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May 3, 2023

The Honorable Joe Manchin III
Chairman
Committee on Energy and Natural Resources
U.S. Senate
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John Barrasso
Ranking Member
Committee on Energy and Natural Resources
U.S. Senate
304 Dirksen Senate Office Building
Washington, DC 20510

Re: Comments for the Record – “Conduct Oversight of FERC” Hearing

Dear Chairman Manchin and Ranking Member Barrasso:

Thank you for the opportunity to provide comments for the record on the “Conduct Oversight of FERC” hearing.

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with \$1.1 trillion in annual sales, over 12,000 facilities nationwide, and with more than 1.8 million employees. IECA membership represents a diverse set of industries including chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, automotive, independent oil refining, and cement.

America’s electricity consumers once again reach out to you to ask for your support in reminding the Federal Energy Regulatory Commission (FERC) that their core mission under the Federal Power Act is to protect electricity consumers¹ and that you do not support the FERC backtracking on transmission competition, as their current Notice of Proposed Rulemaking (NOPR)² contemplates.

Competitive bidding of new transmission projects reduces electricity costs for consumers, is sound anti-inflationary policy, and is a bipartisan conclusion. Under both Presidents Trump and Biden, the Department of Justice (DOJ) has challenged state incumbent preference laws (also known as rights of first refusal laws) that seek to circumvent the FERC’s existing requirements for transmission competition.³ Last year, the DOJ, this time joined by the Federal Trade Commission (FTC), reiterated

¹ Federal Power Act

² “Building for the Future Through Electricity Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Notice of Proposed Rulemaking, April 21, 2022. Although the NOPR was initiated under the former Chair, it remains pending.

³ Iowa Supreme Court, <https://www.iowacourts.gov/courtcases/15908/embed/SupremeCourtOpinion>

that stance in comments on the NOPR's proposal to significantly abandon transmission competition.⁴

FERC's Order No. 1000,⁵ issued over a decade ago, found that transmission competition was essential to the FERC's duty to determine just and reasonable rates and that eliminating contractual preferences in tariffs or agreements under federal jurisdiction was in the public interest.⁶ The FERC's pronouncement about the benefits of competition on transmission rates proved correct as savings from competed projects are significant and consistent with studies that have shown that competition could reduce the cost of transmission projects by up to 40 percent.⁷ Yet only three percent of all transmission investment since Order No. 1000 has been competitively awarded because of a lack of FERC enforcement of Order No. 1000 and incumbent lobbying efforts at the state level. With one study suggesting the United States may need to spend \$2.1 trillion by 2050⁸ to build-out the transmission grid, time is of the essence and your voice is essential now.

Just weeks ago, the Supreme Court of Iowa added their voice to Senators Heinrich and Lee,⁹ the DOJ, the FTC, the United States Court of Appeals for the Fifth Circuit, and hundreds of consumers and bipartisan groups¹⁰ in stating that consumers need competition to tackle ever rising electricity costs. The Iowa Supreme Court was very succinct that preferences are "quintessentially crony capitalism... rent-seeking, protectionist legislation is anticompetitive."¹¹ This conclusion is true whether the preference arises from a state preference law geared to get around the Federal Power Act and the FERC rules or incorporated by the FERC itself. As the Iowa Supreme Court held, "common sense tells us that competitive bidding will lower the cost of upgrading Iowa's electric grid and that eliminating competition will enable the incumbent to command higher prices for both construction and maintenance."¹²

⁴ Federal Trade Commission, DOJ Urge FERC to Preserve Robust Wholesale Electricity Markets, Federal Trade Commission, www.ftc.gov

⁵ Order No. 1000 - Transmission Planning and Cost Allocation, FERC, <https://www.ferc.gov/electric-transmission/order-no-1000-transmission-planning-and-cost-allocation#:~:text=Order%20No.%201000%20is%20a%20Final%20Rule%20that,to%20transmission%20planning%20processes%20and%20cost%20allocation%20methods>

⁶ RM10-23-002 Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, <https://www.ferc.gov/sites/default/files/2020-04/OrderNo.1000-B.pdf>

⁷ Brattle Group: Cost Savings Offered by Competition in Electric Transmission, https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf, even a 25 percent savings would save consumers an estimated \$525 billion by 2050. More specifically, reports indicate that competitive bidding processes could yield savings as follows: MISO (Midwest region): 15-28 percent cost savings; Southwest region (Southwest Power Pool): 50-58 percent savings; and Mid-Atlantic (PJM) region: 60-67 percent savings.

⁸ NET-ZERO AMERICA: Potential Pathways, Infrastructure, and Impacts, Princeton University, <https://netzeroamerica.princeton.edu/?explorer=year&state=national&table=2020&limit=200>

⁹ https://www.ieca-us.com/wp-content/uploads/2022.9.30-FINAL-Pro-Competition-Senate-ENR-letter-to-FERC_-Heinrich-Lee.pdf

¹⁰ <https://electricitytransmissioncompetitioncoalition.org>, groups as divergent as the California Public Utilities Commission and the R Street Institute agree that transmission competition is essential to electricity consumers, large and small.

¹¹ Iowa Supreme Court: <https://www.iowacourts.gov/courtcases/15908/embed/SupremeCourtOpinion> at 34

¹² Id.

As Senators focused on common sense measures for the public benefit,¹³ we ask that you lend your voice, and ultimately that of the entire Energy and Natural Resources Committee, to remind the FERC that consumers come first, even during times of transition and that more transmission competition is the right direction, not less. The cost reductions from projects that have been competitively bid across the country and the opinion of the Iowa Supreme Court shows just how out of step the FERC's transmission planning NOPR is on this critical issue. We urge you to tell the FERC that transmission competition is essential to their mission and to support the ETCC initiatives.¹⁴

Thank you for the opportunity to provide input. We look forward to working with you.

Sincerely,

Paul N. Cicio

Paul N. Cicio

President & CEO

cc: Senate Committee on Energy and Natural Resources
Federal Energy Regulatory Commissioners
The Honorable Jennifer Granholm

¹³ <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=7ED77CFE-162B-4ACE-9821-E45E785B8F5E>

¹⁴ See, <http://electricitytransmissioncompetitioncoalition.org/wp-content/uploads/ETCC-ANOPR-Comments-Filed1.pdf> asking for competition for transmission at 100 kV and above, and independent transmission planning.