identify potential impacts on species or habitat.

Additionally, House Bill 502 effectively elevates the utilization of the Pennsylvania Conservation Opportunity Tool (Tool) – an outgrowth of the Pennsylvania Wildlife Action Plan (Action Plan) – to having regulatory implications. That was never the intent of the Tool or the Action Plan; neither of these were developed with statutory direction or under the authority of the Regulatory Review Act. Simply put, non-regulatory planning tools used by state agencies should not be elevated to having regulatory powers and implications in this manner.

It is also unclear why projects within these areas are subject to an additional fee of 5 cents per maximum kilowatt electric capacity. The Committee is urged to delete both Section 806(a)(6) and the additional fee imposed under Section 806(d)(2).

13) Definitions Related to "Generating Facility" and "Storage Facility"

Throughout House Bill 502 the phrase "*reliable energy generating facility or storage facility*" is utilized repeatedly. However, the actual defined terms in the bill are "reliable energy generating facility" and "reliable energy storage facility".

House Bill 502 presumes that the words "reliable energy" modifies both "generating facility" and "storage facility". From a drafting perspective, this would not be accurate. The Committee is urged to simply use the defined terms consistently throughout the legislation to remove any ambiguity.

Additionally, the definition of "reliable energy generating facility" also includes "*or 'facility'*", as found on Page 3, line 12. This insertion of an extraneous "facility" is confusing. If there is a desire to utilize a general term of "facility" to apply to both energy generation and storage throughout the bill, then the term "facility" should be a stand-alone, defined term within the Definitions section of the legislation.

14) Criteria for Board Determination

Section 807(a)(2)(ii) states that the RESET Board shall issue a certificate of reliable energy supply if, in part, it determines that the applicant has demonstrated that it "*will obtain all necessary environmental permitting for the construction and operation of the proposed reliable energy facility*."

Similar to the concerns raised above in Comment #7 (related to Certification Statement), it is unclear why only "environmental permitting" is referenced? Presumably, there are a host of other non-environmental permitting or authorizations which may be required for the construction of such a facility.

More to the point, it is unclear how the RESET Board can determine that a facility will affirmatively *obtain* all necessary environmental permitting. Certainly, an applicant can apply for all necessary permits, but until the individual permit processes are concluded, it is impossible to demonstrate that permits will, in fact, be "obtained".

The Committee is urged to remove this ambiguity, which serves no real purpose in the underlying bill, by deleting Section 807(a)(2)(i) and (ii).

Conclusion

The MSC appreciates the opportunity to share comments with the Committee. We believe the concept of an energy siting board which is appropriately constructed, with clear authority and defined roles, could be very helpful in incenting the development and construction of much-needed electric power generation.