

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Building for the Future Through Electric	)	
Regional Transmission Planning and Cost	)	Docket No. RM21-17-000
Allocation and Generator Interconnection	)	

**REPLY COMMENTS OF PUBLIC INTEREST ORGANIZATIONS**

**I. Introduction**

Sustainable FERC Project, Natural Resources Defense Council, Sierra Club, Environmental Defense Fund, Southern Environmental Law Center, Conservation Law Foundation, Western Resource Advocates, Acadia Center, NW Energy Coalition, and Southface Institute (together “Public Interest Organizations” or “PIOs”) hereby submit these reply comments in response to the Federal Energy Regulatory Commission’s (“FERC” or “the Commission”) April 21, 2022, Notice of Proposed Rulemaking (“NOPR”) proposing reforms to its regional transmission planning and cost allocation requirements.<sup>1</sup> This filing further explains and clarifies aspects of our August 17, 2022, initial comments<sup>2</sup> in light of comments filed by other parties in this proceeding.

**II. Executive Summary**

Comments on the Commission’s NOPR evince widespread support across a diversity of sectors and stakeholders for its proposed transmission rule reform. While there is some variation on recommendations regarding the Commission’s proposed rule, the vast majority of

---

<sup>1</sup> Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, 179 FERC ¶ 61,028 (2022), 87 Fed. Reg. 26,504 (May 4, 2022).

<sup>2</sup> Comments of Pub. Int. Orgs, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5270 (“PIO Initial Comments”).

stakeholders agree that transmission planning reform is both necessary and the need for it is pressing. Extreme weather impacts to the grid have – and will continue – to intensify. Public policy and market-driven efforts to address and prepare for a changing climate are focusing increasingly on decarbonizing the economy and electrifying the building and transportation sectors. The energy system is diversifying rapidly because it must—not just to meet policy requirements and consumer demands but in order maintain reliability. Regional transmission is the lynchpin for addressing all of these needs while keeping the lights on. This massive energy transition relies on a transmission system that needs to double—and possibly quintuple—by 2050,<sup>3</sup> but whose development is currently stymied by a patchwork of inconsistent and often ineffective planning processes. PIOs thus applaud the Commission for its prioritization of transmission rule reform and urge FERC to move forward with a final rule expeditiously. As noted in our comments filed on August 17, 2022, PIOs largely agree with the Commission’s NOPR, and our proposed changes are designed to ensure that regional transmission planning is effective, enforceable, and just.<sup>4</sup> To that end, PIOs focus our reply comments on the following suggestions for critical improvements to the final transmission planning rule:

1. Threshold requirements are necessary for effective planning on a level playing field.

Given the monumental efforts involved in rulemaking of this magnitude, it is critically important that the Commission’s final rule avoids the pitfalls of Order No. 1000 – primary among them the ease with which meaningful compliance is avoided. Setting minimum requirements for scenario planning and benefit analysis is absolutely critical for achieving effective regional planning and levels the playing field between regional transmission

---

<sup>3</sup> Princeton Univ., *Net Zero Am.: Potential Pathways, Infrastructure, and Impacts*, 27-19, (Oct. 29, 2021), [https://netzeroamerica.princeton.edu/img/Princeton%20NZA%20FINAL%20REPORT%20SUMMARY%20\(29Oct2021\).pdf](https://netzeroamerica.princeton.edu/img/Princeton%20NZA%20FINAL%20REPORT%20SUMMARY%20(29Oct2021).pdf).

<sup>4</sup> See PIO Initial Comments at 1–5.

organization (“RTO”)/independent system operator (“ISO”) and non-RTO/ISO regions. Minimum requirements do not foreclose necessary flexibility to accommodate for regional differences: they are simply the cornerstone upon which any just, reasonable, not unduly discriminatory, and fair planning effort is built and, as the commenters establish, when effective transmission planning is actually occurring, most if not all of the Commission’s recommendations regarding benefits assessment are already being considered. Setting minimum floors does not preclude higher ceilings, needed flexibility or efficiency that adjust to the scope of the project; to the contrary, minimum requirements make planning more straightforward, less politically fraught, and enable the Commission to objectively ensure a level playing field. Moreover, because cost allocation must be roughly commensurate benefits, there can be no just and reasonable cost allocation without a comprehensive and holistic benefits analysis. Failure to mandate the necessary elements of just, reasonable, and non-discriminatory transmission planning is at the root of every problem with the current transmission system.

2. Transmission planning must be just and equitable.

FERC must ensure that transmission planning and implementation ceases to impose discriminatory impacts on frontline and tribal communities by explicitly putting equity and justice at the center of its transmission planning efforts. The final rule should detail specific steps the Commission and regional planners will take to ensure that: (1) that rights and roles given to states under the final rule also be given to tribal governments; (2) affected communities are engaged early in the regional transmission planning process, (3) there are opportunities for diverse stakeholder engagement at every stage of the planning process, and (4) transmission planning incorporates equity impacts as a central consideration at every level.

3. Reinstating a federal right of first refusal is not the solution to better transmission planning.

PIOs join many other commenters in urging the Commission to not reinstate the federal right of first refusal (“ROFR”) in any form. Granting incumbent transmission providers protection from competition is not supported by facts, would be poor policy, and may be inconsistent with law. If FERC believes that its removal of the federal ROFR in Order No. 1000 created incentives for transmission providers to avoid regional projects, the solution is to require robust regional planning that does not allow incumbent transmission owners to avoid the regional planning process. It is not to reinstate an unjust and unreasonable element of the transmission planning process.

4. Transmission planning needs independent oversight to ensure the efficiency and reliability of the grid.

While the NOPR did not address Independent Transmission Monitors (“ITM”), there is a clear need for independent analysis of new transmission facilities given that the vast majority of transmission investment since Order No. 1000 has been outside of regional planning processes and generally not subject to any review. Prudent transmission investments must include an independent review verifying the cost/benefit analysis, demonstrating that reasonable alternatives were considered, and identifying any anti-competitive concerns or confirming that none exist. A primary goal of an ITM should be to improve transparency of the regional, and eventually interregional, planning process. In addition to the role in the regional transmission planning process, the ITM should have a role in reviewing any transmission arising outside of the regional processes – namely local transmission. FERC should reverse its presumption that transmission expenses arising outside of regional independent planning processes are prudent, but could give great weight to independent evaluation of the project such as a that carried out by an independent regional planning body, an RTO/ISO, or an ITM.

