

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

Building for the Future Through Electric )  
Regional Transmission Planning and Cost )  
Allocation and Generation Interconnection )

Docket No. RM21-17-000

**REPLY COMMENTS OF  
THE ELECTRICITY TRANSMISSION COMPETITION COALITION**

November 30, 2021

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The Electricity Transmission Competition Coalition (“ETCC”) appreciates the opportunity to submit these Reply Comments in response to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Advance Notice of Proposed Rulemaking (“ANOPR”) regarding regional transmission planning, regional cost allocation, and generation interconnection processes.<sup>1</sup> The ETCC supports the addition of needed transmission capacity at the lowest possible cost, which can be achieved with more competition in transmission planning, design, and construction. Expanding the integration and deployment of competition in transmission development should be a primary element of the Commission’s efforts to facilitate reasonable transmission expansion and replacement at rates that are just, reasonable, and not unduly discriminatory or preferential.

The ETCC is a broad-based and diverse coalition of large energy-intensive consumers, non-incumbent transmission developers, state consumer advocates, public power representatives, and others that support competition in transmission planning. The ETCC members in support of these Reply Comments are listed in the attached Appendix. The ETCC supports transmission investment driven by the needs of consumers and competitive market outcomes. Competition in

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<sup>1</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generation Interconnection*, 175 FERC ¶ 61,035 at p. 1 (2021) (“ANOPR”).

transmission planning and construction reduces costs to consumers, results in project construction to meet reliability requirements and market-driven transmission needs, and will help achieve the public policy objectives that the Commission intends to achieve through the ANOPR and any subsequent rulemaking. Accordingly, to promote competition and provide transparency in transmission planning and design, the ETCC encourages the Commission to adopt the following initiatives while rejecting contrary stakeholder proposals:

- Adopt rules to implement competitive processes in all jurisdictional regions, with collaboration among all stakeholders (not just transmission owners) to promote necessary transmission investment at the lowest possible cost.
- Eliminate all federal Rights of First Refusal
- Preempt state Rights of First Refusal laws
- Appoint Independent Transmission Planners in non-RTO/ISO regions
- Appoint Independent Transmission Monitors in all regions, with such authority to be assumed by either the existing RTO/ISO Independent Market Monitor or Independent Transmission Planner

Competition would provide a much-needed check on increasing transmission rates driven by current and future transmission investment. The members of the ETCC that are consumers should not be further burdened with the significant transmission cost increases that continue to occur, much less the significant additional transmission investment costs that certain industry stakeholders claim are necessary. Section 206 of the Federal Power Act (“FPA”) instructs the Commission to remedy “any . . . practice” that “affect[s]” a rate for interstate electricity transmission services “demanded” or “charged” by “any public utility” if such practice “is unjust, unreasonable, unduly discriminatory or preferential.”<sup>2</sup> The Commission should reject proposals,

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<sup>2</sup> 16 U.S.C. § 824e(a).

embedded in certain sets of initial comments, that would create or maintain barriers to competition as being contrary to these statutory mandates.

## **I. EXECUTIVE SUMMARY**

Competition should be the driving force for the Commission's establishment of just and reasonable rates at the lowest cost. Competition in the development of new transmission projects is the only means to achieve greater reliability, at lower costs, in a manner that results in fewer emissions. Transmission planning and construction without competition is unjust, unreasonable, and is unduly discriminatory and preferential. Likewise, transmission planning and construction processes without an Independent Transmission Planner and, separately, an Independent Transmission Monitor, are unjust and unreasonable. The ETCC urges the Commission to support competitive market processes and maintain transmission planning processes that follow well-established legal precedent and principles of prudent regulation.

Despite assertions from some parties in this proceeding, competition and collaboration are not mutually exclusive – collaboration among competitive developers, incumbent transmission utilities, and RTO/ISOs is necessary to fully realize the consumer benefits of competition. This collaboration must be all-inclusive; collaboration among an exclusive group of transmission owners is not true collaboration. Some stakeholders have wrongly asserted that competition has “stifled the cooperation and collaboration” among transmission owners, damaged the relationship between transmission owners and regional planning entities, and is not focused on the best interest of the customer.<sup>3</sup> Nothing could be further from the truth – competition provides numerous benefits to customers, particularly in the form of transmission investment at lower cost to maintain reliability with lower rates.

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<sup>3</sup> Comments of Edison Electric Institute, filed Oct. 12, 2021, in Docket No. RM21-17-000 (“EEI Initial Comments”) at 6, 21.

Transmission rates are already high, and some of the proposals made by stakeholders in initial comments would further increase transmission rates in a manner that would be unjust, unreasonable, and unduly discriminatory or preferential. For example, some stakeholders have proposed that the Commission reinstate the federal Right of First Refusal (ROFR), while other stakeholders have proposed that the Commission adopt a state opt-in approach to transmission competition. The Commission should reject these proposals because they are antithetical to the Commission's statutory responsibility to remedy any practice affecting transmission rates that are unjust, unreasonable, or unduly preferential or discriminatory. Consumers deserve the benefits of competition and the lower rates that competition in transmission planning and construction can provide.

Further, the Commission should refine and adopt its proposal to appoint Independent Transmission Monitors, and establish Independent Transmission Planners, both within RTO/ISO regions and outside of such regions. Independent Transmission Planners and Independent Transmission Monitors should have the obligation to ensure that competition is properly driving down rates, stakeholders are not exercising market power, and transmission projects are being placed in service for the benefit of consumers. The Commission has the authority to appoint Independent Transmission Planners and Independent Transmission Monitors and should exercise that authority. Independent Transmission Planners and Independent Transmission Monitors would bring much-needed transparency to transmission planning processes, including for supplemental and other transmission projects that may be unjustly driving up transmission rates.

**II. COMPETITION VERSUS COLLABORATION IS A FALSE DICHOTOMY – THE COMMISSION SHOULD ENABLE ALL STAKEHOLDERS TO COLLABORATE IN SUPPORT OF COMPETITION.**

Competition is essential to just and reasonable rates, and competition and collaboration are not mutually exclusive. Collaboration among competitive developers, incumbent transmission

utilities, RTO/ISOs, market monitors, the Commission, and other stakeholders is necessary to fully realize the consumer benefits of competition. Both competition and collaboration are means to the same ends – the cost-effective development of necessary transmission facilities. The more that incumbent transmission utilities collaborate (or are required to collaborate) with competitive developers, the more competition will develop and the commensurate consumer benefits will be realized. In arguing for a return of contractual monopoly status for monopoly entities to collaborate, the transmission utilities largely ignore that competition was put in place so that the Commission could ensure just and reasonable rates. Collaboration without competition, or collaboration exclusively between transmission utilities, offers no such guarantee. Transmission rates are not presumptively just and reasonable simply because projects were collaboratively planned. Instead, it is collaboration in support of competition that will result in the establishment of just and reasonable rates.

