UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection	)))	**Docket No. RM21-17-000**

COMMENTS OF WIRES

Pursuant to the Notice of Proposed Rulemaking ("NOPR") issued by the Federal Energy Regulatory Commission ("Commission" or "FERC") on April 21, 2022 in the above-caption proceeding,[1] WIRES, on behalf of its members, hereby submits the following comments.

I. INTRODUCTION

WIRES is a non-profit trade association of investor-, publicly-, and cooperatively-owned Transmission Providers and developers, transmission customers, regional grid managers, and equipment and service companies. WIRES promotes investment in electric transmission and consumer and environmental benefits through development of electric transmission infrastructure.[2] Since its inception, WIRES has focused on supporting investment in needed and beneficial transmission infrastructure – investments that Congress and the Commission have recognized are critical to establishing a reliable, resilient, reliable, cost-effective, modern, and clean bulk power system.[3]

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[1] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,028 (2022) ("NOPR").

[2] For more information about WIRES, please visit www.wiresgroup.com.

[3] This filing is supported by the full supporting members of WIRES but does not necessarily reflect the views of the RTO/ISO associate members of WIRES.

Electric transmission investment in the United States remains critical to realizing the benefits of efficient and reliable electric service while enabling the ongoing transition to new generating sources, sometimes located remotely from load, to power an increasingly electrified economy. There are several factors the Commission must consider with any proposed changes to existing regional transmission planning and cost allocation processes including the need to help ensure the ability of the transmission system to reliably serve firm transmission use, the evolution in the nation's resource mix, an increase in the number of new resources seeking transmission service, shifts in load patterns, the impact of increasing extreme weather events on the bulk power system, climate change impacts and the need for resilience, the increasing electrification of the economy, and the challenges associated with implementing changes to transmission planning, cost allocation, and interconnection processes. WIRES has produced numerous studies showing the tremendous benefits transmission investment provides and that the need for new transmission has never been greater.[4]

For these reasons, WIRES actively participated in and provided extensive comments on various issues raised in the Commission's Advance Notice of Proposed Rulemaking ("ANOPR") issued pursuant to section 206 of the Federal Power Act ("FPA")[5] to reexamine regional transmission planning, cost allocation, and other related processes to fully account for the future

[4] *See e.g.*, The Brattle Group, *Employment and Economic Benefits of Transmission Infrastructure Investment in the U.S. and Canada* (May 2011); The Brattle Group, *The Benefits of Electric Transmission: Identifying and Analyzing the Value of Investments*, (July 2013) (Brattle Benefits Report); The Brattle Group, *Well-Planned Electric Transmission Saves Customer Costs: Improved Transmission Planning is Key to the Transition to a Carbon-Constrained Future* (June 2016) ("Brattle Planning Study"); London Economics International, Inc., *How Does Electric Transmission Benefit You?* (Jan. 2018); The Brattle Group, *Recognizing the Role of Transmission in Electric System Resilience* (May 2018); The Brattle Group, *The Coming Electrification of the North American Economy* (Mar. 2019); ScottMadden, Inc., *Informing the Transmission Discussion: A Look at Renewables Integration and Resilience in Selected Regions of the United States* (Jan. 2020) ("ScottMadden Report"); London Economics International, Inc., *Repowering America: Transmission Investment for Economic Stimulus and Climate Change* (May 2021).

[5] 16 U.S.C. § 824e.

energy needs of customers, and of the nation.[6] The Commission's ANOPR raised important issues of transmission planning, cost allocation, and generator interconnection at a critical time as the grid is undergoing a transformation to meet state and national clean energy mandates and goals, the needs of an increasingly electrified economy, and reliability and resilience challenges of increasing frequency and ferocity posed by climate change and extreme weather driven events. This transformation is occurring rapidly, but the pace and exact nature of these changes are uncertain and highly dependent on a number of variables, including federal, state, and local policies. While WIRES supported the Commission's initiative to review and improve transmission planning and cost allocation processes to better prepare for the future, WIRES urged the Commission to avoid trying to fix what is not broken or, notwithstanding the best of intentions, inadvertently create unintended consequences or counterproductive measures.