### **III. Substantial Evidence Exists that FERC Needs to Set Minimum Requirements for Effective and Efficient Transmission Planning**

Most commenters agree with the general premise that Order No. 1000 has not lived up to its promise, and that the Commission needs to modify its transmission planning rules to produce just and reasonable rates.<sup>5</sup> Americans for a Clean Energy Grid’s (“ACEG”) reply comments demonstrate that FERC has made the requisite showing for a FPA section 206 finding that the rates produced under current transmission planning rules are unjust and unreasonable, and conclusively rebut comments by some commenters that no replacement rate is needed.<sup>6</sup> PIOs wholly concur with ACEG’s reply comments in this regard and for the sake of brevity will not repeat them here.

Some commenters call for regional “flexibility” and ask FERC not to adopt a “one size fits all” rule. PIOs agree that regions vary in certain ways, such as: resource mix; the number of non-jurisdictional entities; geographic distance between load centers; and the degree of reliance on competition. However, these types of variations do not change the need for a nationwide framework to proactively plan for the future. Nor do they alter the requisite elements for effective transmission planning in any region, including the need to consider certain factors in

---

<sup>5</sup> See generally, e.g., Comments of Acadia Ctr. and Conservation Law Found., Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 20220817-5151 (“Acadia/CLF Comments”); Comments of Americans for a Clean Energy Grid, Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 20220817-2222 (“ACEG Comments”); Comments of the Am. Clean Power Assoc., Alliance for Clean Energy-New York, Clean Grid Alliance, Mid-Atlantic Renewable Energy Council, and New York Offshore Wind All. on Notice of Proposed Rulemaking, Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 20220817-5211 (“ACP et al. Comments”); Comments of Advanced Energy Economy, Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 20220817-5213 (“AEE Comments”); Initial Comments of the Clean Energy Buyers’ Assoc., Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 20220817-5219 (“CEBA Comments”); Comments of the Off. of the People’s Counsel for D.C. and the Md. Off. of People’s Council Regarding the Notice of Proposed Rulemaking, Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 20220817-5291 (“DC/MD OPC Comments”); Comments of Eversource Energy Svc. Co., Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 20220817-5266; Comments of the Southeast Pub. Int. Groups (“SE Pub. Int. Groups Comments”), Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 20220817-5175; Reply Comments of Americans for a Clean Energy Grid, Docket No. RM21-17-000 (Sept. 18, 2022) (“ACEG Reply Comments”).

<sup>6</sup> ACEG Reply Comments at 13–14, 23–24.

determining the future resource mix, adapt the system to meet likely future scenarios including increasingly common severe weather events caused by climate change, and plan portfolios of projects that work together as a network.

This is particularly true when evaluating the many consumer and reliability benefits of transmission. As PIOs mentioned in our previous comments, for FERC’s transmission planning rules to be effective, they must include minimum benefit metrics that all planning regions must adopt.<sup>7</sup> As noted by GridLab, “FERC’s most effective role in establishing and ensuring compliance with transmission planning standards will be in setting minimum guidelines....”<sup>8</sup> PIOs clearly laid out in our initial comments that benefit metrics serve two of the most essential functions in building a reliable, resilient, and sustainable electricity grid at just and reasonable rates: (1) determining more efficient and effective solutions to solving transmission needs; and (2) ensuring that transmission costs are allocated in a manner commensurate with the benefits those projects provide.<sup>9</sup> The failure to set minimum requirements will allow transmission planning entities to continue to fail to adequately plan for the multiple known, calculable benefits of transmission, and will perpetuate the piecemeal transmission planning that results in investments that fail to maximize efficiencies for consumers or fairly allocate costs.

For the reasons detailed in PIOs’ Initial Comments, the Commission should require that transmission planning entities assess all of the 12 benefits laid out in the NOPR.<sup>10</sup> Each of these benefits has been shown to be quantifiable and correlate with the needs and goals associated with all long-range transmission planning. Moreover, a wide diversity of commenters agree that

---

<sup>7</sup> Comments of Pub. Int. Orgs., 119-124, Docket No. RM21-17-000 (Oct. 12, 2021), Accession No. 20211012-5519 (“PIO ANOPR Comments”); PIO Comments at 37–41.

<sup>8</sup> Comments of GridLab, at 2, Docket No. RM21-17-000 (Aug. 17, 2022) Accession No. 20220817-5142 (“GridLab Comments”).

<sup>9</sup> PIO Comments at 25–28.

<sup>10</sup> *See id.* at 37–41.

FERC’s rule needs to require a minimum set of mandatory benefits.<sup>11</sup> For example, the U.S. Department of Energy (“DOE”),<sup>12</sup> American Electric Power Service Corporation (“AEP”),<sup>13</sup> and International Transmission Company (“ITC”)<sup>14</sup> all indicate that there are certain benefits that should be mandatory for transmission planning entities to include in their planning processes. Even commenters that are not fully supportive of mandating the Commission’s proposed list of benefits recognize the need for transmission planners to quantify broad categories of benefits in order to plan effectively. For example, while Exelon advocates against FERC mandating benefits, it also says that “[i]t is worth quantifying as many of transmission infrastructures’ numerous benefits as possible”<sup>15</sup> and “guidance from the Commission on a minimum threshold for benefits will support alignment on compliance. For example, improved reliability, reduced production costs, and avoided energy losses could be set as the bare minimum of benefits that should be considered across long-term planning processes.”<sup>16</sup> Similarly, while Entergy does not advocate for a minimum set of benefits, it does “generally agree[] that [three] broad categories

---

<sup>11</sup> See, e.g., Comments of the U.S. Dept. of Energy to Notice of Proposed Rulemaking, at 30-33, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5010 (“DOE Comments”); Acadia/CLF Comments at 2-4; ACEG Comments at 32-48; ACP et al. Comments at 18-21; AEE Comments at 25-27; Initial Comments of Am. Elec. Power Svc. Corp., at 23-27, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5224 (“AEP Comments”); CEBA Comments at 19-21; Comments of Enel North Am., Inc., at 3, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5251 (“ENEL Comments”); Initial Comments of Joint Consumer Advoc., at 11, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5246 (“Iowa/Ind. Consumer Advocate Comments”); Initial Comments of New Eng. States Comm. on Elec., at 43-44, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5068 (“NESCOE Comments”); SE Pub. Int. Group Comments at 50-54.

<sup>12</sup> DOE Comments at 31 (DOE states that FERC should require transmission planners to analyze: “avoided or deferred reliability transmission projects and aging infrastructure replacement; either reduced loss of load probability or reduced planning reserve margin; production cost savings; reduced transmission energy losses; access to lower-cost generation; and mitigation of extreme events and system contingencies.”).