**A. The Commission should require RTO/ISOs and other Independent Transmission Planners to adopt both competition and collaboration for the development of new transmission facilities.**

Competitive processes lower the costs of new transmission investment. However, some stakeholders have asserted that “[c]ompetitive processes for transmission projects have had the natural effect of stifling the cooperation and collaboration that has historically existed between transmission owners.”<sup>4</sup> This is patently false. Meanwhile, these stakeholders also state that “[c]ollaboration among those with planning expertise is critical to building transmission in a timely and efficient manner and will be instrumental in developing the grid of the future.”<sup>5</sup> This, on the other hand, is true. But this truth does not support the proposition that competition stifles collaboration between transmission owners or regional planning entities – any correlation does not

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<sup>4</sup> EEI Initial Comments at 21.

<sup>5</sup> *Id.*



equal causation. Competition itself does not break down the ability for transmission owners to cooperate, nor is it a barrier to collaboration between transmission owners; instead, transmission owners have themselves refused to collaborate or cooperate to foster competitive processes that would enable their customers to receive the rate and reliability benefits provided by competition. The Commission should require RTO/ISOs and other Independent Transmission Planners to adopt competitive processes, encourage transmission owners to cooperate with regional transmission planners in order to mitigate increases in transmission rates, and require transmission owners to collaborate to implement competitive processes for the development of new transmission facilities. Further, the ETCC supports effective oversight of competitive processes. Even if the Commission does not appoint Independent Transmission Planners or Independent Transmission Monitors, the ETCC encourages the Commission to ensure that there is effective oversight such that competition is administered in a manner that results in pro-competitive outcomes.

Further, the assertions made by EEI and others about how competition is “not focused on the best interest of the customer”<sup>6</sup> is lacking any support from consumer advocates or customer-oriented stakeholders in this proceeding. The ETCC is a diverse coalition of large energy-intensive consumers, non-incumbent transmission developers, state consumer advocates, public power representatives, and others that support competition in transmission planning – and the ETCC, on behalf of its diverse array of utility customers, is requesting that the Commission support competition as the means of maintaining reliability at rates that are just, reasonable, and not unduly discriminatory or preferential.

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<sup>6</sup> *Id.*

## **B. Competition Is Not Antithetical To Transmission Development But A Necessary Requirement For Just And Reasonable Rates**

Although multiple consumer and other groups have advocated for additional transmission competition, many transmission owners have unsurprisingly sought to re-establish a monopoly for all future cost-of-service transmission development. These transmission owners have used the ANOPR as an opportunity to seek Commission reinstatement of contractual rights of first refusal and other anti-competitive initiatives.<sup>7</sup> The transmission owners had divided the market among themselves through various agreements among transmission owners in the creation of RTO/ISOs.<sup>8</sup> Having lost multiple efforts to preserve contractual ROFR arrangements,<sup>9</sup> the ANOPR represents the transmission owners' third bite at the apple.

Transmission utilities were unsuccessful in retaining a contractual right to divide the market because, as the Seventh Circuit observed, “[n]either in their briefs nor at oral argument were they able to articulate any benefit that such a right would (with limited exceptions discussed later in this opinion) confer on consumers of electricity or on society as a whole under current

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<sup>7</sup> See, e.g., EEI Initial Comments; Comments of the Indicated PJM Transmission Owners, filed Oct. 12, 2021, in Docket No. RM21-17-000 (“PJM TOs Comments”) at 28-33; Initial Comments of the MISO Transmission Owners, filed Oct. 12, 2021, in Docket No. RM21-17-000 (“MISO TOs Comments”) at 24-26; Comments of Southern California Edison Company, filed Oct. 12, 2021, in Docket No. RM21-17-000 (“SCE Comments”) at 5-6.

<sup>8</sup> See, *MISO Transmission Owners, et. al v Federal Energy Regulatory Commission*, 819 F.3d 329, 332 (7<sup>th</sup> Cir. 2016)(“MISO TOs”) (explaining that “the contract among the MISO transmission owners contained a right of first refusal.”) [cite to PJM, SPP and ISO-NE dockets accepting contract rights] In this regard, while many refer to the right of first refusal as a “federal” right of first refusal, including the Commission itself (see, e.g., Order No. 1000 at P 3) the phrase has always been somewhat of a misnomer as there is no federal requirement for a right of first refusal, merely a short window when contracts including a right of first refusal were accepted by the Commission and implemented though filed tariffs.: compare with Commission rejection of such provisions: *Cleco Power LLC*, 101 FERC ¶ 61,008 at P 117 (2002), *order terminating proceedings*, 112 FERC ¶ 61,069 (2005); see also *Carolina Power and Light Co.*, 94 FERC ¶ 61,273 at 62,010, *order on reh’g*, 95 FERC ¶ 61,282 at 61,995 (2001).

<sup>9</sup> *South Carolina Public Service Authority v. FERC*, 762 F.3d 41 (D.C.Cir.2014)(Upholding Order No. 1000’s require that rights of first refusal be removed); *MISO TOs*, 819 F.3d 329 (7<sup>th</sup> Cir. 2016)(rejecting MISO transmission owners’ assertion that their contractual right of first refusal could not be abrogated by FERC); *Oklahoma Gas & Elect. Co. v. FERC*, 827 F.3d 75 (D.C. Cir. 2016) rejecting SPP transmission owners’ assertion that their contractual right of first refusal could not be abrogated by FERC); *Emera Maine v. FERC*, 854 F.3d 662 (D.C. Cir. 2017) (upholding FERC’s determination that requiring the removal of contractual right of first refusal met the public interest requirements of the Mobile-Sierra Doctrine). Although the PJM transmission owners made similar arguments their Petition for Review was dismissed on the basis that they failed to preserve the argument.

conditions.”<sup>10</sup> This time, with no new arguments or evidence of consumer benefits from their market division proposal, the transmission utilities assert that the requirement for competition for regional transmission “*had the natural effect* of stifling the cooperation and collaboration that has historically existed between transmission owners . . .”<sup>11</sup> and posit that the lack of transmission owner cooperation and collaboration is harmful to getting necessary transmission built at just and reasonable rates.<sup>12</sup> Although the ETCC agrees that the transmission utilities’ efforts to circumvent the competition requirements of Order No. 1000 have been harmful, the ETCC does not agree that such efforts are “natural” nor that exclusive “collaboration” among transmission owners is more important to the Commission’s statutory obligations than competition.

