

**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 the R Street Institute**

**I. Issue Summary**

On April 21, 2022, the Federal Energy Regulatory Commission (Commission) published a Notice of Proposed Rulemaking (NOPR) on reforms to improve regional transmission planning, cost allocation and generator interconnection.<sup>1</sup> The R Street Institute (RSI) filed initial comments in the NOPR.<sup>2</sup> RSI submits these comments in reply to other parties' initial comments. As with the initial NOPR comments, RSI is also filing separately in reply comments as part of the Electricity Transmission Competition Coalition (ETCC).

**II. Summary of R Street Position**

Comments filed in this proceeding overwhelmingly support the main thrust of the NOPR—advance holistic, proactive transmission planning. The glaring omission of the NOPR is retaining an artificial silo between economic and reliability projects, which RSI's initial comments expand upon. The Achilles Heel of the NOPR are its anti-competitive elements, which would not only impose harm on the order of tens of billions of dollars or more but also risk undermining productive reforms in the NOPR.

The winning formula for the Commission is to “refine the good and jettison the bad” in the NOPR.<sup>3</sup> The comments of the Advanced Energy Economy laid this out in endorsing the core aspects of the NOPR while asking FERC to strip out counterproductive anti-competitive elements like reinstatement of the right of first refusal (ROFR).<sup>4</sup> RSI echoes this sentiment, noting the record reflects ample evidence on how to refine the good already but needs clarification on how to jettison the bad. In fact, the beneficial parts of the NOPR largely address the strategic incumbent transmission owner (TO) behavior the NOPR uses to justify ROFR, whereas ROFR itself creates legal risk, undermines state buy-in and imposes economic harm.

---

<sup>1</sup> Federal Energy Regulatory Commission, “Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Notice of Proposed Rulemaking, Docket No. RM21-17-000, May 4, 2022. <https://www.govinfo.gov/content/pkg/FR-2022-05-04/pdf/2022-08973.pdf>.

<sup>2</sup> “Comments of the R Street Institute on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Docket No. RM21-17-000, Aug. 17, 2022. <https://www.rstreet.org/wp-content/uploads/2022/08/20220817-5207.pdf>.

<sup>3</sup> Devin Hartman, “The Good, the Bad and the Winning Formula for FERC’s Regional Transmission Reform Proposal,” R Street Institute, Aug. 22, 2022. <https://www.rstreet.org/2022/08/22/the-good-the-bad-and-the-winning-formula-for-fercs-regional-transmission-reform-proposal>.

<sup>4</sup> “Comments of Advanced Energy Economy on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Docket No. RM21-17-000, Aug. 17, 2022. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5213&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5213&optimized=false).

### III. Additional Response to the NOPR

Several parties unconvincingly filed comments questioning the benefits of transmission competition, while other parties provided verifiable evidence of the benefits of competition that cannot be replicated through alternative means. Some parties expressed concern that competition shifts incumbent TO behavior toward less efficient smaller solutions, while other parties clarified the root causes of suppressed regional transmission development and how to address them in a way that enhances competition. Even parties opposing competition raised major legal concerns with the anti-competitive elements of the NOPR. The comments of state public utility commissions made clear that retaining and expanding competition is important for securing state buy-in.

#### ***The benefits of transmission competition are not in question***

As noted by consumer groups in the comments, transmission costs are rising rapidly and reveal a major economic discipline problem.<sup>5</sup> The NOPR aggravates the root cause of this problem by proposing provisions that would fatally undermine the only effective cost containment mechanism in place today: competition. The only cost containment mechanism offered in the NOPR is the removal of construction work in progress (CWIP). However, it is commonplace for nonincumbent transmission providers to waive CWIP already in competitive solicitations. Thus, preserving and expanding competition should remedy concerns with CWIP and yield cost savings and innovation far beyond what CWIP removal alone would accomplish.

Incumbent TOs funded a new study by Concentric Energy Advisors claiming competitive transmission failed to show benefits.<sup>6</sup> The study selection criteria and cost methodology is flawed. It omits competitive and non-competitive incumbent projects and instead cherry-picks projects won by nonincumbents between 2015 and 2017. Comments by RSI and the ETCC reference studies and recent solicitation evidence across a broad suite of projects, which reveal that competition induces major cost savings and shifts risk from consumers to suppliers.<sup>7</sup>

The benchmark industry study on transmission competition was conducted by the Brattle Group in 2019 and found 20 to 30 percent cost savings, plus innovation benefits, and has withstood scrutiny.<sup>8</sup> In fact, comments in this record by the New Jersey Board of Public Utilities suggest the Brattle Group cost

---

<sup>5</sup> “Comments of the Electricity Consumers Resource Council on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Docket No. RM21-17-000, Aug. 17, 2022. <https://elcon.org/wp-content/uploads/RM21-17-Transmission-NOPR-Comments-FINAL.pdf>.