<sup>13</sup> AEP Comments at 21-23 (FERC must require every region to assess benefits that “fall into the following five categories: (1) savings obtained due to reduction in planning reserve margin and capacity investments, (2) adjusted production cost savings, (3) savings obtained due to avoided reliability or local reliability needs, (4) net load payment savings for benefiting zones only, and (5) increased interregional transfers.”).

<sup>14</sup> Comments of Intl. Transmission Co. d/b/a ITC Transmission, Mich. Elec. Transmission Co., LLC, ITC Midwest LLC, and ITC Great Plains, LLC at 3, 18-22, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5163 (“ITC Comments”).

<sup>15</sup> Comments of Exelon Corp., at 15, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5152 (“Exelon Comments”).

<sup>16</sup> *Id.* at 16.

should be considered in [long-term planning].”<sup>17</sup> Entergy tracks these broad categories to the more specific benefits outlined in the NOPR, showing that these three broad categories cover 10 of the 12 benefits proposed by FERC should be evaluated in the transmission planning process.<sup>18</sup> While commenters supporting the need for transmission providers to analyze certain benefits have different reasons for doing so, collectively these comments support planning transmission using benefits that roughly fall into three broad categories which correspond to most of the specific benefits outlined in the NOPR. First, capacity benefits must be considered in transmission planning. This roughly translates to the following benefits laid out in the NOPR: reduced loss of load probability or reduced planning reserve margin (#2), capacity cost benefits from reduced peak energy losses (#8), and deferred generation capacity investments (#9). Second, transmission planning must consider dispatch efficiency, access to less expensive resources, or adjusted production cost savings. This roughly translates to production cost savings (#3), access to lower cost generation (#10), reduced transmission energy losses (#4), and reduced congestion due to transmission outages (#5). Finally, transmission must be planned to maintain reliability and resilience: avoided or deferred reliability transmission facilities and aging transmission infrastructure replacement (#1); mitigation of weather and load uncertainty (#7); and mitigation of extreme events and system contingencies (#6).

---

<sup>17</sup> Initial Comments of the Entergy Operating Cos., at 21, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5315 (“Entergy Comments”).

<sup>18</sup> These three categories are: capacity benefits ((#2) either reduced loss of load probability or reduced planning reserve margin; (#8) capacity cost benefits from reduced peak energy losses; and (#9) deferred generation capacity investments); dispatch benefits ((#3) production cost savings; (#4) reduced transmission energy losses; (#5) reduced congestion due to transmission outages; and (#10) access to lower cost generation); and reliability or resilience benefits ((#1) avoided or deferred reliability transmission facilities and aging transmission infrastructure replacement; (#6) mitigation of extreme events and system contingencies; and (#7) mitigation of weather and load uncertainty). *Id.*

As PIOs made clear in our Initial Comments, a mandated minimum need not be burdensome and has room for flexibility where appropriate.<sup>19</sup> Similarly, the Commission can approve screening tools that public utility transmission providers can use to reduce analytic burdens in administering this list and allow providers to self-certify compliance and/or provide justifications for when benefits do not apply.<sup>20</sup>

Further, as discussed extensively in our initial comments, courts have made clear that in setting transmission cost allocation, FERC must have “an articulable and plausible reason to believe that the benefits [of transmission] are at least roughly commensurate with” the assigned costs.<sup>21</sup> FERC cannot argue that it has a plausible reason to believe that costs are roughly commensurate with benefits if it does not require that the full suite of known and calculable benefits be calculated.

The Commission should not be swayed by arguments that some transmission planners are already succeeding in regional planning and that requiring minimum benefits would be disruptive to existing processes. The Midcontinent Independent System Operator (“MISO”), for example, argues against mandatory benefits assessments because of the success it has had with its Multi-Value Project (“MVP”) portfolio and its Long-Range Transmission Plan (“LRTP”).<sup>22</sup> While we support MISO’s efforts at regional planning through MVP and LRTP, the relative success of those portfolios compared to other transmission planners does not argue against establishing a minimum set of benefits and a broader reform of the transmission planning process. In fact, even MISO has struggled with regional transmission planning. More than ten

---

<sup>19</sup> PIO Comments at 41.

<sup>20</sup> See *id.*

<sup>21</sup> *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009).

<sup>22</sup> Initial Comments of the MISO Transmission Owners, at 2–3, Docket No. RM21-17-000 (Sept. 6, 2022), Accession No. 20220906-5110 (“MISO TO Comments”).

years passed between its MVP portfolio—which represents only 16% of the transmission investments made in MISO since 2003<sup>23</sup>—and its recently approved LRTP portfolio. While the LRTP portfolio is an important set of regional projects, it is confined to only one portion of MISO’s footprint. We do not believe that the minimum benefits we are advocating for here would have slowed MISO’s ability to identify and approve the MVP and LRTP portfolios and may have, in fact, helped MISO develop projects that truly spanned the entirety of MISO’s footprint. The lack of effective regional planning has resulted in a situation where nine years after Entergy joined MISO, there is still no definitive commitment to integrate the North and South subregions. Even if the successes of MISO or any other individual transmission planner make for a relatively easy compliance with this rule, that should not stop the Commission from creating a minimum set of benefits nationwide, which are necessary to ensure a level playing field where transmission planning is not as successful.

In addition to minimum benefits, FERC must set minimum requirements for some factors in scenario planning, including: mandatory incorporation of estimates of consumer demand and corporate commitments into future resource mix estimates; the use of “best available data;” data and planning factor transparency requirements; and the mandatory inclusion of extreme heat and/or extreme cold into scenario modeling as appropriate.<sup>24</sup> Commenters expressed widespread support for these recommendations.<sup>25</sup> For example, ELCON states that “long-term scenario

---

<sup>23</sup> See, e.g., Comments of the Colo. Off. Of The Utility Consumer Advocate, at 30, Docket No. RM21-17-000 (Aug. 17, 2022) Accession No. 20220817-5287 (“COOUC Comments”) (MISO MVP projects comprise “only 16% of the \$42 billion growth in transmission infrastructure investment since MISO’s formation in 2003”).

<sup>24</sup> See PIO Comments at 17–22.