Following consideration of the comments submitted in response to the ANOPR, the Commission narrowed its focus in the NOPR to proposed changes to existing regional transmission planning and cost allocation processes, as well as revisions to Order No. 1000 competitive processes. With respect to long-term regional transmission planning, the Commission proposed to require public utility Transmission Providers to: (1) identify transmission needs driven by changes in the resource mix and demand through the development of long-term scenarios that satisfy the requirements, including accounting for low-frequency, high-impact events such as extreme weather events; (2) evaluate the benefits of regional transmission facilities to meet these needs over at least a 20-year time horizon starting from the estimated in-service date of transmission facilities; and (3) establish transparent and not unduly discriminatory criteria to select transmission facilities in the regional transmission plan for

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[6] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Notice of Proposed Rulemaking, 176 FERC ¶ 61,024 (2021) ("ANOPR").

purposes of cost allocation that address transmission needs in collaboration with states and stakeholders.[7] The Commission also proposed to require fuller consideration of dynamic line ratings and advanced power flow control devices in regional transmission planning processes.[8] Notably, the Commission clarified that these changes did not apply to or impact existing reliability and economic planning requirements.[9]

As to transmission cost allocation, the Commission proposes to require Transmission Providers seek agreement of relevant state entities within the transmission planning region regarding cost allocation methods for transmission facilities selected through a long-term regional transmission planning process.[10] In a modification to the requirements of Order No. 1000, [11] the NOPR proposes to allow for the exercise of federal rights of first refusal in conjunction with establishing joint ownership of transmission facilities.[12] The Commission also proposed transparency and coordination requirements for local transmission planning processes and proposed to restrict the ability of Transmission Providers to use a long-standing construction-work-in-progress ("CWIP") incentive for long-term regional transmission facilities.[13] Finally, the Commission observes that while the ANOPR sought comment on additional reforms such as cost allocation for interconnection upgrades, interconnection queue

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[7] NOPR at P 3.

[8] *Id.*

[9] *Id.*

[10] *Id*. at P 4.

[11] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

[12] NOPR at P 6.

[13] *Id.* at PP 5 & 7.

processes, interregional transmission planning, and oversight of transmission planning and costs, it did not include them in the proposed rule but would continue to review the record and propose further reforms, as warranted.[14]

In general, WIRES supports the proposed rule. To the extent the Commission's proposal is likely to facilitate investment in transmission infrastructure to meet the nation's well-documented needs of the future, WIRES supports the Commission's effort. Indeed, many of the proposed reforms either reflect or are consistent with the comments WIRES submitted in response to the ANOPR. WIRES submits the following comments to support core aspects of the proposed rule, seek clarification of certain aspects of the proposal, or in certain instances where the proposal is at odds with the Commission's goal of getting needed and beneficial transmission built, WIRES asks the Commission to revise or reconsider its proposed reforms.

II. COMMENTS

A. Regional Transmission Planning

The Commission has repeatedly expressed concern that regional transmission planning processes are not adequately planning for the transmission needs of anticipated future generation to meet a changing resource mix, including generation that is not yet in the interconnection queue.[15] In response to these concerns, the proposed rule would require Transmission Providers to participate in a Long-Term Regional Transmission Planning Process that: (1) uses a transmission planning horizon of at least 20 years to develop Long-Term Scenarios; (2) is repeated at least once every three years; (3) incorporates specific categories of factors that might drive transmission needs into their Long-Term Scenarios; (4) develop at least four Long-Term

[14] *Id*. at P 10.

[15] ANOPR at P 44; NOPR at P 64.

Scenarios; (5) uses "best available data" in the Long-Term Scenarios; and (6) considers whether to identify geographic zones with the potential for development of large amounts of new generation.[16] However, the Commission properly clarified that these proposed changes would not apply to Order No. 1000's requirements with respect to existing reliability and economic planning requirements.[17]

Overall, the proposed rule strikes a reasonable approach toward conducting long-term regional transmission planning on a sufficiently forward-looking basis to meet the nation's transmission needs in light of uncertain and changing demand, resource mix, and resilience challenges. When faced with a future that has a clear trend but significant uncertainties as to the magnitude and timing of the drivers behind these changes, more proactively-planned transmission infrastructure can provide a much wider range of valuable options to cope with future challenges at lower risks and costs for customers and policymakers.[18] WIRES supports a holistic regional planning process that incorporates expected future generation and evaluates a full range of transmission benefits over the expected life of assets. To that end, WIRES suggests robust scenario planning to determine appropriate portfolios and individual projects. At the same time, the number and structure of scenarios should be carefully chosen to support efficient decision making and avoid creating a burdensome process. To better accomplish this nation-wide, WIRES recommends the Commission provide clear guidance applicable to all regions to ensure all regions are clear on the criteria while also assessing planning futures that are appropriately representative of expected future conditions in the region. In addition, WIRES supports the proposal to preserve current economic and reliability planning processes and urges

[16] NOPR at P 78.

