



Electricity  
Transmission  
Competition  
Coalition

April 25, 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: Iowa Supreme Court Rejects Electricity Transmission Right of First Refusal Law – Described as “Quintessentially Crony Capitalism; Rent Seeking; Protectionist and Anti-Competitive”***

Dear Chairman Manchin and Ranking Member Barrasso:

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 consumers<sup>1</sup> and that you do not support FERC backtracking on transmission competition as their current Notice of Proposed Rulemaking (NOPR)<sup>2</sup> 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 FERC’s existing requirements for transmission competition.<sup>3</sup> Last year, DOJ, this time joined by the Federal Trade Commission (FTC), reiterated that stance in comments on the NOPR’s proposal to significantly abandon transmission competition.<sup>4</sup>

FERC’s Order No. 1000,<sup>5</sup> issued over a decade ago, found that transmission competition was essential to 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.<sup>6</sup> 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.<sup>7</sup> Yet only three percent of all transmission investment

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<sup>1</sup> Federal Power Act.

<sup>2</sup> “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.

<sup>3</sup> [cite to 5<sup>th</sup> Circuit brief]

<sup>4</sup> Federal Trade Commission, DOJ Urge FERC to Preserve Robust Wholesale Electricity Markets | Federal Trade Commission (ftc.gov)

<sup>5</sup> [cite]

<sup>6</sup> [cite to public interest orders]

<sup>7</sup> 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](https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf) Even a 25

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 2050<sup>8</sup> 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,<sup>9</sup> the DOJ, FTC, the United States Court of Appeals for the Fifth Circuit, and hundreds of consumers and bipartisan groups<sup>10</sup> in saying that consumers need competition to tackle the ever-rising electricity costs. The Iowa Supreme Court was very succinct that preferences are “quintessentially crony capitalism . . . rent-seeking, protectionist legislation is anticompetitive.”<sup>11</sup> This conclusion is true whether the preference arises from a state preference law geared to get around the Federal Power Act and FERC rules or incorporated by 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.”<sup>12</sup>

As Senators focused on common sense measures for the public benefit,<sup>13</sup> we ask that you lend your voice, and ultimately that of the entire Energy and Natural Resources Committee, to remind 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 FERC that transmission competition is essential to their mission, and to support the ETCC initiatives.<sup>14</sup>

Sincerely,

*Paul N. Cicio*

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Chairman, Electricity Transmission Competition Coalition

<https://electricitytransmissioncompetitioncoalition.org/>

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

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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.

<sup>8</sup> NET-ZERO AMERICA: Potential Pathways, Infrastructure, and Impacts, Princeton University,

<https://netzeroamerica.princeton.edu/?explorer=year&state=national&table=2020&limit=200>

<sup>9</sup> [https://www.ieca-us.com/wp-content/uploads/2022.9.30-FINAL-Pro-Competition-Senate-ENR-letter-to-FERC\\_-Heinrich-Lee.pdf](https://www.ieca-us.com/wp-content/uploads/2022.9.30-FINAL-Pro-Competition-Senate-ENR-letter-to-FERC_-Heinrich-Lee.pdf)

<sup>10</sup> <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.

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

<sup>12</sup> Id.

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

<sup>14</sup> 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.

## **MEMBERS OF THE ELECTRICITY TRANSMISSION COMPETITION COALITION (ETCC)**

Ag Processing  
Alliance of Western Energy Consumers  
Aluminum Association  
American Chemistry Council  
American Forest and Paper Association  
American Foundry Society  
American Iron and Steel Institute  
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Arkansas Electric Energy Consumers, Inc.  
Arkansas Forest and Paper Council  
Association of Businesses Advocating for Tariff Equity  
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Carolina Industrial Group for Fair Utility Rates  
Carolina Utility Customers Association, Inc.  
Century Aluminum  
Chemistry Council of New Jersey  
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Coalition of MISO Transmission Customers  
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Council of Industrial Boilers Organization  
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Formosa Plastics Corporation, U.S.A.  
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Indiana Industrial Energy Consumers  
Industrial Energy Consumers of America  
Industrial Energy Consumers of Pennsylvania  
Industrial Energy Users-Ohio  
Industrial Minerals Association-North America  
Iowa Business Energy Coalition  
Iowa Industrial Energy Group, Inc.  
Iron Mining Association of Minnesota  
Kimberly-Clark Corporation  
Large Energy Users Coalition (NJ)  
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LS Power Development, LLC  
Maine Industrial Energy Consumer Group  
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Messer Americas

Metalcasters of Minnesota  
Michigan Chemistry Council  
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National Council of Textile Organizations  
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NextEra Energy, Inc.  
North Carolina Manufacturers Alliance  
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Office of the People's Counsel for the District of Columbia  
Ohio Cast Metals Association  
Ohio Chemistry Technology Council  
Ohio Energy Group  
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Oklahoma Industrial Energy Consumers  
Olin Corporation  
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Pennsylvania Energy Consumer Alliance  
PJM Industrial Customer Coalition  
Portland Cement Association  
Public Citizen, Inc.  
R Street  
Resale Power Group of Iowa  
Retail Industry Leaders Association  
Riceland Foods, Inc.  
Rio Tinto  
Skana Aluminum Company  
Steel Manufacturers Association  
Texas Cast Metals Association  
TimkenSteel Corporation  
Vallourec STAR LP  
Vinyl Institute  
Virginia Manufacturers Association  
West Virginia Energy Users Group  
West Virginia Manufacturers Association  
Wisconsin Cast Metals Association  
Wisconsin Industrial Energy Group