<sup>25</sup> See, e.g., DOE Comments at 11–14, 16–18; Acadia/CLF Comments at 7–10; ACEG Comments at 25–30; ACP et al. Comments at 10–13; CEBA Comments at 13–18; Comments of the Elec. Consumers Res. Council, at 8, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5057 (“ELCON Comments”); GridLab Comments at 3–4, 23–24; Comments of the Sw. Power Pool Market Monitoring Unit on Notice of Proposed Rulemaking, a 8, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5053 (“SPP MMU Comments”); SE Pub. Int. Groups Comments at 44–48; Entergy Comments at 15–16; Comments of the Georgia Pub. Svc. Comm. at, 4–5, Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 20220818-5036 (“GAPSC Comments”).

planning should not be limited to the anticipated resource mix but also take into consideration impacts on reliability and congestion management.”<sup>26</sup>

PIOs were also not alone in stressing the importance of requiring holistic planning that removes silos between long-term planning silos for public policy, economic, and reliability needs.<sup>27</sup> For example, PJM noted that “any endeavor to tackle the transmission needs of the electric grid of the future would be incomplete without factoring resilience into revisions to [intermediate and long-term transmission planning] processes.”<sup>28</sup> PJM explicitly calls for the Commission’s final rule to include enhanced reliability planning and that planning requirements across FERC rules be harmonized.<sup>29</sup> Shell Energy has also echoed calls “that the Commission push the industry to use a more holistic approach to overall system planning” that integrates all drivers of transmission, without separate siloes for economic, reliability, and public policy transmission planning.<sup>30</sup> Many commenters also agree that FERC must also mandate that long-term planning be done on a system-wide, portfolio basis.<sup>31</sup>

#### **IV. Transmission Planning Must Be Equitable and Prioritize Minimizing Impacts of the Energy Grid on Environmental Justice Communities**

Many commenters in this proceeding have called for equity-based transmission planning in order to address the needs of historically marginalized and disadvantaged communities<sup>32</sup> that

---

<sup>26</sup> ELCON Comments at 4.

<sup>27</sup> PIO Comments at 4–5, 14, 29–31. *See also, e.g.*, ACEG Comments at 31–32; CEBA Comments at 10; ACP et al. Comments at 25–26; Comments of The R Street Institute at 3, 7–8, Docket No. RM21-17 (Aug. 17, 2022), Accession No. 202208117-5207.

<sup>28</sup> Initial Comments of PJM Interconnection, LLC, at 3, 11, 13, Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 202208117-5298 (“PJM Comments”).

<sup>29</sup> *Id.* at 13–20.

<sup>30</sup> Reply Comments of Shell Energy North America (US), LP, Shell New Energies US, LLC, and Savion, LLC, 2–4, Docket No. RM21-17-000 (Sept. 19, 2022), Accession No. 20220919-5020.

<sup>31</sup> *See, e.g.*, Exelon Comments at 15–16; ITC Comments at 3; AEP Comments at 27; DOE Comments at 35; ACEG Comments at 48–49.

<sup>32</sup> “Disadvantaged communities,” also referred to as “overburdened and underserved communities” refer to communities that face societal disadvantages based on a combination of variables that may include low income, high unemployment, racial and ethnic segregation, linguistic isolation, disproportionate environmental stressor burdens

are disproportionately negatively affected by today’s energy system.<sup>33</sup> Extensive evidence demonstrates that the nation’s energy system has been planned, sited, and operated in ways that disproportionately burden low-income communities and communities of color.<sup>34</sup> In addition to being more likely to live near and be affected by highly polluting and dangerous fossil fuel generation, disadvantaged communities are more likely to include people who struggle to pay for the electricity they need, pay a higher percentage of their total income toward electricity costs, are more likely to be harmed by disruptions of service due to outages, and are more likely to live in places impacted by the siting of large infrastructure including transmission lines.<sup>35</sup> Moreover, as noted by WE ACT:

Under investments in maintaining the grid have left it unreliable and unfit for a climate-impacted world. In the last six years, power outages across the country have grown two-fold due to an aging system and increasingly disruptive weather events. These natural disasters (e.g. “Gulf Coast hurricanes, West Coast wildfires, Midwest heat waves and a Texas deep freeze”) and accompanying failures in electricity transmission disproportionately affect environmental justice communities at the frontlines of the climate crisis. Communities of color and low-income communities are more susceptible to power outages due to the racist government practice of redlining and associated area disinvestment; the expense and inaccessibility of life-saving generators; higher rates of reliance on electricity-dependent durable medical equipment; lower likelihood of having three days-worth store of food, drinking water, and medication; lack of emergency

---

and high cumulative impacts, high energy cost burden and low energy access, and jobs lost through the energy transition. Off. of Mgmt. and Budget, *Interim Implementation Guidance for the Justice40 Initiative*, at 2–3 (July 20, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

<sup>33</sup> See Acadia/CLF Comments at 11–12; California Energy Commission Comments, at 2, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5004 (“CEC Comments”); Center for Biological Diversity Comments, at 20–24, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5121 (“CBD Comments”); Comments of the City of New York, 3–4, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5233 (“NYC Comments”); COUCA Comments at 23–24; Comments of the Conservation and Renewable Energy Coalition, *passim*, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5313 (“CREC Comments”); DOE Comments at 9; Comments of Greater Grand Rapids Chapter of the Nat’l. Assoc. for the Advancement of Colored People, *passim*, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5284 (“GGR NAACP Comments”); Initial Comments of Massachusetts Attorney General Maura Healey, at 53–54, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5210 (“MA AG Comments”); Comments of the Nat’l Assoc. of State Energy Officials, at 5, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5085 (“NASEO Comments”); WE ACT Comments, *passim*, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5001 (“WE ACT Comments”).

<sup>34</sup> MA AG Comments at 53–54.

<sup>35</sup> See GGR NAACP Comments at 8–9.

communications in multiple languages; and a lack of prioritization in power restoration. Grid unreliability is an urgent environmental injustice issue.<sup>36</sup>

In announcing the Commission’s Equity Action Plan in April 2022, Chairman Glick stated that “FERC must meet its responsibility to ensure our decisions do not unfairly impact historically marginalized communities,” promising that this was an initial step in “build[ing] a culture and program that ensures the Commission is appropriately integrating environmental justice and equity issues into our decision making and day-to-day operations.”<sup>37</sup> This promise is reflected in the Equity Action Plan itself, which states that “[t]he equity assessment process and EAP are initial steps in the Commission’s efforts to better integrate environmental justice and equity considerations in its decision-making processes, agency wide.”<sup>38</sup> This NOPR is an opportunity for the Commission not only to work toward ensuring that, going forward, our energy system does not continue to disproportionately harm and burden environmental justice communities, but also to support those communities through the clean energy transition.