[17] *Id.* at PP 3, 72.

[18] *See generally*, Brattle Planning Study.

the Commission to ensure that the proposed Long-Term Regional Transmission Planning Process does not undermine those processes in the final rule.

As to some of the specific aspects of the proposed Long-Term Regional Transmission Planning Process, the Commission would require use of a transmission planning horizon of at least 20 years with reassessments and revisions to the scenarios at least every three years.[19] While 20 years might be a reasonable transmission planning horizon for developing Long-Term Scenarios in many instances, in order to account for regional differences or circumstances that would render such a timeline inappropriate, WIRES urges the Commission to expressly permit regions to request a variance when circumstances warrant one.

In a similar vein, the Commission should permit Transmission Providers to request a variance to the three-year scenario reassessment requirement if such a variance is warranted. While a triennial review process might be appropriate for some regions, if three years is too short an interval between studies, the requirement could be disruptive and have the perverse effect of increasing costs or impeding the planning and/or development process. The Commission should also clarify that Transmission Providers are not required to reassess previously approved projects in the triennial review process. Moreover, projects that are approved in the Long-Term Regional Transmission Planning Process should not be subject to ongoing triennial re-evaluation to avoid periodic disruption to the progress of those projects and potential increased costs and development delays. Doing so would increase the risk that transmission developers face which could also hinder needed transmission build and increase costs to customers.[20]

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[19] NOPR at 91.

[20] These risks are in part alleviated by the abandoned plant incentive. Modifications to that incentive are proposed in the Commission's Incentives NOPR which proposes to allow 100% abandoned plant for all projects approved by a regional planning entity from the date of selection in a regional transmission planning process. *See Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Notice of Proposed Rulemaking, 85 Fed. Reg. 18784, 170 FERC ¶ 61,204 at PP 6, 38, 82-84, *errata notice*, 171 FERC ¶ 61,072 (2020) (Incentives NOPR), *modified by*, Supplemental Notice of Proposed Rulemaking, 175 FERC ¶ 61,035, at P 9 (2021) (proposing

B. Local Transmission Planning

In the proposed rule, the Commission expresses concern regarding the adequacy of the transparency in existing local transmission planning processes and the sufficiency of the coordination between local and regional transmission planning processes.[21] To address these concerns, the Commission proposes to require Transmission Providers to take steps to enhance the transparency of (1) the criteria, models, and assumptions used in their local transmission planning processes; (2) the needs identified; and (3) the potential facilities evaluated to address the identified needs.[22] In addition, the Commission proposes requiring a regional review of all in-kind replacements of local transmission facilities 230-kV or above anticipated within the next 10 years to identify "right-sized" regional alternatives that would provide the benefits of the in-kind replacements in a more efficient or cost-effective manner.[23]

The NOPR attempts to balance the Commission's concerns with existing processes under Order No. 1000 that were intended to "provide flexibility for public utility Transmission Providers to develop procedures appropriate for their local and regional transmission planning processes."[24] Order No. 1000 does not require that the transmission facilities in a Transmission Provider's local transmission plan be subject to approval at the regional or interregional level, unless that Transmission Provider seeks to have any of those facilities selected in the regional

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elimination of, rather than increase in, the RTO participation adder). That proposal would further appropriately reduce risks to transmission developers, and in doing so incent the necessary investment in transmission at a lower cost to customers. When a planning region initiates a project, rather than the developer, there is no policy rationale for requiring the developer to bear a share of prudently incurred project costs if the project is abandoned for reasons outside of the developer's control.

[21] *Id*. at P 398.

[22] *Id.* at P 400.

[23] *Id.* at P 403.