The gravamen of the transmission utilities’ position is the false assertion that competition and collaboration are incompatible, that only through incumbent collaboration among themselves is needed transmission planning possible, and that they must therefore be returned to an insulated monopoly status by the Commission. EEI, the transmission utilities’ trade group, argues that:

Reinstating the federal ROFR [right of first refusal] will address the inefficiencies caused by the competitive process and help get needed transmission built in a cost-effective, timely manner as it allows the entities with the expertise, the knowledge of the existing system, the relationship with customers and regulatory agencies and the obligation to provide safe reliable service to build the lines selected in the regional process.<sup>13</sup>

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<sup>10</sup> MISO TOs, 819 F.3d at 332.

<sup>11</sup> EEI Comments at 21 [emphasis added].

<sup>12</sup> *Id.* at. 22.

<sup>13</sup> EEI Comments at 23.

As noted by ETCC's Initial Comments,<sup>14</sup> and those of multiple regulatory and consumer agencies,<sup>15</sup> including NARUC,<sup>16</sup> the transmission utilities' "customers and regulatory agencies" want more competition, not less. The exclusive "collaboration" the transmission utilities claim is missing is not a pro-consumer goal, but merely a mechanism for the perpetuation of monopoly status.

**C. Exclusive Collaboration Does Not Determine The Best Project Nor Ensure Just And Reasonable Rates**

The transmission utilities' position against competition relies on the assumption that collaboration among incumbent transmission owners both naturally results in the determination of the more efficient or cost-effective project for consumers and that such determination cannot occur without collaboration. Missing from their argument, however, is any explanation as to how the collaboration they claim is missing is more than what is mandated by existing transmission planning rules nor why they refuse to participate fully in such transmission planning. For example, the MISO transmission utilities assert that "[i]deally, transmission planning should be collaborative to ensure that the most efficient and cost-effective transmission solutions are identified."<sup>17</sup> Likewise, National Grid complains that competition has caused "stifling

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<sup>14</sup> Comments of the Electricity Transmission Competition Coalition, filed Oct. 12, 2021 in Docket No. RM21-17-000 ("ETCC Comments") at 1-2.

<sup>15</sup> Comments of the United States Department of Energy to Advance Notice of Proposed Rulemaking, filed Oct. 12, 2021 in Docket No. RM21-17-000 ("DOE Comments") at 11; Comments of the National Association of State Utility Consumer Advocates, filed Oct. 12, 2021, in Docket No. RM21-17-000 ("NASUCA Comments") at 7; Initial Comments of the New England States Committee on Electricity, filed Oct. 12, 2021 in Docket No. RM21-17-000 ("NESCOE Comments") at 25-27; Initial Comments of the California Public Utilities Commission ("CPUC"), filed Oct. 12, 2021 in Docket No. RM21-17-000 ("CPUC Comments") at 24-25; Comments of the New Jersey Board of Public Utilities, filed Oct. 12, 2021 in Docket No. RM21-17-000 ("NJBPU Comments") at 11-12; Initial Comments of the New York State Public Service Commission and New York State Energy Research and Development Authority, filed Oct. 12, 2021 in Docket No. RM21-17-000 ("NYPSC/NYSERDA Comments") at 4; Comments of the Pennsylvania Public Utility Commission, filed Oct. 12, 2021 in Docket No. RM21-17-000 ("PA PUC Comments") at 16.

<sup>16</sup> Motion to Intervene and Comments of the National Association of Regulatory Utility Commissioners, filed Oct. 12, 2021 in Docket No. RM21-17-000 ("NARUC Comments") at 13.

<sup>17</sup> MISO TO Initial Comments at 26.

collaboration between regional planners and transmission owners and dedicating significant time and expense navigating the processes for competitive solicitations.”<sup>18</sup> But the very rule that required competition, also confirmed that:

[t]his Final Rule requires **that each public utility transmission provider participate** in a regional transmission planning process that produces a regional transmission plan and that complies with the transmission planning principles of Order No. 890 identified below. We determine that such transmission planning will expand opportunities for more efficient and cost-effective transmission solutions for public utility transmission providers and stakeholders. This will, in turn, help ensure that the rates, terms and conditions of the Commission-jurisdictional services are just and reasonable and not unduly discriminatory or preferential.<sup>19</sup>

The various transmission owner collaboration arguments therefore beg the question: are incumbent transmission owners meeting their “participation” obligations to determine the more efficient or cost-effective transmission as required by Order No. 1000? The incumbent transmission utilities’ comments seem to be an acknowledgement that they are not, and will not, participate unless they are returned to individual monopoly status and collectively to cartel status.<sup>20</sup>

The transmission utilities also offer the Commission no information to understand where the regional planning required by Order Nos. 890 and 1000 ends and the extra, allegedly non-attained, incumbent collaboration begins. The ETCC believes that if the incumbent transmission utilities meet the regional planning requirements of Order Nos. 890 and 1000, they would be fully engaged in the “collaborative” planning they claim is missing. They are not fully engaged because they have prioritized avoiding competition over engaging in collaboration in the determination of

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<sup>18</sup> Initial Comments of National Grid PLC, filed Oct. 12, 2021, in Docket No. RM21-17-000 (“National Grid Comments”) at 22.

<sup>19</sup> Order No. 1000 at P 146.

<sup>20</sup> Joint Comments of Consumer Organizations, filed Oct. 12, 2021, in Docket No. RM21-17-000 at 12; <https://www.merriam-webster.com/dictionary/cartel>

the more efficient or cost-effective transmission for consumers, including the ETCC's diverse array of transmission customers. The incumbents' trade association asserts that the incumbent transmission owners' refusal to engage in collaborative regional planning is a "natural" result of the competition required by Order No. 1000, ignoring completely the regional planning requirements of that very Order and its predecessor, Order No. 890.

Equally important, none of the transmission utility comments offer proof that the pre-Order No. 1000 "collaboration" or the future collaboration they claim is essential to transmission development will mean without question that the more efficient or cost-effective project will be built. Instead, the transmission utilities merely assert that transmission projects were built,<sup>21</sup> and they ask that the Commission presume, whether true or not, that the projects that were built were the right projects for consumers and would be the more efficient or cost-effective alternative. The Commission has no evidentiary basis for such a presumption.