Moreover, the NOPR takes pains to propose reforms that “may minimize delays and additional costs that can be associated with siting proceedings that follow the regional transmission planning and cost allocation processes at the federal level.”<sup>39</sup> As pointed out by Greater Grand Rapids NAACP, state and local governments are increasingly requiring state agencies to ensure equitable outcomes as part of the decision making process in their

---

<sup>36</sup> WE ACT Comments at 1–2 (citations omitted).

<sup>37</sup> See Press Release, *FERC issues Equity Action Plan*, FERC (Apr. 15, 2022), <https://www.ferc.gov/news-events/news/ferc-issues-equity-action-plan>.

<sup>38</sup> See FERC, *Equity Action Plan*, at 2 (Jan. 20, 2022) (“The equity assessment process and EAP are initial steps in the Commission’s efforts to better integrate environmental justice and equity considerations in its decision-making processes, agency wide.”), <https://www.ferc.gov/news-events/news/ferc-issues-equity-action-plan#>.

<sup>39</sup> NOPR at P 301.

transmission siting proceedings.<sup>40</sup> Thus, including environmental justice issues in the transmission planning process can make it easier for planned transmission to actually be sited and built.

Unfortunately, the Commission says nothing of whether or how transmission planners must prioritize equity in transmission planning in order to cease having negative impacts of transmission fall disproportionately on historically marginalized communities and ensure that grid reliability investments be made equitably. In fact, the NOPR makes no mention of environmental justice or equity at all. And while the rule repeatedly discusses the importance of consultation with states, it makes no mention of a similar process for consultation with tribal nations, as appears to be required by FERC's Equity Action Plan. These are substantial oversights that threaten to undermine the public interest purposes of the NOPR. Without ensuring that transmission planning is equitable and benefits rather than continues to harm environmental justice communities, the Commission cannot hope to realize the goal of the NOPR to meet public policy goals and ensure just, reasonable, and non-discriminatory rates.

The Commission can and should use the final rule in this proceeding to improve the energy system with respect to affected communities. Like WE ACT, we “urge FERC to reframe its approach to regulating power transmission” in a way that centers environmental justice by facilitating the construction of a just and cleaner energy grid.<sup>41</sup> We also agree with the Greater Grand Rapids NAACP that the Commission must explicitly require transmission providers to consider transmission needs driven by public policies calling for energy equity and justice, as

---

<sup>40</sup> GGR NAACP Comments at 13, *citing, e.g.*, Va. Code Ann. § 56-265.2; Mich. Dept. of Env't, Great Lakes, and Energy, *MI Healthy Climate Plan*, at 7, 29 (Apr. 2022), <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Offices/OCE/MI-Healthy-Climate-Plan.pdf?rev=d13f4adc2b1d45909bd708cafccbfafa&hash=99437BF2709B9B3471D16FC1EC692588>.

<sup>41</sup> WE ACT Comments at 2.

they are otherwise “likely to exclude these considerations in part because of the mistaken belief that applying transmission rules on an impartial basis, alone, will ensure energy equity and justice.”<sup>42</sup>

In addition to clarifying that the NOPR must require the same levels of engagement with tribal governments as it does with states, we agree with the Massachusetts Attorney General that the final rule needs to include specific steps the Commission and regional planners will take to ensure that: (1) affected communities are engaged early in the regional transmission planning process; (2) there are opportunities for diverse stakeholder engagement at every stage of the planning process; and (3) new transmission proposals are evaluated with equity impacts as a central consideration.<sup>43</sup>

There are at least three critical ways the NOPR can evaluate equity impacts on frontline communities. First, the Commission should make clear that Long-Term Regional Transmission Planning comply with and incorporate relevant aspects of applicable federal, state, tribal, and local environmental and energy justice policies—including future resource mix impacts, assignment of transmission benefits toward disadvantaged communities, and project selection.<sup>44</sup>

Second, as part of its benefits analysis, the Commission should require transmission planners to consider the ways in which transmission projects can increase access to lower-cost renewable generation while reducing reliance on uneconomic, financially burdensome, and polluting fossil fuel generation as part of a portfolio-wide benefit analysis and project selection. Increasing access of lower-cost renewable energy to environmental justice communities has an outsized benefit that may be missed on a pure dollar-for-dollar comparison of project costs and

---

<sup>42</sup> GGR NAACP Initial Comments at 7.

<sup>43</sup> MA AG Comments at 54.

<sup>44</sup> *See, e.g.*, GGR NAACP Comments at 12–15, 21–23, listing notable federal, state, and local public policies requiring that equity and energy justice inform decision-making processes; WE ACT Comments at 4–6.

benefits. For example, a project that lowers energy costs for a low-income community will have a greater impact on rates than a project that lowers energy costs by the same amount for a wealthier community, as people in low-income communities spend a higher percentage of their income on electricity costs. Further, as PIOs have noted in their prior comments, the Commission should require that benefits analyses include benefits associated with reduced emissions impacts.<sup>45</sup> This is especially critical to ensuring equitable planning. Increasing access to renewable energy and reducing reliance on fossil fuel generation has an outsized benefit to environmental justice communities that are more likely to be located near highly polluting generators.<sup>46</sup> Proximity to fossil generation substantially harms people's health.<sup>47</sup> This harm puts people in environmental justice communities under greater financial strain due to direct medical costs and the indirect reduction in wages caused by increased health problems. The Commission cannot deem rates to be just and reasonable where transmission planners fail to value the full benefits of reducing the quantifiable harms to overburdened and disadvantaged justice communities when selecting projects. We also echo other commentors in recommending that the Commission require transmission planners to engage with disadvantaged communities throughout the planning process and to factor equity effects into the decision-making process for project selection.

Finally, the Commission should also require transmission planners to consider the impacts of siting and constructing large infrastructure in or near disadvantaged communities that have been disproportionately burdened by transmission and generation infrastructure. Many of

---

<sup>45</sup> See PIO Comments at 26; PIO ANOPR Comments at 80, Ex. A (The Brattle Group and Grid Strategies, *Transmission Planning for the 21<sup>st</sup> Century: Proven Practices that Increase Value and Reduce Costs*, at 31, 34–35, 50–51, 101).

<sup>46</sup> See CBD Comments at 21–22.

