UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning and Cost Management	Docket Nos.	AD22-8-000
Joint Federal-State Task Force on Electric Transmission		AD21-15-000

Post-technical Conference Comments of Joint Customers

I. Issue Summary and ECA Introduction

On October 6, 2022, the Federal Energy Regulatory Commission (FERC or Commission) convened a technical conference on transmission planning and cost management.[1] On December 23, 2022, the Commission issued a notice inviting post-technical conference comments, especially in five areas: local transmission planning and asset management, project implementation and variance analysis, independent transmission monitor, formula rates and prudence practices, and federal and state regulation of transmission facilities.[2] These issue areas have important synergies with separate reforms proposed by the Commission in the April 2022 Notice of Proposed Rulemaking (Regional Planning NOPR) on improving regional transmission planning, cost allocation and generator interconnection.[3] The Electricity Customer Alliance (ECA) has a keen interest in transmission planning and costs because it aggregates perspectives across diverse transmission customer groups responsible for incurring the costs of new transmission development.

The Citizens Utility Board of Illinois, Electricity Consumers Resource Council, Maryland Office of People's Counsel, New Jersey Division of Rate Counsel, Office of the People's Counsel for the District of Columbia, Greg Poulos-Executive Director of Consumer Advocates of PJM States, acting in his individual capacity, Public Citizen, Inc., and R Street Institute are signing onto this comment, not as official members of ECA but as part of its broader mission to align diverse commercial, industrial, and residential electricity customers, retail consumer advocates, trade associations, and public interest groups who want to increase transparency and accountability, specifically to ensure that customers are able to better participate and adapt to meet the needs of a changing electric grid. As a coalition, ECA also seeks to convene, harness, and scale an aligned customer voice to improve the nation's electricity systems, providing increased value to all energy customers.

II. Summary of Joint Customer Transmission Policy Position

[1] 87 Fed. Reg. 80533 (December 30, 2022). https://www.federalregister.gov/documents/2022/12/30/2022-28454/transmission-planning-and-cost-management-joint-federal-state-task-force-on-electric-transmission.
[2] Ibid.
[3] 87 Fed. Reg. 26504 (May 4, 2022). https://www.federalregister.gov/documents/2022/05/04/2022-08973/building-for-the-future-through-electric-regional-transmission-planning-and-cost-allocation-and.

Transmission customers support and depend on prudent transmission investment, which maximizes economic, reliability and resilience benefits less the investment cost. Transmission developers have ample access to capital and spend over $20 billion per year on transmission in the United States.[4] Unfortunately, billions of dollars are misallocated annually, eroding net benefits to consumers and suppressing development of cleaner and lower-cost generation.[5] The problem rests squarely on a regulatory system that is outdated and structurally flawed, resulting in a severe lack of economic discipline.[6]

Economic discipline either results from competition or strict cost-of-service regulation. Independent experts and state commissioners in this proceeding have found that, "astoundingly, a large proportion of transmission development is neither subject to competitive bidding nor economic regulation."[7] In particular, they identify that projects between the 100-230 kilovolt (kV) range, projects creatively dubbed "reliability need," and those within a single transmission zone, irrespective of cost allocation, are exempt from competition and economic regulation.[8] The result, when paired with the overcapitalization incentive of cost-of-service rates, is that incumbent utilities have an incentive to overspend on less efficient transmission outside the scope of regionally-planned projects, which then subverts investment in efficient regional transmission.[9] Many incumbent transmission utilities also own generation and subvert regional transmission development to prevent imports that would harm their existing fleet or their case for state regulators to approve new generation rate base. For example, in 2022, Entergy secured approval of a new rate-based power plant that will cost ratepayers ten times more than a planned regional transmission solution that the Midcontinent Independent System Operator (MISO) has since sought to withdraw after the power plant decision.[10]

To address transmission regulatory flaws, a 2022 convening of customer groups identified four customer transmission reform priorities: improved planning, optimized existing infrastructure, effective competition, and quality governance.[11] Consistent with this, the Regional Planning NOPR should emphasize how to do regional transmission planning better, including adopting proactive and holistic benefits accounting that de-silos economic and reliability projects. The