At the end of the day, the collaboration assertions made by the transmission utilities are simply misdirection. Although planning collaboration may be a lofty goal, it is nothing more than an empty notion as it guarantees nothing of relevance to the Commission. The Commission's obligations are reliability and just and reasonable rates for any and all transmission projects built. Collaboration alone, without competition, guarantees neither of these. The entirety of the transmission utilities' argument hinges on the presumption that pre-Order No. 1000 monopoly collaboration resulted in projects being advanced,<sup>22</sup> but the transmission utilities have offered no empirical evidence that those projects were the best option for consumers on a reliability or cost

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<sup>21</sup> See, e.g., PJM TOs Comments at 31 (stating "Collaboration and cooperation get transmission built."); SCE Comments at 5, (arguing collaboration will "increase the likelihood of transmission needed to meet clean energy goals being built"). Of course, purported "collaborative" planning is no guarantee that projects will be timely built. See, e.g., <https://www.utilitydive.com/news/crossed-wires-wisconsin-transmission-proposal-sparks-debate-over-best-path/560362/>; [https://www.nj.com/news/2010/07/pseg\\_delays\\_construction\\_of\\_co.html](https://www.nj.com/news/2010/07/pseg_delays_construction_of_co.html)

<sup>22</sup> See, e.g., PJM TOs Comments at 31 (stating "Collaboration and cooperation get transmission built.")

basis. Furthermore, without competition, even if the projects advanced were the ‘right’ projects, the lack of competition for those projects means that the rates cannot be established to be just and reasonable.

**D. Commission action is necessary to establish competitive processes and transparency for subregional and supplemental projects because there is currently no rigorous review of these projects by states or RTO/ISOs.**

As noted in the Initial Comments filed by the ETCC, the Commission should adopt a 100 kV bright-line threshold for competition eligibility to ensure consumers receive the full benefits of transmission development.<sup>23</sup> However, regarding subregional and supplemental projects in particular, the Commission should require competitive processes to be implemented because there is currently no rigorous state or RTO/ISO review of those projects. Neither the Commission nor the states have stepped in to fulfill all regulatory review functions for subregional and supplemental projects, thus resulting in a “regulatory gap”. Commission action to establish and implement competitive processes for these projects would be a step in the right direction towards ensuring that consumers are protected from excessive spending and commensurate rate increases resulting from these projects. In some instances, states do not review these projects at all but simply require the transmission utility to file a construction notice.<sup>24</sup> In fact, in this proceeding, the Public Utilities Commission of Ohio’s Federal Energy Advocate (Ohio Federal Energy Advocate) explained that “[t]here is currently no federal or regional certification or approval

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<sup>23</sup> ETCC Initial Comments at 16-19.

<sup>24</sup> See, e.g., Ohio Adm.Code 4906-6-05 (Ohio laws requiring a Construction Notice for certain transmission lines on existing structures, transmission line replacements, or new construction resulting in a transmission line not greater than 0.2 miles in length. And, for transmission lines where more than a construction notice is required, certain transmission lines are still subject to an accelerated Letter of Notification application process); see also 52 Pa. Code 57.71-76 (Pennsylvania law governing siting of transmission lines allowing a Letter of Notification for certain transmission lines and upgrades in existing rights of way).

process for these transmission projects.”<sup>25</sup> The Ohio Federal Energy Advocate asserted “[t]he lack of regulatory oversight for supplemental projects offers little assurance that customer charges for this transmission are just and reasonable.”<sup>26</sup> There is currently a significant lack of transparency around supplemental and subregional projects at the federal level and, as an extension, a lack of robust competition in developing and implementing transmission projects. While the ETCC encourages the Commission to appoint Independent Transmission Monitors to promote transparency, the Commission should also fill the regulatory gap and implement competitive processes to ensure that consumers are not unreasonably burdened by rates resulting from transmission investments where less-costly alternatives exist.

### **III. STATE AND FEDERAL RIGHTS OF FIRST REFUSAL ARE ANTI-COMPETITIVE AND RESULT IN RATES THAT ARE UNJUST, UNREASONABLE, AND UNDULY DISCRIMINATORY AND PREFERENTIAL.**

#### **A. The Commission should reject the proposals by EEI, WIRES, and other stakeholders to reinstate a federal ROFR.**

The Commission should reject proposals by stakeholders to reinstate an anticompetitive federal ROFR. The stakeholders proposing to reinstate a federal ROFR do not have the best interests of consumers in mind. Several commenters have suggested that the Commission not only fail to preempt state ROFR laws but should reinstate the federal ROFR system abolished by Order No. 1000. In their comments, EEI claims that the elimination of the federal ROFR requirements by Order No. 1000 has caused delays in the completion of transmission projects and had the effect “of stifling the cooperation and collaboration that has historically existed between transmission owners.”<sup>27</sup> Similarly, WIRES concedes that Order No. 1000 “has increased the

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<sup>25</sup> Ohio Federal Energy Advocate Comments filed Oct. 12, 2021, in Docket No. RM21-17-000 (“Ohio FEA Comments”) at 11.

<sup>26</sup> Ohio FEA Comments at 11.

<sup>27</sup> EEI Initial Comments at 21.



number of innovative and/or cost-effective transmission options for consideration,” but claims that “it has also caused delays and limited opportunities for dialogue between transmission developers, market participants, and RTOs/ISOs.”<sup>28</sup> Both EEI and WIRES suggest that the Commission should consider a retreat from Order No. 1000 based on these considerations.

While it is true that Order No. 1000 has failed to spark the degree of competition for electric transmission projects anticipated and hoped for by the Commission (and consumers), the Commission should not abandon its efforts to provide the benefits of competition to consumers. The Commission eliminated federal ROFR requirements in Order No. 1000 for good reason. As the court noted in *South Carolina Public Service Authority v. FERC*, when Order No. 1000 was challenged, the Commission eliminated federal ROFR requirements because it “concluded that the economic self-interest of electric transmission monopolists lay in denying transmission or offering it only on inferior terms to emerging competitors.”<sup>29</sup> In Order No. 1000, the Commission concluded that removing ROFR requirements at the RTO/ISO level could “result in benefits of competition in transmission development, and associated potential savings.”<sup>30</sup> Subsequent evidence for projects where competition has been allowed demonstrates that competition does, in fact, result in benefits in transmission development and cost savings to consumers. An analysis by the Brattle Group found that the winning bidders in competitive projects were 40 percent less costly than the initial cost estimates for projects, whereas non-competitive projects ended up

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<sup>28</sup> WIRES Comments filed Oct. 12, 2021, in Docket No. RM21-17-000 at 11.