<sup>47</sup> See *id.*

these communities have been significantly harmed by the construction of large infrastructure near and through them.<sup>48</sup> The Commission must take steps to prevent further harm and destruction on already overburdened communities and ensure that the benefits of transmission infrastructure are equitably shared. The Commission should create requirements for how transmission planners must engage with communities to ensure that their voices are heard early and often in the planning processes and are meaningfully considered. The Commission should also require transmission providers to incorporate the equity impacts when evaluating which transmission projects are selected, including whether construction of projects will impact environmental justice communities and what the cumulative impacts of the projects will be.<sup>49</sup>

## **V. FERC's ROFR Proposal is Unjust and Unreasonable**

The NOPR proposes to largely reinstate incumbent transmission providers' federal right of first refusal (ROFR).<sup>50</sup> The stated motivation is pragmatic: the Commission finds that exposure to competition may present transmission providers with "perverse investment incentives" that discourage regional planning.<sup>51</sup> PIOs join many other commenters in urging the Commission to not reinstate the federal ROFR in any form.<sup>52</sup> As briefly explained below,

---

<sup>48</sup> Reply and Post-Technical Conference Comments of Acadia Ctr. and Conservation Law Found., at 1–20, Docket No. RM21-17-000, Nov. 30, 2021, Accession No. 20211130-5219.

<sup>49</sup> *See id.* at 21–22; Comments of the U.S. Dept. of Energy to Advance Notice of Proposed Rulemaking, at 4, 38, Docket No. RM21-17-000, Oct. 12, 2021, Accession No. 20211012-5498 ("DOE ANOPR Comments"); PIO ANOPR Comments at 113–117; WE ACT Comments at 4–6.

<sup>50</sup> NOPR at P 358.

<sup>51</sup> *Id.* at P 350.

<sup>52</sup> *See, e.g.* Comment of U.S. Dept. of Justice and Fed. Trade Comm., Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5300 ("DOJ/FTC Comments"); Initial Comments of Anbaric Devpt. Partners, LLC, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817- 5024 ("Anbaric Comments"); CEBA Comments at 31–32, DC/MD OPC Comments at 41–47, Comments by the Elec. Transmission Competition Coalition in Opposition to Certain Aspects of the Proposed Rule, *passim*, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5258 ("Enel Comments"); Comments of the Elec. Power Supply Assoc. ("EPSA Comments") *passim*, Docket No. RM21-17-000, Aug. 17, 2022, Accession No. 20220817-5157; Comment of the Harvard Elec. Law Initiative, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5179 ("Harvard Comments"); Initial Comments of Ky. Pub. Svc. Comm. Chairman Kent Chandler, at 9–24, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5304 ("Kent Chandler Comments"); Comments of LS Power Grid,

granting incumbent transmission providers protection from competition is not supported by facts, would be poor policy, and may be inconsistent with law.

Several commenters, mostly transmission providers, support reinstating the federal ROFR.<sup>53</sup> Based on versions of a single report,<sup>54</sup> these commenters all offer variations on the claim that competition has not yielded consumer benefits.<sup>55</sup> However, that report has significant limitations: even though 31 transmission competitive projects have completed selection processes, it only examines six,<sup>56</sup> raising concerns of cherry-picked data; it fails to compare competitive offers with those made by incumbents or the costs of projects not competitively bid; and it discusses cost overruns, schedule delays, and performance problems in competitively procured projects but fails to compare those with uncompetitive projects. While the Concentric Report's "case study" approach limits it to providing anecdotes, multiple comprehensive studies support the conclusion that competitive transmission procurement results in costs savings in the range of 20% to 40%.<sup>57</sup> Transmission providers' claims that the cost savings from competition are "illusory" simply do not hold up to scrutiny.<sup>58</sup>

---

LLC to the Comm.'s Notice of Proposed Rulemaking, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5294 ("LS Power Comments"); MA AG Comments at 40–53, Initial Comments of the Nat'l. Assoc. of State Utility Consumer Advocs., at 8, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5285 ("NASUCA Comments"); NYC Comments at 10–13.

<sup>53</sup> See MISO TO Comments at 49, Comments of Developers Advocating Transmission Advancements (a coalition of transmission-owning utilities), *passim*, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5078 ("DATA Comments"); Comments of Dominion Energy Svcs, Inc. 59–64, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5395; Initial Comments of the Edison Elec. Inst. ("EEI Comments") 5–6, 24–32, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5096.

<sup>54</sup> Concentric Energy Advisors, Inc., *Competitive Transmission: Experience to-Date Shows Order No. 1000 Solicitations Fail to Show Benefits* (Aug. 2022) (prepared on behalf of the DATA Coalition: Ameren Services, Eversource Energy, Exelon Corp., ITC Holdings Corp., National Grid USA, Public Service Electric and Gas Company, Xcel Energy), <https://ceadvisors.com/wp-content/uploads/2022/08/Competitive-Transmission-Experience-To-Date-Shows-Order-No.-1000-Solicitations-Fail-to-Show-Benefits.pdf> ("2022 Concentric Report") (DATA Comments, Attach. A). Many other commenters also cited to the 2022 Concentric Report, including but not limited to: MISO Transmission Owners, Ameren, ITC, and other transmission owners.

<sup>55</sup> See, e.g., Developers Advocating Transmission Advancements Initial Comments at 7.

<sup>56</sup> See 2022 Concentric Report at 14.

<sup>57</sup> See Electricity Transmission Competition Coalition Initial Comments at 4.

<sup>58</sup> MISO Transmission Owners Comments at 56.

Nearly all commenters who would not hold monopolies under a reinstated federal ROFR agree that retaining competition is the preferred policy.<sup>59</sup> There is wide support that the Order No. 1000 findings that “federal rights of first refusal create opportunities for undue discrimination and preferential treatment against nonincumbent transmission developers” and that a federal ROFR “is unjust and unreasonable because it may result in the failure to consider more efficient of cost-effective solutions to regional needs” still hold.<sup>60</sup>

Transmission providers’ response is unavailing. The Commission found that Order No. 1000’s competition creates incentives for transmission providers to avoid regional projects. Transmission providers agree that Order No. 1000’s removal of the federal ROFR discouraged the development of regional transmission,<sup>61</sup> but neglect to say that is because they actively work to avoid regional transmission planning processes in favor of less efficient effective local projects. Transmission providers then offer that outcome as justification for returning their monopoly over transmission projects. The evidence that some transmission providers may have successfully engaged in anti-competitive behavior<sup>62</sup> is hardly a convincing argument for granting them *more* market power. The Commission should stand by its policy of encouraging competition. PIOs maintain that the most effective solution to ensure regional transmission is planned is to set threshold requirements around the regional planning process and to eliminate the perverse incentives for transmission providers to over-invest in uncompetitive projects.<sup>63</sup>

---

<sup>59</sup> See, e.g., DOJ/FTC Comments, *passim*; Anbaric Comments at 11–17; CEBA Comments at 31–32, DC/MD OPC Comments at 41–47, Enel Comments, *passim*; EPSA Comments, *passim*; Harvard Comments, *passim*; Kent Chandler Comments at 9–24; LS Power Comments, *passim*; MA AG Comments at 40–53; NASUCA Comments at 8; and NYC Comments at 10–13.