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[4] See, e.g., Johannes Pfeifenberger, "21st Century Transmission Planning: Benefits Quantification and Cost Allocation," Brattle, January 2022, p. 3. https://www.brattle.com/wp-content/uploads/2022/01/21st-Century-Transmission-Planning-Benefits-Quantification-and-Cost-Allocation.pdf.
[5] See, e.g., Toshiki Tsuchida et al., "Grid-Enhancing Technologies Shown to Double Regional Renewable Energy Capacity, According to Study by Brattle Consultants," Brattle, Feb. 1, 2021. https://www.brattle.com/insights-events/publications/gridenhancing-technologies-shown-to-double-regional-renewable-energy-capacityaccording-to-study-by-brattle-consultants.
[6] Jennifer Chen and Devin Hartman, "Transmission Reform Strategy from a Customer Perspective: Optimizing Net Benefits and Procedural Vehicles," R Street Institute, No. 257, May 2022. https://www.rstreet.org/wp-content/uploads/2022/05/RSTREET257.pdf.
[7] Devin Hartman and Kent Chandler, "Stakeholder Soapbox: A Transmission Planning Resolution Emerges," *RTOInsider,* Dec. 13, 2022. https://www.rtoinsider.com/articles/31281-stakeholder-soapbox-tx-planning-resolution-emerges.
[8] Ibid.
[9] Chen and Hartman, 2022.
[10] See, e.g., https://www.rstreet.org/commentary/texas-regulators-ok-of-entergy-1-2-gw-gas-plant-draws-mixed-observer-reactions/.
[11] Ibid.

Regional Planning NOPR should remove its anti-competitive right-of-first-refusal (ROFR) provisions, which will add billions in consumer costs.[12] The Regional Planning NOPR's motive for ROFR – to avoid incumbent transmission owners from subverting regional transmission planning – will not be remedied by ROFR but can be addressed by this proceeding.

State regulators who participated in this proceeding have noted that competition is unworkable for legitimately local projects, yet where competition is absent the regulatory oversight gap is pervasive.[13] The inconsistent oversight of local projects results in opacity and increased costs for energy customers. It also subverts efficient regional transmission development by creating a powerful incentive for incumbent utilities to pursue local projects that receive virtually no economic scrutiny from regulators. Indeed, in some regions the majority of transmission expansion is exempt from competition and lacks robust economic regulatory review.[14]

In this proceeding, FERC Commissioners correctly identified a major regulatory gap and information gap between state and federal regulators over local transmission projects.[15] For example, Commissioner Freeman of the Indiana Utility Regulatory Commission and president of the Organization of MISO states, noted that her state has no process for reviewing transmission projects.[16] Practices vary widely by state, altering the nature of the regulatory gap and strategic utility behavior. For example, Chairman Gladys Brown Dutrieuille of the Pennsylvania Public Utilities Commission said Pennsylvania only conducts reviews of greenfield projects larger than 100 kV, and thus there is a "big increase" in projects that only require a utility to file a report or letter of notice to build without providing exact numbers.[17]

There is also a regulatory flaw for regional reliability need projects, which are exempt from competition and economic cost-of-service regulatory scrutiny. For example, in 2022, PJM identified several "immediate needs" transmission projects to meet reliability violations created by growing datacenter load in the "Datacenter Alley" region of Northern Virginia.[18] At least two of the identified projects would have been subject to a competitive solicitation window but for the immediate needs designation, which gave Dominion exclusive authority to construct the projects with little cost oversight or transparency, including an exemption from PJM's Designated Entity Agreement.[19]

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[12] "Comments of the Electricity Transmission Competition Coalition before the Federal Energy Regulatory Commission," Docket No. RM21-17-000, Aug. 17, 2022, p. 14. https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220817-5258&optimized=false.

[13] Hartman and Chandler, 2022.

[14] Ethan Howland, "FERC, state regulators consider independent monitors as way to boost transmission oversight 'gap,'" *UtilityDive*, Nov. 16, 2022.

[15] Rich Heidorn Jr., "FERC Tech Conference Highlights Regulatory Gaps on Transmission Oversight," *RTOInsider,* Oct. 10, 2022. https://www.rtoinsider.com/articles/30933-ferc-tech-conference-highlights-regulatory-gaps-tx-oversight.

[16] Heidorn, 2022.

[17] Howland, 2022.

[18] https://www.pjm.com/-/media/committees-groups/committees/teac/2022/20220712/item-08---dominion-northern-virginia-area-violations---need-statement.ashx.

[19] "Comments of the Data Center Coalition", Docket No. EL22-85-000, Sept. 15, 2022, at p. 1.

These state practices, paired with FERC's formula rates and presumption of prudence, is not economic regulation.[20] As a result, captive customers often have little transparency or recourse to challenge the prudency of such projects. This makes the case for local transmission reform imperative.

