

Prepared Opening Remarks of Stephen J. Humes, Holland & Knight LLP
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Welcome once again to the Chicago Advanced Energy Series Breakfast Meeting and the Chicago office of Holland & Knight. I'm an energy partner with the firm based in our New York City office. Unfortunately my colleague Barb Adams was unable to be here today.

Thank you once again H.G. Chissell, your team and to all the sponsors who are investing in these challenges and working to find solutions. The time is now to be discussing Critical Infrastructure, Resilience and Microgrids and the challenge we all face is to confront the problems and help put solutions into action.

From my perspective as an attorney advising owners and operators of critical infrastructure, we have clients currently under attack, today, as we speak. There are malicious actors determined to interrupt the flow of natural gas, the operation of power plants and reliability and resilience of the transmission and distribution grid every day. The stakes are rising, risking the energy infrastructure we all depend on.

Microgrids that can operate in island mode and that can offer black start capability are especially important for critical facility operators such as essential services of government—think water and wastewater treatment plants, airports, hospitals and communities that demand reliable and resilient power and natural gas.

When you add the clean, zero carbon energy infrastructure that many communities are insisting on these days, it's more important than ever that we find solutions to these problems and help to deliver reliable, resilient energy infrastructure at reasonable cost—that's right, the public has to pay for these solutions and so they have to be practical and reasonable.

As if the challenges weren't enough, such as the threats from malicious cyberattacks and the structural and cost issues that stand in the way of clean infrastructure that innovative states like Illinois decide to implement, we now have pretty clear signals coming from the Federal Energy Regulatory Commission and other federal agencies that the federal government intends to erect regulatory barriers to make it harder for clean energy projects to participate in wholesale capacity markets. FERC has already issued orders in the competitive wholesale power markets operated by PJM, ISO-NE and, as of last Thursday, in NY-ISO, altering the rules for regional power markets designed to penalize clean energy and incentivize markets to keep struggling fossil power plants open. The approved changes to the capacity market rules would limit wind and solar power's participation in these markets by establishing what's called Minimum Offer Price Rules, or MOPRs, for resources that receive state subsidies.

In another example of federal barriers to clean energy development, there are nearly a dozen offshore wind projects in the queue in the Northeast where the Bureau of Ocean Energy Management leased areas in the Atlantic Ocean off the coast of Massachusetts, New York, New Jersey, and beyond. Some of these projects are already seeking environmental permits from the same agency but are being stone-walled as EIS reviews are being held up for a year or more over cumulative impacts and other issues. These projects promise to deliver 1,000s of MW of clean renewable energy in the Northeast, but permits are delayed. Meanwhile, if you want to build an offshore oil rig, permits are readily available.

So the big challenge that we see beyond project basics is that when well-intentioned states like Illinois, New York, New Jersey, Connecticut, Massachusetts, Rhode Island, and others decide to encourage contracts for these renewable energy facilities, those same facilities will get penalized when they go to participate in these competitive wholesale power markets or,

especially in the case of offshore wind, try to build on the very land the federal government leased to them for hundreds of millions of dollars.

That's a real challenge that complicates the development and deployment of clean energy or other state-sponsored resources to advance microgrids, resiliency or reliability objectives. At the very time that states are seeking to lower carbon emissions and deliver reliability and resiliency, many believe the result of FERC's orders will end up boosting capacity market prices and therefore capacity revenue for coal, oil and gas generators more than the failed plan of the Department of Energy several years ago.

A lot of renewable energy project developers and microgrid project developers have been increasingly counting on the availability of wholesale capacity market revenue as another revenue stream to help these projects make economic sense, but FERC's actions are effectively pulling the rug out from under these clean energy projects. What's the response? State leaders from New England to Illinois are talking about leaving the regional markets rather than tolerating penalties on clean energy projects. So that could lead to the collapse of the ISOs and RTOs.

What are states and communities to do? These are difficult questions. States can keep supporting renewable energy and microgrid infrastructure within the cooperative federalism balance of power that the Federal Power Act contemplates. That law states that states can provide support outside the scope of the FERC-jurisdictional wholesale power markets and RECs are outside FERC's jurisdiction. That's why states have been conducting procurements for REC contracts which are out of the reach of FERC's jurisdiction. The message coming from FERC these days however is that even if states are acting within their scope of power and

authority, FERC is imposing market costs on and erecting barriers to the state supported resources.

That leaves us with a number of questions and our great panel of discussion leaders are here to help us discuss critical infrastructure, resilience and microgrids and to identify the problem statements and solutions. And so, without further ado, it is my pleasure to bring up HG to introduce our speakers and kick off our collaborations. Please enjoy the meeting and stay involved for future programs as our collaborations continue.