[24] ANOPR at P 16 n.33 (quoting Order No. 1000 at P 220).

transmission plan for purposes of cost allocation.[25] Rather, Order No. 1000 permits a Transmission Provider to meet its reliability needs or service obligations by choosing to build new transmission facilities that are located within its retail distribution service territory or footprint as long as the Transmission Provider does not receive regional cost allocation for the facilities.[26]

There are good reasons for maintaining a distinction between regional transmission planning and local transmission planning. While the regional planning process is directed toward addressing certain reliability, economic criteria, and public policy initiatives, it is not geared toward addressing additional system needs related to resiliency, asset management, customer needs, customer impact, and replacing aging infrastructure that is typically the focus of local planning.[27] Efficient local transmission planning processes are vital to ensuring that transmission owners can continue to provide reliable service to their customers, particularly retail customers in their distribution service territories, while also supporting regional planning process goals and objectives. Moreover, it is often the case that upgrades to local, lower voltage-facilities are needed on a relatively fast timeframe to meet changing system conditions. Local planning processes are also critically important to efforts to accommodate state policies such as promoting the development of distributed generation and increased electrification, as well as providing transmission owners the ability to develop and deploy innovative solutions to local needs, including non-wires alternatives.

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[25] *Id*. at P 26 (citing Order No. 1000-A at P 190).

[26] *Id*. at P 27 (citing Order No. 1000-A at PP 366, 379, 425, 428).

[27] Charles River Associates, *The Value of Local Transmission Planning* (December 2021) at pp. 9,13. https://wiresgroup.com/wp-content/uploads/2021/12/Value-of-Local-Transmission-Planning-report-WIRES-CRA.pdf

Overall, the proposed rule strikes a reasonable balance between the Commission's concerns about transparency and "right-sizing" on the one hand, and preserving the ability of local planners to evaluate transmission benefits from areas such as aging infrastructure replacement, local resilience, and other local needs at a level where planners have the expertise and capabilities to identify and develop plans for their solution on the other.[28] Moreover, while the proposed 230 kV cut-off for consideration of existing facilities a Transmission Provider owns that it estimates may need to be replaced is an appropriate threshold for "right-sizing" consideration in some regions, the Commission should clarify that the proposed rule would not prohibit "right-size" consideration of transmission at a lower voltage threshold if existing planning processes already do so, or provide flexibility for regions to justify the use of a different threshold. Furthermore, while the provision of a list of forecasted in-kind replacements to the RTO may be appropriate given the existing planning processes in some regions, it may not be necessary in others and the Commission should provide flexibility around this proposed requirement. If the Commission choses to move forward with this requirement, the Commission should allow for the transmission owner to provide to the Transmission Provider a non-public, confidential, non-binding list of facilities that may need to be replaced based on an appropriate time horizon as determined by the Transmission Provider. Each Transmission Provider, based on industry guidelines, as well as operational and maintenance procedures used for determining the health and condition of its assets, must have the discretion to determine what assets should be on the list and when. Also, given the sensitivity of disclosing where on the grid the infrastructure may be vulnerable, it is only appropriate for this information to remain confidential.

[28] *Id.* at p. 19.

C. Regional Transmission Cost Allocation

The Commission has consistently, and correctly, recognized that "knowing how the costs of transmission facilities [will] be allocated is critical to the development of new infrastructure because Transmission Providers and customers cannot be expected to support the construction of new transmission facilities unless they understand who will pay the associated costs."[29] In Order No. 1000, the Commission required Transmission Providers to adopt regional and interregional cost allocation methodologies that meet a basic set of six principles while allowing cost allocation methodologies to vary by project type.[30] This resulted in different approaches to regional cost allocation that have evolved over time to align beneficiaries and cost assignments.

A core concept underlying the Commission's policy on cost allocation has been that the processes by which costs of transmission infrastructure are allocated to beneficiaries must be done in a way that is at least roughly commensurate with the benefits.[31] In practice, this means that the Commission may not regionally allocate costs unless the benefits are allocated regionally, and likewise, costs cannot be recovered only from local customers if the benefits are regional.[32]

The proposed rule seeks to require Transmission Providers in each transmission planning region to seek the agreement of relevant state entities within the transmission planning region regarding the cost allocation method or methods that will apply to transmission facilities selected

[29] Order No. 1000 at P 496 (citing Order No. 890 at P557); NOPR at P 297.

[30] *Id*. at PP 558-750.