<sup>6</sup> Concentric Energy Advisors, “Competitive Transmission: Experience To-Date Shows Order No. 1000 Solicitations Fail to Show Benefits,” August 2022. <https://ceadvisors.com/wp-content/uploads/2022/08/Competitive-Transmission-Experience-To-Date-Shows-Order-No.-1000-Solicitations-Fail-to-Show-Benefits.pdf>.

<sup>7</sup> “Comments by the Electricity Transmission Competition Coalition on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Docket No. RM21-17-000, Aug. 17, 2022. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5258&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5258&optimized=false).

<sup>8</sup> Johannes P. Pfeifenberger et al., “Cost Savings Offered by Competition in Electric Transmission,” The Brattle Group, April 2019. [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).

savings may be conservative.<sup>9</sup> The California Public Utilities Commission (CPUC) found that competitive projects completed after the Brattle Report in the California Independent System Operator (CAISO) netted cost savings of 29 and 55 percent compared to typical cost escalation above CAISO's estimates.<sup>10</sup>

This raises the point that a comprehensive, methodologically sound and up-to-date assessment of the benefits of competition is warranted. The Commission should seek to build a stronger record on the merits of competition using robust, verifiable data of apples-to-apples project comparisons across the complete timeframe in which competition has been implemented.

Methodological problems surfaced in other parties' comments questioning the benefits of competition. PJM comments incorrectly conflate the benefits of competition as a function of the size of solution sets and whether a nonincumbent transmission developer submits the most efficient solution.<sup>11</sup> The size and incumbent/nonincumbent status of transmission solutions are not appropriate measures to gauge the performance of competitive mechanisms for transmission, or any industry segment for that matter. The focus must be on a comparison of the static and dynamic economic efficiencies of transmission procurement using competitive procurement compared to an uncompetitive procurement baseline.

The mere presence of nonincumbent suppliers imposes economic discipline on the behavior of an incumbent supplier in any industry. The economics literature clarifies this under a number of conditions, such as incumbent bidding behavior shifting based on the perceived threat level and uncertainty associated with nonincumbents.<sup>12</sup> The comments of the Department of Justice (DOJ) and Federal Trade Commission (FTC) conclude that in the case of transmission competition, "incumbents tend to make more competitive proposals when they face competition."<sup>13</sup> As such, competition yields benefits even when incumbents win, and the proportion of projects won by incumbents has no bearing on the benefits of competition.

Further, contrary to PJM's comments, smaller solutions are not necessarily economically inferior. In fact, there are recent cases in PJM where competition revealed that innovative upgrades had comparable congestion mitigation and multi-year in-service expediency advantages at less than 1 percent of the cost of greenfield development.<sup>14</sup> This underscores the point that while economies of scale exist for

---

<sup>9</sup> "Comments of the New Jersey Board of Public Utilities on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection," Docket No. RM21-17-000, Aug. 17, 2022, p. 66. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5283&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5283&optimized=false).

<sup>10</sup> "Initial Comments of the California Public Utilities Commission on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection," Docket No. RM21-17-000, Aug. 17, 2022, p. 30. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5255&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5255&optimized=false).

<sup>11</sup> "Initial Comments of the PJM Interconnection on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection," Docket No. RM21-17-000, Aug. 17, 2022, p. 48. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5298&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5298&optimized=false).

<sup>12</sup> For e.g., see Jan U. Becker et al., "Start-ups, incumbents, and the effects of takeover competition," *Journal of Business Research*, May 5, 2016. <https://isidl.com/wp-content/uploads/2017/07/E4265-ISIDL.pdf>.

<sup>13</sup> "Comment of United States Department of Justice and Federal Trade Commission on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection," Docket No. RM21-17-000, Aug. 17, 2022, p. 13. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5300&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5300&optimized=false).

<sup>14</sup> Steve Huntoon, "Counterflow: Say It Ain't So, Joe," *RTOInsider*, July 4, 2022. <https://www.rtoinsider.com/articles/30413-counterflow-say-it-aint-so-joe>.

conventional transmission expansion, competition can unearth innovative, unconventional solutions that have far lower per unit costs with earlier in-service dates.

PJM also notes added administrative cost of evaluating competitive bids.<sup>15</sup> The Commission should account for administrative cost compared to the benefits of competition. Ample evidence demonstrates that the benefits far exceed the costs.<sup>16</sup> This justifies added administrative expense on cost-benefit analysis grounds. The Commission should also note that PJM and other regional transmission organizations (RTOs) have a vested interest in pleasing incumbent TOs and pursuing easier administrative solutions irrespective of their economic merits.<sup>17</sup> The Commission's responsibility is not to let RTOs pursue the path of least resistance, but to ensure just and reasonable rates that, by extension, mean supporting competitive mechanisms.