<sup>60</sup> Order No. 1000 at PP 286, 284.

<sup>61</sup> See, e.g., MISO TO Comments at 53.

<sup>62</sup> See Comments of the Indep. Market Monitor for PJM, at 7, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817 (describing the existence of anti-competitive behavior as a “self-evident conclusion”).

<sup>63</sup> PIO Comments at 83; see also Harvard Comments at 10.

The NOPR cites FPA Section 309 as granting FERC discretion to amend or rescind Order No. 1000's findings and mandates.<sup>64</sup> However, FPA Section 309 is not a license for arbitrary or capricious decision making; it only allows the Commission to act as "necessary or appropriate to carry out the provisions of this chapter."<sup>65</sup> Those provisions – as relevant here FPA sections 205 and 206<sup>66</sup> – state that any rate that is not just or reasonable is unlawful<sup>67</sup> and that no rate may be unduly discriminatory.<sup>68</sup> In this light, the Commission must separate the question of if Order No. 1000 reforms were effective from any reevaluation of the Order No. 1000 findings that then existing federal ROFRs were unjust, unreasonable, and unduly discriminatory.

Although there appears to be broad consensus that Order No. 1000's attempts to promote competition have not been effective, that does not grant FERC authority to reinstate unlawful rates. PIOs agree with other commenters that the proposed joint ownership conditions will most likely simply result in incumbent transmission providers' partnering with each other to the exclusion of other transmission developers, resulting in unjust and unreasonable rates.<sup>69</sup> Absent explanation as to why transmission providers would be any less inclined to act in their own economic self-interest, the joint ownership proposal does not address the Order No. 1000 finding that a federal ROFR leads to discriminatory rates.

It is not within FERC's authority to offer a compromise of accepting unjust, unreasonable, and unduly discriminatory rates in exchange for a better-functioning regional planning process. Rather, FERC must address any ineffectiveness of its removal of the federal

---

<sup>64</sup> NOPR at P 351, *citing* 16 U.S.C. § 825h.

<sup>65</sup> 16 U.S.C. § 825h.

<sup>66</sup> 16 U.S.C. §§ 824d, 824e.

<sup>67</sup> 16 U.S.C. §§ 824d(a), 825e(a).

<sup>68</sup> 16 U.S.C. §§ 824d(b), 825e(a).

<sup>69</sup> *See, e.g.*, Harvard Comments at 12–22.

right of first refusal with robust regional planning requirements that do not allow incumbent transmission owners to avoid the regional planning process.

## **VI. PIOs Support the Creation of Independent Transmission Monitors to Provide Oversight Over the Regional Planning Process**

While the NOPR did not address ITM, this issue is featured prominently in the Advanced Notice of Proposed Rulemaking (“ANOPR”).<sup>70</sup> In the ANOPR, FERC sought comment on potential measures it could take to ensure that there is appropriate oversight over how new regional transmission facilities are identified, planned, and paid for, and whether it would be appropriate for the Commission to require that transmission providers in each RTO/ISO and non-RTO/ISO region establish an independent entity to monitor the planning and cost of transmission facilities in the region.<sup>71</sup>

As PIOs mentioned in our ANOPR comments and in our initial NOPR comments, the need for independent analysis of new transmission facilities is readily apparent given that the vast majority of transmission investment since Order No. 1000 is in the form of owner-initiated transmission projects arising outside of regional planning that are generally not subject to any review.<sup>72</sup> Prudent transmission investments must include an independent review verifying the cost/benefit analysis, demonstrating that alternatives were considered, and identifying any anti-competitive concerns or confirming that none exist. Numerous commenters in this proceeding have emphasized the need for independent oversight.<sup>73</sup> Typical among these was the Department

---

<sup>70</sup> Building for the Future Through Elec. Regional Transmission Planning and Cost Allocation and Generator Interconnection, 176 FERC ¶ 61,024 at PP 163–175 (2021).

<sup>71</sup> *Id.* at P 163.

<sup>72</sup> PIO ANOPR Comments at 72; PIO Comments at 2-3, 6-9. *See also* NOPR at P 26, 36.

<sup>73</sup> DOE ANOPR Comments at 49; DOJ/FTC NOPR Comments at 21; DC/Maryland OPC NOPR Comments at 40; Iowa/Ind. Consumer Advocate NOPR Comments at 26–29; Kent Chandler Comments at 25; MA AG Comments at 26–27, NASUCA NOPR Comments at 6-7; Joint Comments of the Non-RTO NASUCA States, at 5–9, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5318 (“Non-RTO NASUCA Comments”); SE Pub. Int. Groups Comments at 56–57, Comments of Western Public Interest Orgs., at 35–36, Docket No. RM21-17-000 (Aug. 17, 2022), Accession No. 20220817-5021.

of Energy, which stated: “Transmission planning, interconnection, and cost allocation all involve issues of great importance to the public, often with conflicting interests among participants... applicants should have the option of calling for review of such studies by an independent entity, such as a regional transmission monitor.”<sup>74</sup> An ITM would also be able to provide expertise in understanding and replicating planning assumptions.<sup>75</sup>

A primary goal of an ITM should be to improve transparency of the regional, and eventually interregional, planning process. As the Commission explained in the ANOPR “the record created by the [ITM] could help the Commission in ensuring that the design of the regional transmission planning and cost allocation processes remain just and reasonable and not unduly discriminatory or preferential.”<sup>76</sup> A neutral third-party analysis of a long-term regional transmission plan, its implementation, and its cost allocation methods would assist the regulatory process where privately owned, vertically integrated utilities have no incentive to control costs on their own.

With respect to the scope of the ITM and its responsibilities, PIOs agree with many of the points raised in the initial comments of the Non-RTO National Association of State Utility Consumer Advocates (“NASUCA”) as well as other parties. For example, PIOs agree that ITMs should be required in both RTO/ISO and non-RTO/ISO regions. With respect to non-RTO/ISO regions, “it often appears that the same underlying utility-generated transmission plans and modeling are used both in the state integrated resource plan (“IRP”) process and the regional planning process and, in a circular fashion, the results from one process are used as evidence in

---

<sup>74</sup> DOE ANOPR Comments at 49.

<sup>75</sup> See Non-RTO NASUCA Comments at 7–8 (“the modeling and analysis are highly technical and presented on strictly defined schedules, making it difficult for other stakeholders, such as consumer advocates who are perennially under-resourced and overworked, to participate effectively in the planning process.”).