[31] *Id*. at PP 622-629; *Illinois Comm. Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) (to approve a cost allocation methodology, the Commission must have "an articulable and plausible reason to believe that the benefits are at least roughly commensurate" with how the costs are allocated).

[32] *See Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1261 (D.C. Cir. 2018).

through long-term regional transmission planning.[33] The proposed rule would further require Transmission Providers to allow a time period for states to negotiate an alternate cost allocation methodology for a transmission facility selected through the long-term transmission planning process.[34]

WIRES generally supports the proposed role for states in the cost allocation process for transmission facilities through long-term regional transmission planning, however, certain aspects of the proposal require clarification. For instance, it is important for the Commission to clarify that Transmission Providers are only required to *seek* agreement from relevant state entities regarding the approach to cost allocation for Long-Term Regional Transmission Facilities and that such agreement is not *required*.[35] Otherwise, such a requirement could infringe upon the exclusive right of public utilities under section 205 of the FPA[36] to file tariff provisions governing their rates, terms and conditions of service, including cost allocation. [37] Moreover, as a practical matter, introducing a new approval hurdle for transmission projects is not likely to facilitate the approval or construction of needed transmission projects. Finally, to the extent relevant states are unable to agree on an appropriate cost allocation methodology in a timely fashion that is appropriately representative of the timing of the needed transmission facilities, the Commission should afford regions the opportunity to apply an existing *ex ante* cost

[33] NOPR at P 278.

[34] *Id.* at P 279.

[35] *Id.* at P 305.

[36] 16 U.S.C. § 824d.

[37] *See Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9-11 (D.C. Cir. 2002) ("[T]his Court, among others, has stressed that the power to initiate rate changes rests with the utility and cannot be appropriated by FERC in the absence of a finding that the existing rate was unlawful); *Atl. City Elec. Co. v. FERC*, 329 F.3d 856, 858-59 (D.C. Cir. 2003) (per curiam).

allocation methodology associated with the long-term regional transmission planning in that region.

D. Conditional Right of First Refusal[38]

In the proposed rule, the Commission found that, "[d]ue to continuing changes in both supply and demand, ongoing investment in transmission facilities is necessary to ensure the transmission system continues to serve load in a reliable and economically efficient fashion."[39] However, since the implementation of Order No. 1000, transmission investment through the regional transmission planning and cost allocation processes has not only failed to increase, in some regions investment in regionally planned transmission has actually declined.[40]

The Commission surmised that there could be a connection between the trend in flat or even declining regional transmission investment and the incumbent transmission developer reforms eliminating longstanding federal rights of first refusal with respect to new transmission facilities selected in a regional transmission plan.[41] The Commission observed that some commenters in the Order No. 1000 rulemaking proceeding had presciently expressed concerns that eliminating federal rights of first refusal could discourage regional transmission development and that investment trends observed since Order No. 1000's implementation appeared to be bearing out those concerns.[42]

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[38] This section is supported by a majority of, but not all, WIRES Full Supporting Members. The Full Supporting Members of WIRES otherwise support the other comments and recommendations in this filing.

[39] NOPR at P 28.

[40] *Id*. at P 349.

[41] *Id*. at P 350.

[42] *Id.*

To address these developments based on a decade of actual experience gained in the implementation of Order No. 1000, the Commission found that "Order No. 1000's remedy—requiring the elimination of *all* federal rights of first refusal for entirely new transmission facilities selected in a regional transmission plan for purposes of cost allocation—was overly broad."[43] Instead, the Commission proposes to allow Transmission Providers to propose, pursuant to FPA section 205, federal rights of first refusal conditioned upon the incumbent Transmission Provider establishing joint ownership of the transmission facilities with unaffiliated nonincumbent transmission developers, or with another unaffiliated entity, including another incumbent Transmission Provider.[44]

WIRES agrees with the Commission's determination that the implementation of Order No. 1000's competitive transmission planning process has not been successful in spurring regional transmission development on a level required to meet the nation's transmission needs of the future. Although in some instances, the lack of a ROFR may have arguably increased the number of innovative and/or cost-effective transmission options for consideration, it has also caused delays and limited opportunities for dialogue between transmission developers, market participants, and RTOs/ISOs, in addition to not delivering regional transmission projects under the timeframes necessary to meet increasingly aggressive climate targets. Even for single projects, existing bidding processes are resource intensive and cause delays in project development. To the extent the Commission's goal is to encourage the approval of a larger volume of regional projects, the practical difficulties and development delays associated with bidding processes are at odds with that goal.