III. Joint Customer Position on this Proceeding

Unclear jurisdictional coverage, inadequate information, and flawed prudency mechanisms are the source of the local transmission regulatory problem. The record in this proceeding seeks extensive input on all these elements. Joint customers voice support for general improvements in the following areas, while many organizations participating in this effort will file separate detailed comments:

- *Local transmission planning, asset management, project implementation and variance analysis*. The identification of need is critical to gauge project prudence, and current local transmission is not scrutinized for need in a manner that is coordinated with regional transmission expansion. Better information in regional transmission organization (RTO) footprints on the interplay between regional and local planning, such as how economies of scale from regional planning obfuscate the need for inefficient local projects, would inform stricter oversight of local transmission reviews. Much more is needed outside RTOs, where transmission planning opacity reigns supreme and the independence of transmission planning is not always evident. Equalizing treatment of Order Nos. 890 and 1000 across RTO and non-RTO regions, especially regarding independent regional transmission planning, would be a major step forward.[21]
- *Formula rates and prudence practices*. Transmission projects exempt from competition must face robust economic prudence scrutiny from regulators, which warrants reexamining the current policy of unconditional formula rate treatment under a presumption of prudence. Dozens of consumer groups have sought to change this policy, such as suggesting that the Commission impose on transmission owners an affirmative burden to demonstrate transmission facility prudence.[22] The Commission should not grant the presumption of prudence to a transmission provider unless the relevant state utility commission first certifies that it has deemed the project prudent based on a determination of the project's need, cost, and consideration of alternatives. Consumers and regulators also lack sufficient information to determine whether transmission provider expenditures are prudent consistent with the ability to challenge under the "serious doubt" standard that requires "reliable, probative, and substantial evidence."[23] Robust transparency criteria should be required for formula rates.
- *Federal and state regulation of transmission facilities*. There is unquestionably a gap between federal and state economic regulatory oversight in RTO regions. The extent of this varies by the criteria and mechanism of state prudence review (e.g., voltage thresholds). Closing the regulatory gap begins with a clear definition of "local" projects.

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[20] Hartman and Chandler, 2022.
[21] Hartman and Chandler, 2022.
[22] "Comments of the Electricity Transmission Competition Coalition before the Federal Energy Regulatory Commission," Docket No. RM21-17-000, Oct. 12, 2021, p. 36.
[23] Delmarva Power & Light Co.,172 FERC ¶ 61,175, at P 15 (2020) (citing New Eng.PowerCo., Opinion No. 231, 31 FERC ¶ 61,047 (1985)).

State regulators and independent experts note that transmission facilities between 100 and 230 kV should not be considered "local" projects because they are typically built to serve regional load.[24] Lowering the voltage exemption threshold to 100 kV, which is consistent with the standard definition of the bulk power system, would clarify jurisdictional ambiguity driving the regulatory gap.[25] Further, the Commission could reject the presumption of prudence for formula rates for any local transmission project not subject to economic scrutiny by state regulators.

- *Independent Transmission Monitor (ITM)*. The information gap identified undermines state and federal prudence reviews. This warrants thorough pursuit of an ITM, which state regulators say could furnish information to help close the regulatory gap with local transmission projects[26] and could provide independent expertise augmenting transparency and stakeholder access particularly in non-RTO regions.[27] An ITM may provide various functions with different federal and, perhaps, state filing authority. Ideas for ITM features are being spearheaded by the ITM Coalition under the leadership of the Electricity Consumers Resource Council. Distinguishing an ITM's role in and outside of RTO regions will be important, because the lack of independent transmission planning outside of RTOs is a major deficiency requiring reforms in its own right.[28]

Procedurally, next steps may take various forms. For example, the synergies between these issues may warrant a notice of inquiry or subsequent technical conference(s) in greater depth on all subjects in this proceeding. It is also possible that implementing an ITM, reformulating Order No. 890 criteria, and revising formula rates and prudence practices warrant separate proceedings to develop more in-depth or expedited records. The Commission may wish to consider synchronization with other pending proceedings, such as remedying the local transmission regulatory and information gaps in this proceeding in conjunction with regional transmission reforms in the Regional Planning NOPR.

IV. Conclusion

Current local transmission practices lead to elevated and unnecessary transmission costs with little transparency, accountability, or regulatory oversight for electricity customers. This is unacceptable but correctable. It will require FERC and states to work collaboratively to close this regulatory gap, with independent analysis and customer voices at the forefront.

Joint Customers respectfully request that the Commission consider the comments herein.

Respectfully submitted,

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[24] Hartman and Chandler, 2022.
[25] For e.g., see the "Bulk Electric System" definition provided by the North American Electric Reliability Corporation, p. iii. https://www.nerc.com/pa/Stand/2018%20Bulk%20Electric%20System%20Definition%20Reference/BES_Reference_Doc_08_08_2018_Clean_for_Posting.pdf.
[26] https://www.utilitydive.com/news/ferc-naruc-task-force-independent-monitor-itm/636677/
[27] "Joint Comments of the Non-RTO NASUCA States before the Federal Energy Regulatory Commission," Docket No. RM21-17-000, Aug. 17, 2022, p. 8-9.
[28] See, e.g., https://cebi.org/wp-content/uploads/2023/02/CEBI-The-Benefits-of-New-Regional-Transmission-Planning-Entities-in-The-U.S.-West-And-Southeast-Regions.pdf.

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