<sup>76</sup> ANOPR at P 173.

the other process to justify the same or similar plan and modeling results.”<sup>77</sup> ITMs should also be required in RTO/ISO regions given that they would provide additional transparency to RTO/ISO transmission planning processes and the plans they produce.<sup>78</sup>

Similarly, PIOs agree that ITMs should have an active role in transmission planning. In RTO/ISO regions, the ITM could take on a more general role to complement the planning process, but in non-RTO/ISO regions that have little coordination and oversight, the ITM could have more prescriptive responsibilities. However, it is critical that the ITM be an independent entity, which means that the ITM should be free of ownership entanglements with transmission owners or other market participants, including a requirement that the ITM entity not receive payments from the filing party.

In addition to the role in the regional transmission planning process, the ITM should have a role in reviewing any transmission arising outside of the regional processes – namely local transmission.<sup>79</sup> As PIOs said in our Initial ANOPR Comments and Initial NOPR Comments, FERC should reverse its presumption that transmission expenses arising outside of regional independent planning processes are prudent.<sup>80</sup> In reviewing transmission cost recovery FPA Section 205 filings, the Commission should also give great weight to independent evaluation of the project such as a review carried out by an independent regional planning body, an RTO/ISO, or an ITM. The ITM could review local projects to verify that they are not displacing more efficient or cost-effective regional alternatives that may satisfy multiple transmission needs.

---

<sup>77</sup> Non-RTO NASUCA Comments at 8.

<sup>78</sup> COUCA Comments at 32 (“RTOs seek to attract and retain transmission owning members and can be expected to facilitate the interests of these members in opposing or failing to institute processes that would impose greater discipline, cost control, and efficiency in transmission planning and development.”).

<sup>79</sup> See PIO ANOPR Comments at 62.

<sup>80</sup> See *id.*; PIO Comments at 52.

While PIOs agree that the Commission may want to consider regional flexibility in terms of defining the role of the ITM in each planning region, below is a non-exhaustive list of tasks that an ITM could perform:

- Coordination of data validity, data sharing and data transparency, including the timely sharing of transmission planning models and other planning information.
- Facilitate stakeholder participation in all phases of the transmission planning process.
- Assist with selection criteria for the RFP process.
- Assist in dispute resolution of cost allocation between TOs, between RTO/ISOs, or between states.
- Independent analysis of cost estimates.
- Consideration of grid-enhancing technologies such as reconductoring with advanced conductors, Power Flow Controllers, Dynamic Line Rating (DLR) and other technologies in the planning process.
- Review competitive solicitations and offer input to increase transparency, fairness, and accountability.
- Evaluate local projects to see if a regional solution results in better benefit/cost ratios.
- Consult with ITMs in other regions to consider opportunities for interregional transmission projects that could benefit both regions.

Finally, given the oversight role that an ITM will play concerning transmission tariff rules and protocols, PIOs believe that this entity should have the same FPA section 206 authority as independent market monitors have should a perceived violation occur.

## VII. Conclusion

PIOs appreciate the opportunity to provide these reply comments on the Commission's timely and important NOPR and ask that the Commission consider the recommendations made herein in this rulemaking.

Dated: September 19, 2022

Respectfully submitted,

/s/ Cullen Howe

Cullen Howe  
Senior Attorney  
Natural Resources Defense Council  
40 West 20th Street  
Eighth Floor  
New York, NY 10011  
[chowe@nrdc.org](mailto:chowe@nrdc.org)

/s/ Danielle Fidler

Danielle Fidler  
Staff Attorney  
Earthjustice, Clean Energy Program  
1001 G Street NW, Suite 1000  
Washington, DC 20001  
[dfidler@earthjustice.org](mailto:dfidler@earthjustice.org)

*Counsel for Natural Resources  
Defense Council*

/s/ Katie Southworth

Katie Southworth  
Program Director, Advocacy  
Southface Institute  
241 Pine St NE  
Atlanta, GA 30308  
[ksouthworth@southface.org](mailto:ksouthworth@southface.org)

/s/ Melissa E. Birchard

Melissa E. Birchard  
Director, Clean Energy  
Acadia Center  
198 Tremont Street, Suite 415

/s/ John Moore

John Moore, Director  
/s/ Thomas Rutigliano  
Thomas Rutigliano, Senior Advocate  
Sustainable FERC Project  
1125 15th Street NW, Suite 300  
Washington DC 20005  
[Moore.fercproject@gmail.com](mailto:Moore.fercproject@gmail.com)  
[trutigliano@nrdc.org](mailto:trutigliano@nrdc.org)

/s/ Justin Vickers

Justin Vickers  
Senior Attorney  
Sierra Club, Environmental Law Program  
70 E Lake St., Suite 1500  
Chicago, IL 60601  
[Justin.Vickers@sierraclub.org](mailto:Justin.Vickers@sierraclub.org)

/s/ Ted Kelly

Ted Kelly  
Senior Attorney, Energy  
Environmental Defense Fund  
1875 Connecticut Ave. NW, Suite 600  
Washington, DC 20009  
[tekelly@edf.org](mailto:tekelly@edf.org)

/s/ Nicholas J. Guidi

Nicholas J. Guidi  
Federal Energy Regulatory Attorney  
Southern Environmental Law Center  
122 C St. NW, Suite 325  
Washington, DC 20001  
[nguidi@selcdc.org](mailto:nguidi@selcdc.org)

Boston, MA 02111  
[mbirchard@acadiacenter.org](mailto:mbirchard@acadiacenter.org)

/s/ Fred Heutte

Fred Heutte  
Senior Policy Associate  
NW Energy Coalition  
811 1st Ave, Suite 305  
Seattle, WA 98104  
[Fred@nwenergy.org](mailto:Fred@nwenergy.org)

/s/ Vijay Satyal

Vijay Satyal  
Manager, Regional Energy Markets

/s/ Ken Wilson

Ken Wilson  
Engineering Fellow  
Western Resource Advocates  
307 West 200 South, Suite 2000  
Salt Lake City, UT 84101  
[Vijay.satyal@westernresources.org](mailto:Vijay.satyal@westernresources.org)  
[Ken.Wilson@westernresources.org](mailto:Ken.Wilson@westernresources.org)

/s/ Phelps Turner

Phelps Turner  
Senior Attorney  
Conservation Law Foundation  
53 Exchange Street, Suite 200  
Portland, ME 04101  
[pturner@clf.org](mailto:pturner@clf.org)