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[43] *Id.* at P 352.
[44] *Id*. at P 358.

WIRES generally supports the Commission's effort to revisit the overly broad remedy of unconditional elimination of federal rights of first refusal established in Order No. 1000 by providing the opportunity for conditional federal rights of first refusal through joint ownership projects. Opportunities for integrating varied transmission ownership models should appropriately focus on those areas where partnerships are valuable, such as long-distance, multi-jurisdictional projects that are challenging to build. Partnerships models, including some that may involve affiliates of an incumbent utility along with unaffiliated entities, have been shown to be effective in delivering innovative, cost-effective projects with more widespread support. In addition, the Commission should be flexible in promoting opportunities for parties with rights of first refusal to partner with and develop transmission projects with other transmission developers holding rights of first refusal, or, alternatively, parties without those rights that could provide other advantages. Importantly, the Commission should provide flexibility with respect to eligibility of transmission affiliates of utilities that have ROFR rights to form qualifying partnerships as an effective model that delivers needed transmission projects.[45]

To provide the greatest level of certainty for ongoing regional planning efforts, the Commission should maintain the option for incumbents to partner with other incumbents to secure the Conditional ROFR in a Final Rule. Furthermore, the Commission should expressly allow Transmission Providers to secure Conditional ROFRs for project types that will be jointly owned by two or more incumbent transmission owners pursuant to existing joint ownership structures contained in regional tariffs. Such structures include (1) split ownership between two or more incumbents for projects which connect two or more transmission owner systems, and (2) regional portfolios, which are inherently jointly owned by multiple transmission owners.

[45] For example, an effective model in New York is the New York Transco.

Allowing the Conditional ROFR for existing joint ownership structures, including portfolios, is consistent with the goals of the NOPR to promote cost effective regional transmission development. Portfolios are approved under a single set of criteria, and thus are functionally the same as a single project. They are owned by multiple transmission owners (including public power) as dictated by a non-discriminatory regional planning process. To provide additional certainty for Transmission Providers as they pursue regional planning efforts that result in these types of projects, the Commission should allow Transmission Providers to apply for Conditional ROFRs on a prospective basis by outlining these joint ownership structures in a compliance filing, or on a project-by-project basis, as necessary. Finally, the Commission should affirm that nothing in the NOPR or a Final Rule will change the current consideration of existing or future state ROFR laws, which are resulting in cost effective transmission development in states that have adopted such laws.

In addition, the Commission should require whatever change it makes concerning ROFR pursuant to its authority under FPA section 206, rather than under FPA section 309. The Commission has already laid the groundwork to make adverse findings as to the impact of ROFR elimination, which would satisfy the section 206 preconditions for imposing a remedy. Acting under section 206 will also generate an affirmative compliance obligation, ensuring that the Commission's remedy is applied consistently and to the benefit of all customers. Given the complexities and intricacies of the varying stakeholder processes within the regions, the likelihood that some regions will reinstate rights of first refusal and others will not is too great. The Commission has recognized that a patchwork approach to transmission planning has hindered needed regional transmission development, and absent clarity on this point, the proposed remedy could exacerbate the situation.

In the same vein, the Commission should also provide more guidance on partnership conditions, for example, a sense of what constitutes a "meaningful" joint-ownership, and a minimum level of transparency with respect to the partnership arrangement and process. Without being overly prescriptive, additional guidance from FERC in these areas would help to avoid the potential for litigation as this new paradigm is implemented and facilitate effective innovation, cost-efficiency, and broad support for longer distance projects that cross utility franchise territories and wider regions.