<sup>29</sup> 762 F.2d 41, 50 (D.C. Cir. 2014).

<sup>30</sup> 136 FERC ¶ 61,051 at PP 284, 313 (2011), 2011 WL 2956837, at \*91; *see also MISO Transmission Owners v. FERC*, 819 F.3d 329, 333 (7th Cir. 2016) (noting that FERC instituted Order 1000 because it “was convinced that competition among firms for the right to build transmission facilities would result in lower rates to consumers of electricity.”).

costing 34 percent more than initial estimates.<sup>31</sup> This is consistent with the international experience, which is learning from the success of domestic transmission competition. An independent review in August 2021 of North American transmission projects “suggests a range of savings is possible from 22% to 42% relative to the initial indicative design.”<sup>32</sup>

To the extent that Order No. 1000 has not lived up to expectations, it is not because the Commission eliminated a federal ROFR, but because the Commission has permitted competitive carve-outs, including allowing states to replace the federal ROFR with their own state ROFRs and allowing incumbent transmission owners to evade competition by focusing capital deployment on local and lower-voltage transmission projects that are not regionally cost-allocated. As a result, only 3 percent of transmission projects started after Order No. 1000 have been open to competition. The exemptions from competition allowed for in Order No. 1000 have been exploited by incumbent transmission operators, which have lobbied for the creation of state ROFR requirements despite the opposition of public interest and consumer groups. The existence of state ROFR requirements is also impeding collaboration between the states, as the unfairness of the cost-shifting that can be involved creates friction between states.

EEI asserts that the Commission’s elimination of the federal ROFR from RTO/ISO tariffs in Order No. 1000 has resulted in uncertainty, increased costs, and increased delays.<sup>33</sup> This assertion is patently false. Competition lowers costs to consumers and results in projects being developed more quickly. The costs and delays identified by EEI are a result of the loopholes and exceptions to the Commission’s elimination of ROFR provisions in Order No. 1000. EEI further

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<sup>31</sup> Johannes P. Pfeifenberger et al., “Cost Savings Offered by Competition in Electric Transmission,” The Brattle Group, April 2019, pp. 29, 40.

<sup>32</sup> “Draft Impact Statement,” of gem, Consultation on our views on early competition in onshore electricity transmission networks, August, 2021, at 5.

<sup>33</sup> EEI Initial Comments at 21.

argues that “competitive processes for transmission projects have had the natural effect of stifling the cooperation and collaborating between transmission owners, as well as regional planning entities . . .”<sup>34</sup> On the contrary, competitive processes have the demonstrable benefit of lowering costs, protecting consumers from cost over-runs, and completing projects in a timely fashion. EEI has provided not a single data point, statistic, or study in support of its assertion that competition increases costs or delays project construction. Meanwhile, the ETCC and other consumer groups have provided an abundance of studies, analyses, and data demonstrating the benefits of competition where it has been allowed.<sup>35</sup>

WIRES also recommends that the Commission consider reinstating a federal ROFR and asserts that the Commission’s elimination of the federal ROFR in Order No. 1000 has not lived up to expectations.<sup>36</sup> However, as noted above, the reason competition has not taken hold and elimination of the federal ROFR has not provided the expected benefits is because incumbent transmission utilities have erected barriers to prevent competition from developing. Instead of reinstating the federal ROFR, the Commission should eliminate all federal and state ROFR provisions so that consumers can receive the demonstrable benefits of lower costs provided by competition.

Before the Commission spurred implementation of competitive processes in Order No. 1000, transmission utilities underinvested in the transmission system resulting in more costs to consumers. In 2007, when the Commission issued Order No. 890, it noted that the United States had “witnessed a decline in transmission investment relative to load growth,” and found that the

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<sup>34</sup> *Id.*

<sup>35</sup> See ETCC Initial Comments.

<sup>36</sup> WIRES Comments at 11-12.

resulting grid congestion could “have significant costs to consumers.”<sup>37</sup> Today, the exact opposite scenario exists - transmission investment and costs are increasing rapidly, while load remains generally flat. And even though load is projected to remain relatively flat, the combination of rapid growth in new renewable generation, public policy concerns about emissions, and the age of certain existing transmission facilities are projected by some to drive substantial additional transmission investment in the future. To prevent these initiatives from unjustly driving up transmission rates, the Commission should eliminate the federal ROFR for all transmission projects subject to competition.

**B. The Commission should adopt rules that deploy transmission competition nationwide and reject proposals by MISO and others to create a state “opt-in” model for competition.**

The Commission should reject proposals to allow competition only by states that opt-in to competition. Competition in transmission planning and construction provides broad benefits to consumers, while an “opt-in model” for competition would segment markets and result in the creation of the very silos that the Commission and Congress have expressed an intent to avoid. Under the FPA, the Commission has jurisdiction over the interstate transmission of electric energy and wholesale transactions.<sup>38</sup> The Commission has traditionally recognized that certain areas of electricity regulation remain the province of the states.<sup>39</sup> At the same time, the line between the realm of federal and state jurisdiction is not a sharp one, and the Commission can and has issued regulations that have an effect on even intrastate elements of the transmission and electric system

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<sup>37</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, FERC ¶ 60,421, 72 Fed. Reg. at 12,276, 12,318.

<sup>38</sup> 16 U.S.C. § 824(b)(1).

<sup>39</sup> *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utilities*, Order No. 1000, 136 FERC ¶ 61051, ¶ 107 (July 21, 2011) (“We acknowledge that there is longstanding state authority over certain matters that are relevant to transmission planning and expansion, such as matters relating to siting, permitting, and construction”).

where doing so has an impact on transmission rates and cost allocation among different states. But to create an opt-in model where competition is only allowed to flourish in some areas while prohibited in others will create numerous discriminatory and preferential outcomes prohibited by the FPA.