### ***Undermining competition will not benefit regional transmission expansion***

Numerous parties make clear that the rationale for the anti-competitive elements of the NOPR—reducing deterrents to regional transmission development—is unwarranted. The main threats to regional transmission expansion are letting incumbent TOs have unmitigated authority to pursue inefficient transmission expansion and exercise undue influence on regional transmission planning to benefit their own generation fleet. The Southern Renewable Energy Association (SREA) notes how incumbent TOs manipulate their generation plans to stifle regional transmission development.<sup>18</sup> The motive is predictable; the incumbent utility profits far more from adding to inefficient generation rate base than efficient transmission expansion that enables less expensive imported power than the self-build option.<sup>19</sup>

Numerous commenters, especially proponents of regional transmission development, note that the productive provisions of the NOPR would dramatically dilute the undue influence of incumbent TOs that is preventing efficient regional transmission development. SREA says the pattern of problematic incumbent TO behavior makes a case to “bolster transmission expansion planning processes... along the lines proposed in the NOPR.”<sup>20</sup> Similarly, NextEra Energy – the leading national renewables developer and beneficiary of regional transmission expansion – detailed in comments how more robust regional planning—not reinstatement of federal ROFR—would remedy concerns of underinvestment in regional transmission facilities.<sup>21</sup> The CPUC, a proponent of regional transmission expansion, echoed this

---

<sup>15</sup> “Comments of the PJM Interconnection on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” pp. 47-48.

[https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5298&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5298&optimized=false).

<sup>16</sup> See, e.g., “Impact Assessment,” Office of Gas and Electricity Markets, March 2022.

<https://www.ofgem.gov.uk/sites/default/files/2022-03/Transmission%20Early%20Competition%20IA.pdf>.

<sup>17</sup> Jennifer Chen and Devin Hartman, “Transmission Reform Strategy from a Customer Perspective: Optimizing Net Benefits and Procedural Vehicles,” *R Street Policy Study* No. 257, May 2022, p. 10. <https://www.rstreet.org/wp-content/uploads/2022/05/RSTREET257.pdf>.

<sup>18</sup> “Comments of the Southern Renewable Energy Association on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Docket No. RM21-17-000, Aug. 17, 2022, pp. 13-15. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5204&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5204&optimized=false).

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, p. 15.

<sup>21</sup> “Initial Comments of NextEra Energy, Inc. on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Docket No. RM21-17-000, Aug. 17, 2022, pp. 24-27. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5265&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5265&optimized=false).

rationale as well.<sup>22</sup> A common theme among these commenters is that a longer planning horizon paired with scenario analysis would result in transmission planning that is far less vulnerable to incumbent TO influence in the planning process and any strategic behavior—such as short-term changes in generation plans—intended to thwart regional transmission development.

Strong evidence was provided in agreement with the core positions of SREA, NextEra and CPUC by parties more neutral to regional transmission development. The ETCC made clear that the anti-competitive provisions of the NOPR do not address the root cause of the problem the provisions seek to address.<sup>23</sup> Rather, the ETCC demonstrates that other actions in the NOPR, such as more holistic planning, as well as complementary reforms like instituting independent oversight, would address the root causes.<sup>24</sup>

Instilling robust regulatory oversight of local projects that are exempt from competition is imperative to crack down on inefficient local project expansion by incumbent TOs at the expense of efficient regional expansion. This is necessary in a context with or without regional competition. However, instituting robust regulatory oversight is more administratively resource-intensive than facilitating competition. Thus, given the Commission's finite resources to perform oversight, the Commission should expand the scope of competition to minimize the need for tighter regulation of projects exempt from competition.

The Pennsylvania Public Utilities Commission, whose constituents have been victimized extensively by inefficient transmission expansion exempt from competition, finds the ROFR counterproductive to increase the number of regional transmission projects.<sup>25</sup> It elaborates that the “consequence of granting a ROFR for right-sized projects might not just be to displace small local projects, but incumbent transmission owners may use this as a powerful new tool to avoid regional competition.”<sup>26</sup>

The DOJ/FTC comments diagnosed the regional underbuilds concern correctly and suggested prudent next steps:

To the extent that Order No. 1000 may have inadvertently led incumbent utilities to overinvest in local transmission facilities at the expense of more efficient regional facilities, the Agencies point out that this distortion has multiple causes, including ones that the NOPR does not address ... The Agencies therefore urge FERC not to displace competition, but instead to consider solutions to utilities' misaligned incentives that are consistent with and promote competition.<sup>27</sup>

---

<sup>22</sup> “Initial Comments of the California Public Utilities Commission on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection.”