Accordingly, the Commission should reject the proposals by MISO and others to allow “for states to opt in, rather than opt out, of competitive transmission development in their state.” The key to achieving the proliferation of transmission competition in RTO/ISO regions is to comprehensively close competitive carve-out opportunities under Order No. 1000, not to increase them. Under the current governance structure where RTO/ISO membership is voluntary, incumbent transmission operators have outsized influence in RTO/ISO strategic decision making generally and transmission planning processes specifically. This has left the Commission and RTO/ISOs hampered in devising appropriate transmission policy. Attempts to placate the interests of incumbent transmission operators, such as proposals to let states "opt in" to competition, would result in a systemic regulatory bias in their favor and against consumer interests. One way to avert this while reducing - rather than exacerbating - the ability of incumbent transmission operators to dictate RTO/ISO membership is for the Commission to exercise its authority to make generic findings across all transmission owners (RTO and non-RTO) under section 206 of the FPA, where all transmission operators would be required to comply with a consistent tariff. Eliminating differences between RTO/ISO regions and non-RTO/ISO regions in transmission planning and transmission competition would help to minimize opportunities for “regulatory arbitrage” – where certain transmission owners avoid independent transmission planning altogether (to their benefit and to consumers’ detriment) and other transmission owners have the opportunity to undermine

independent transmission planning via opportunities for departure if “independent” transmission planning does not inure to their benefit.

**C. Commission preemption of state ROFR laws would eliminate the discriminatory rates between states that have enacted ROFR laws and those states that have not.**

The Commission should explicitly preempt state laws that provide incumbent transmission owners a state-approved ROFR. State ROFR laws result in unfair and discriminatory rates, as consumers are forced to pay higher rates to recoup the inflated costs that come from a lack of competition in transmission projects. For example, consider two neighboring states – State A and State B. State A has a ROFR requirement, while State B does not. Where a transmission project involving cost allocation between both states falls under State A’s ROFR requirement, some portion of the higher costs due to the ROFR will be passed on to consumers in State B. By contrast, where a project with cost allocation between both states does not fall under State A’s ROFR requirement, consumers in State A receive the benefit of the cheaper project. The result is that residents of State B must pay higher rates to benefit incumbent transmission operators in State A.

This is not merely a hypothetical. State have already resisted other states’ ROFR laws and demonstrated a proclivity for rejecting transmission lines that they believe do not benefit them.<sup>40</sup> In some instances, states oppose other states’ ROFR laws because they adversely impact customers in multiple states, and further, any mismatches between costs and benefits in a state has resulted in some states denying authorizations for new transmission, which means that one state’s ROFR impedes transmission development in other states. Any action that erodes the net benefits of transmission development, especially excessive costs of the magnitude imposed on one state by another’s ROFR, undermine state cooperation on transmission development. The discriminatory

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<sup>40</sup> See, e.g., Jana Benscoter, “Central Pa. landowners relieved as PUC rejects controversial powerline project: ‘We fought hard’,” PennLive, May 25, 2021

nature of state ROFR requirements has even provoked engagement from the United States Department of Justice, which has cautioned state legislatures contemplating enacting ROFR requirements that the laws reduce competition and harm consumers.<sup>41</sup> The most straightforward way to remedy the discriminatory rates brought about by state ROFR requirements – and protect one state from another state’s anti-competitive practice in interstate commerce – is for the Commission to proactively prevent states from enacting and enforcing those discriminatory requirements. Preempting state ROFR laws would preclude this source of aggravating tension between states, making it easier for different states to work together on needed transmission infrastructure buildouts.

In Order No. 1000, the Commission found that “an incumbent transmission provider’s ability to use a right of first refusal to act in its own economic self-interest may discourage new entrants from proposing new transmission projects in the regional transmission planning process,”<sup>42</sup> an outcome that can “undermine the identification and evaluation of more efficient or cost-effective solutions to regional transmission needs.”<sup>43</sup> This is exactly what state ROFR laws do – they undermine identification and evaluation of more efficient or cost-effective solutions to regional transmission needs. State ROFR laws are effective at protecting incumbent transmission owners, nullifying competition, and increasing costs to consumers, not only in the state in which the ROFR law is enacted, but in neighboring states where the new transmission project may be cost-shared.

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<sup>41</sup> “Letter of the U.S. Department of Justice Antitrust Division to the Honorable Travis Clardy,” Department of Justice, April 19, 2019.

<sup>42</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051, at P 256 (2011).

<sup>43</sup> *Id.* P 253.

**D. The Commission has a statutory obligation under the FPA to eliminate barriers to competition that result in unjust, unreasonable, and unduly discriminatory or preferential transmission rates.**

The Commission has a statutory obligation under the FPA to ensure that “any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission” is not “unjust, unreasonable, unduly discriminatory or preferential.”<sup>44</sup> In promulgating Order No. 1000, the Commission found that the elimination of federal ROFR was necessary so that the Commission could “fulfill [its] statutory obligation to ensure that Commission-jurisdictional services are provided at rates, terms, and conditions of service that are just and reasonable and not unduly discriminatory or preferential.”<sup>45</sup> The Commission’s conclusion about its obligations here has been upheld by the federal courts.<sup>46</sup> Subsequent events have done nothing to invalidate this conclusion. A reinstatement of a federal ROFR now would reintroduce legal risk and create massive uncertainty and legal challenges that would stunt the transmission development paradigm for years.

**IV. THE COMMISSION HAS AUTHORITY UNDER THE FEDERAL POWER ACT TO APPOINT INDEPENDENT TRANSMISSION PLANNERS AND INDEPENDENT TRANSMISSION MONITORS. THE COMMISSION SHOULD EXERCISE THAT AUTHORITY.**

To ensure that transmission planning and construction processes are being conducted in a timely and transparent manner, these transmission processes should be overseen by FERC-approved Independent Transmission Planners and Independent Transmission Monitors. Competition, properly implemented, can be more efficient on both a timing and cost basis than current incumbent-based transmission development where no real incentive exists for the

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<sup>44</sup> 16 U.S.C. § 824e(a).

<sup>45</sup> 136 FERC ¶ 61,051 at PP 12.

<sup>46</sup> See *South Carolina Public Service Authority v. FERC*, 762 F.2d 41 (D.C. Cir. 2014).



incumbent transmission owner to complete the project ahead of schedule or under budget. Independent entities – both in the planning capacity and in the monitoring/reporting capacity – are critical to the success of introducing competition into a space that has historically been subject to monopoly control.

Further, Independent Transmission Monitors can identify process failures and recommend improvements. As an example, in the ANOPR, the Commission asks whether an Independent Transmission Monitor would be helpful to address costs and prudence reviews of Supplemental Projects. An Independent Transmission Monitor would be particularly helpful to address costs and prudence of Supplemental Projects because there currently exists a regulatory gap regarding who has jurisdiction to review the costs and prudence of these projects. This regulatory gap is made apparent in the Initial Comments filed by EEI and PJM. EEI asserts that if there are stakeholder concerns about whether processes produce unjust and unreasonable outcomes, then stakeholders can work with their regions to develop additional processes.<sup>47</sup> Meanwhile, PJM asserts that an Independent Transmission Monitor would not be helpful to address costs and prudence of Supplemental Projects because the issues “are clearly the responsibility of the Commission to oversee and adjudicate.”<sup>48</sup> The inconsistent positions between RTO/ISOs and Transmission Owners regarding who has jurisdiction over supplemental projects is just one example of why the Commission should appoint an Independent Transmission Monitor. Further, appointing Independent Transmission Monitors would provide transparency at minimal incremental cost.