[https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5255&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5255&optimized=false).

<sup>23</sup> “Comments by the Electricity Transmission Competition Coalition on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection.”

[https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5258&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5258&optimized=false).

<sup>24</sup> Ibid.

<sup>25</sup> “Comments of the Pennsylvania Public Utilities Commission on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Docket No. RM21-17-000, Aug. 16, 2022, pp. 18-20. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220816-5053&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220816-5053&optimized=false).

<sup>26</sup> Ibid, p. 22. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220816-5053&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220816-5053&optimized=false).

<sup>27</sup> “Comment of United States Department of Justice and Federal Trade Commission on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” pp. 7-8. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5300&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5300&optimized=false).

Large consumers, who have raised major concerns about transmission cost escalations, have similarly diagnosed the root cause of challenges to coordinating and identifying large transmission projects. The Electricity Consumers Resource Council shares the concern in the NOPR about the current piecemeal, incremental approach to transmission planning and diagnoses that the problem is that “too much flexibility was provided to transmission providers in Order No. 1000 that allowed some regions to skirt open competitive solicitations.”<sup>28</sup> This presents a case for stronger accountability and robust independent planning that minimizes the ability of incumbent TOs to evade the Order 1000 framework, not to roll back competition.

Altogether, the record is clear that the Commission needs to move forward with more robust regional planning and oversight of local transmission projects. Properly implemented, these actions would address the root causes of any regional transmission underdevelopment. As such, these productive actions would render the objectives of the anti-competitive provisions unnecessary.

### ***Retaining and expanding competition benefits state relations***

Reforms that backtrack on competition not only introduce legal risk, but they would spark stakeholder dissension. States, in particular, are strong supporters of retaining and expanding competition. The comments of a variety of state utility commissions, including those in Pennsylvania, New Jersey, Kansas, New York, Kentucky and California, seek to retain competitive mechanisms. It is clear that the cost markup imposed by ROFR would increase stakeholder disputes and make interstate collaboration and siting approvals more contentious.

Greater state participation in regional transmission planning, including the NOPR’s provision, is not a substitute for competition. The Chairman of the Kentucky Public Service Commission made clear that greater regulatory oversight—whether by states or federal governments—is not a substitute for competition.<sup>29</sup> There are profound jurisdictional and institutional resource constraints inhibiting state utility commissions from ever serving in this capacity for interstate transmission. SREA notes that southern states provide little to no regulatory oversight of regional transmission planning and are “unable to adequately evaluate long range transmission planning processes.”<sup>30</sup>

The CPUC, a major proponent of regional transmission expansion, correctly states how productive provisions in the NOPR address the concerns the NOPR uses to justify ROFR, while noting that backtracking on transmission competition will push consumers to a breaking point and undermine a clean energy transition:

The Commission’s ultimate decisions regarding the instant NOPR, and other related current and future proceedings, have the potential to improve the regulatory framework in a manner that

---

<sup>28</sup> “Comments of the Electricity Consumers Resource Council on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” p. 3. <https://elcon.org/wp-content/uploads/RM21-17-Transmission-NOPR-Comments-FINAL.pdf>.

<sup>29</sup> “Initial Comments of Kentucky Public Service Commission Chairman and Commissioner Kent A. Chandler on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Docket No. RM21-17-000, Aug. 17, 2022, pp. 13-14. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5304&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5304&optimized=false).

<sup>30</sup> “Comments of the Southern Renewable Energy Association on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,” p. 2. [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5204&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5204&optimized=false).

properly channels the expected torrent of transmission investment in the coming decades into innovative, efficient, and cost-effective transmission solutions that will at once modernize the grid, thereby facilitating the clean energy transition, and result in affordable, sustainable, and, ultimately, just and reasonable rates. On the other hand, were the Commission to ultimately retreat from competition, such a regulatory step backwards could potentially undermine the implementation of the NOPR's core, critical proposed reforms, by unsustainably increasing already high transmission rates, and thereby pushing customers past the threshold they can reasonably and justly be expected to bear.<sup>31</sup>

#### IV. Conclusion

RSI respectfully requests the Commission consider the comments contained herein.

Respectfully submitted,

*/s/ Devin Hartman*

Devin Hartman  
Director, Energy and Environmental Policy  
R Street Institute  
1212 New York Ave. NW, Suite 900  
Washington, D.C. 20005  
(202) 525-5717  
[dhartman@rstreet.org](mailto:dhartman@rstreet.org)

September 19, 2022

---

<sup>31</sup> "Initial Comments of the California Public Utilities Commission on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection," pp. 4-5.  
[https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220817-5255&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5255&optimized=false).

Document Content(s)

Final - RM21-17 reply comments - Devin Hartman.docx .....1