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<sup>47</sup> See EEI Initial Comments at 42.

<sup>48</sup> PJM Initial Comments at 78.

**A. The Federal Power Act gives the Commission authority to appoint an Independent Transmission Monitor in the same way the Commission has authority to appoint an Independent Market Monitor.**

The Commission has authority under the Federal Power Act to appoint an Independent Transmission Monitor, or to expand the responsibilities of existing RTO/ISO market monitors to include transmission planning and construction processes. The Commission issued this ANOPR pursuant to its authority under section 206 of the FPA, in order to consider the potential need for reforms or revisions to existing regulations to improve the electric regional transmission planning and cost allocation and generator interconnection processes. Pursuant to this authority, the Commission is capable of adopting new rules to reform or revise its existing regulations, including such regulations on the creation and scope of responsibilities for market monitoring.

On June 29, 1998, PJM filed a market monitoring plan pursuant to Ordering Paragraph (V) of the Commission's Order in Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 (1997) to establish a market monitoring unit of PJM with a broad range of monitoring responsibilities. This Order and plan followed the issuance of the Commission's Order No. 888 Open Access Rule. At the time, the Commission found that PJM restructuring would significantly alter the operation of the electric power market within PJM and implement a novel congestion pricing approach, but with such restructuring it would be important to monitor implementation to assess undue discrimination and market operation. Accordingly, the Commission appointed an independent market monitor and placed within the market monitor's "ambit of monitoring responsibilities ... the duty to monitor matters relating to transmission congestion pricing, exercise of market power, structural problems in the PJM Market, design flaws in the operating rules, and

compliance with the standards, procedures or practices as set forth in the PJM OATT, Operating Agreement, Reliability Agreement, PJM Manuals, and the PJM Regional Practices Document.”<sup>49</sup>

An Independent Market Monitor is necessary for the Commission to comply with its statutory obligation under the FPA to ensure that “any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission” is not “unjust, unreasonable, unduly discriminatory or preferential.”<sup>50</sup> Along with this obligation, the Commission has the authority under the FPA to take the necessary steps to monitor markets and processes, including transmission planning processes, to ensure that rates and charges are not unjust, unreasonable, unduly discriminatory or preferential. To comply with its obligation to ensure just and reasonable rates, under its authority to take the necessary steps to monitor markets and processes, the Commission should appoint Independent Transmission Monitors. Even if the Commission does not appoint new Independent Transmission Monitors in RTO/ISO regions, the Commission should clarify that the existing authority provided to current market monitors includes the authority for market monitors to review transmission planning and construction processes.

WIRES asserts that the Commission can only impose an Independent Transmission Monitor if it meets the dual burden of section 206 of the FPA by showing that existing tariffs or rules are unjust and unreasonable and that the required rule to be put in place is just and reasonable.<sup>51</sup> Both of these burdens are met here - the failure of existing tariffs and rules to adequately monitor transmission planning and construction processes is unjust and unreasonable, and an Independent Transmission Monitor would remedy the unjust and unreasonable lack of

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<sup>49</sup> Order Approving Market Monitoring Plan as Modified, 86 FERC ¶ 61,247, ER98-3527-000 (Mar. 10, 1999) at 3.

<sup>50</sup> 16 U.S.C. § 824e(a).

<sup>51</sup> WIRES at 21.

transparency. The Commission has issued this ANOPR under its section 206 authority and may adopt rules necessary to fulfill its statutory responsibility to ensure that “any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission” is not “unjust, unreasonable, unduly discriminatory or preferential.”<sup>52</sup> WIRES further avers that even if the Independent Transmission Monitor is not vested with binding decisional authority, then such Independent Transmission Monitor would essentially be deputized by the Commission with authority to review spending, conduct necessary analyses, and make preliminary determinations and recommendations to the Commission regarding transmission facility costs, and thus be vested with the “vener of the exercise of federal authority” to inhibit, interfere, coerce, and influence transmission planning processes and decisions.<sup>53</sup> On the contrary, the very nature of monitoring is in an oversight role, with reporting obligations to the Commission or to its Office of Enforcement, but without authority to immediately and directly remedy a detected problem and without an opportunity for the Independent Transmission Monitor to influence transmission planning processes and decisions. Even if an Independent Transmission Planner inadvertently influenced the transmission planning process, such influence would provide transparency, reduce costs to consumers, ensure competitive processes are implemented instead of subverted, and support processes that result in just and reasonable rates at the lowest possible costs. These are the features, not the bugs, of an Independent Transmission Monitor. An Independent Transmission Monitor would not create additional delay and costs, but instead support the very remedy sought by WIRES - to support appropriate changes necessary to expedite processes and reduce costs.

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<sup>52</sup> 16 U.S.C. § 824e(a).

<sup>53</sup> WIRES Comments at 23.

**B. An Independent Transmission Monitor would provide additional transparency and oversight, both in RTO/ISO regions and outside of such regions.**

The Commission should reject assertions by MISO, PJM, AEE, and others that an Independent Transmission Monitor is only needed in non-RTO/ISO regions. In their Initial Comments, the existing Independent Market Monitors (Potomac Economics and Monitoring Analytics) stated that an Independent Transmission Monitor would be highly beneficial.<sup>54</sup> Potomac Economics is the Independent Market Monitor for MISO, and the external Market Monitoring Unit for the New York ISO and for ISO New England. Meanwhile, Monitoring Analytics is the Independent Market Monitor for PJM. As Independent Market Monitors, Potomac Economics and Monitoring Analytics know a thing or two about how to review processes, identify barriers to entry or process failures, and make valuable recommendations to improve such processes. They state that an Independent Transmission Monitor “would be able to identify valuable recommendations for improvements in the modeling, project identification, and would be able to identify issues in the planning processes and inconsistencies with other processes including the generation interconnection process.”<sup>55</sup> In other words, Independent Transmission Monitors would look to provide recommendations to accomplish the very goals set forth by the Commission in this ANOPR – identify issues in the planning processes and inconsistencies with other planning processes, including the generation interconnection process. Further, as noted by Monitoring Analytics, the information provided by an Independent Transmission Monitor would be essential for the Commission, for state public utility commissions, for all market participants, for all customers, and for the RTO/ISOs or Independent Transmission Planner.<sup>56</sup> For these reasons, the

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<sup>54</sup> Potomac Economics Comments filed Oct. 12, 2021, in Docket No. RM21-17-000 at 9.

<sup>55</sup> Potomac Economics Comments at 9.

<sup>56</sup> Monitoring Analytics Comments filed Oct. 12, 2021, in Docket No. RM21-17-000 at 17.

Commission should appoint Independent Transmission Monitors in both RTO/ISO regions and outside of such regions to provide needed transparency into transmission planning processes.

This is not the first time the Commission has considered the value of an Independent Transmission Monitor. In RM05-17-000 and RM05-25-000, which would ultimately culminate in the issuance of Order No. 890, numerous parties proposed, and the Commission considered, whether to appoint an independent entity to monitor transmission processes. The Commission noted that “overall comments on the use of an independent third party to oversee or coordinate the planning process range from those who believe it is not needed to those who feel it should be required rather than merely encouraged.”<sup>57</sup> Apparently, not much has changed, as comments in this proceeding range as much they did 14 years ago. At the time, the Commission specifically noted that “EPSA strongly supports independent oversight and believes that third party oversight will be necessary in non-RTO areas, particularly where transmission providers have conducted non-transparent processes.”<sup>58</sup> And Old Dominion stressed that even in RTO/ISO regions, the transmission owners may have the ability to exercise market power and, therefore, the market monitoring unit should have the requisite independence and authority to investigate and address undue influence.<sup>59</sup> Despite these comments, in Order No. 890 the Commission decided not to require the use of an independent third party coordinator at that time.<sup>60</sup> Now, the time for the Commission to appoint Independent Transmission Monitors has arrived, and such responsibility can be seamlessly integrated into the oversight responsibilities of current Independent Market Monitors in RTO/ISO regions.

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<sup>57</sup> Order No. 890 at P 563.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at footnote 330.

<sup>60</sup> *Id.* at P 567.

**C. The Commission should reject arguments by WIRES, EEI, PJM, and others that Independent Transmission Monitors are not needed.**

Additional oversight and transparency in the transmission planning and cost allocation processes is needed. However, EEI avers that there have not been any findings that current processes are unjust and unreasonable, so the need for an Independent Transmission Monitor has not been demonstrated. The Commission should reject the assertions by EEI that no transmission monitor is needed. Transmission rates are increasing rapidly, and consumers are paying the cost. More transparency, monitoring, and analysis is needed to protect consumers from processes that may lead to unjust and unreasonable rates.

In RTO/ISO regions, the role of Independent Transmission Monitor can be assumed by the existing Independent Market Monitors with explicit authority to monitor administration of all transmission-related aspects of the RTO/ISO tariff. Outside of RTO/ISO regions, the Independent Transmission Monitors should be established as stand-alone entities, separate and apart from, and with monitoring and reporting responsibility concerning the actions of the Independent Transmission Planner. This Independent Transmission Monitor, or Independent Market Monitor as the case may be, would further work to ensure that these competitive transmission processes are not established or implemented in a manner that undermines expedience. The Independent Transmission Monitor would also monitor compliance with the rules for competitive transmission processes, make suggestions for process improvements, and report any rules violations directly to the FERC Office of Enforcement.

V. **CONCLUSION**

WHEREFORE, the ETCC respectfully requests that the Commission afford due consideration to these Reply Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By: */s/ Robert A. Weishaar, Jr.*

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Counsel to the Industrial Energy Consumers of America, the American Forest & Paper Association, the PJM Industrial Customer Coalition, and the Coalition of MISO Transmission Customers, and on behalf of the many other member companies and organizations that comprise the Electricity Transmission Competition Coalition

Dated: November 30, 2021



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 30<sup>th</sup> day of November, 2021.

*/s/ Robert A. Weishaar, Jr.*

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# Appendix

## ETCC Members

Ag Processing Inc.  
Aluminum Association  
American Chemistry Council  
American Forest and Paper Association  
American Foundry Society  
American Iron and Steel Institute  
Ardagh Group  
Arglass Yamamura  
Arkansas Electric Energy Consumers, Inc.  
Arkansas Forest and Paper Council  
Association of Businesses Advocating for Tariff Equity  
CalPortland Company  
Can Manufacturers Institute  
Carolina Industrial Group for Fair Utility Rates  
Carolina Utility Customers Association, Inc.  
Century Aluminum  
Chemistry Council of New Jersey  
Coalition of MISO Transmission Customers  
Council of Industrial Boilers  
Delaware Energy Users Group  
Digital Realty  
Domtar Corporation  
Eramet Marietta Inc.  
Ford Motor Company  
Formosa Plastics Corporation, U.S.A.  
Foundry Association of Michigan  
Glass Packaging Institute  
Illinois Industrial Energy Consumers  
Indiana Cast Metals Association  
Indiana Industrial Energy Consumers  
Industrial Energy Consumers of America  
Industrial Energy Consumers of Pennsylvania  
Industrial Energy Users-Ohio  
Industrial Minerals Association-North America

Iron Mining Association of Minnesota  
Iowa Business Energy Coalition  
Iowa Industrial Energy Group, Inc.  
Lehigh Hanson, Inc.  
LS Power Development, LLC  
Maine Industrial Energy Consumer Group  
Marathon Petroleum Corporation  
Maryland Office of People's Counsel  
Metalcasters of Minnesota  
Messer Americas  
Michigan Chemistry Council  
Midwest Food Products Association  
Minnesota Large Industrial Group  
Multiple Intervenors, NY  
National Council of Textile Organizations  
National Retail Federation  
North Carolina Manufacturers Alliance  
Office of the People's Counsel for the District of Columbia  
Ohio Cast Metals Association  
Ohio Energy Group  
Ohio Manufacturers' Association  
Ohio Steel Council  
Olin Corporation  
Owens-Illinois  
Pennsylvania Energy Consumer Alliance  
PJM Industrial Customer Coalition  
Portland Cement Association  
R Street  
Resale Power Group of Iowa  
Retail Industry Leaders Association  
Riceland Foods, Inc.  
Rio Tinto  
Steel Manufacturers Association  
Texas Cast Metals Association  
Vallourec STAR LP  
Vinyl Institute  
Virginia Manufacturers Association  
West Virginia Energy Users Group  
Wisconsin Cast Metals Association  
Wisconsin Industrial Energy Group