E. The Construction Work In Progress (CWIP) Incentive

In addition to establishing a valuable long-term planning process, the NOPR also clearly identifies an interest on the part of the Commission in actually building for the future. Although flexibility is critical to successful long-term planning, certainty is equally critical with respect to the construction phase to ensure needed transmission is built. For nearly twenty years, the Commission has permitted transmission owners, first on a case-by-case basis and subsequently in Order No. 679, to include up to 100 percent of prudently incurred, transmission-related construction work in progress ("CWIP") in their rate base.[46] The Commission adopted the view that this rate treatment furthers the goals of FPA section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, and reducing the pressures on an applicant's finances caused by investing in transmission projects.[47] Moreover, the Commission determined

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[46] *See American Transmission Company, LLC*, 105 FERC ¶ 61,388 (2003) (*ATC*); *Promoting Transmission Inv. through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 at PP 104, 115, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

[47] *Id*. at PP 103 n.70, 115; 2012 Policy Statement at P 12 (this incentive "addresses timing issues associated with the recovery of financing costs for large transmission investments and allows recovery of a return on construction costs during the construction period rather than delaying cost recovery until the plant is placed into service").

that such action was critical to reversing a nation-wide decline in transmission investment by removing a barrier to that investment.[48]

The NOPR proposes to abandon this precedent and no longer permit Transmission Providers to use 100 percent CWIP for projects that result from its proposed Long-Term Regional Transmission Planning process.[49] According to the Commission, this policy reversal is needed because Long-Term Regional Transmission Projects will likely face greater uncertainty, *i.e*., risk.[50] The Commission's proposal is contrary to its goal of increasing investment in transmission infrastructure to meet the needs of the future as it will negatively impact both Transmission Providers and customers.

The fact of the matter is that the rationale underlying the Commission's CWIP policy for the last twenty years is as valid today as it was when first implemented in *ATC* and Order No. 679. Allowing public utilities to include 100 percent of prudently incurred transmission-related CWIP in rate base furthers "the goals of section 219 by providing up-front regulatory certainty, rate stability and improved cash flow for applicants thereby easing the pressures on their finances caused by transmission development programs."[51] This result benefits both public utilities and customers by enhancing the public utility's cash flow, reducing interest expense, assisting with financing, and reducing the risk of a downgrade in debt rating—which increases the cost of capital and, therefore, increasing the costs ultimately borne by customers. With respect to the customer protections provided by the inclusion of 100 percent CWIP in rate base, the

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[48] *Id.* at P116.

[49] NOPR at P333.

[50] *Id*. at 331.

[51] Order No. 679 at P 115.

Commission has found that its policy promotes rate stability and reduces the potential for rate shock to customers when large projects go into service.[52] In particular, the Commission has found that

> when certain large-scale transmission projects come on line, there is a risk that consumers may experience "rate shock" if CWIP is not permitted in rate base. By allowing CWIP in rate base, the rate impact of the [project] can be spread over the entire construction period which reduces the amount of Allowance for Funds Used During Construction that the customer ultimately pays.[53]

The NOPR's proposal to limit public utilities' recovery of CWIP due to concerns about customer impacts is entirely at odds with its determination in *PPL* that the CWIP policy does not increase customer rates and, importantly, mitigates customer rate impact. The Commission does not reconcile the inconsistency between the proposed rule and its precedent. As a result, the Commission's proposal is not supported by the record or Commission precedent and is arbitrary and capricious. Accordingly, the Commission should reconsider its proposed rule, and the CWIP incentive should be retained.

F. Independent Transmission Monitor

The ANOPR sought comment on whether it would be appropriate for the Commission to require Transmission Providers, regardless of whether or not they are in an RTO/ISO region, to establish an independent entity to monitor the planning and cost of transmission facilities in the region.[54] WIRES strongly opposed the proposition on both legal and policy grounds, and the Commission did not include a proposal for an independent transmission monitor in the proposed

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[52] *PPL Elec. Utils. Corp. and Pub. Serv. Elec. & Gas Co.*, 123 FERC ¶ 61,068, at PP 42-43 (2008), *reh'g denied*, 124 FERC ¶ 61,229 (2008) (*PPL*).

[53] *Id.* (internal citation omitted).

[54] *Id.* at P 163.

rule. The Commission's decision to omit an independent transmission monitor requirement from the proposed rule was correct.

As a threshold matter, the Commission can only impose a new requirement for all Transmission Providers to establish an independent transmission monitor if it meets the dual burden of section 206 of the FPA: the Commission must both show that existing tariffs or rules are unjust and unreasonable and that the rule it requires to be put in place is just and reasonable. The record in this proceeding does not meet this burden.

The basis for the ANOPR's independent transmission monitor proposal was not particularly clear. In essence, the core concern seemed to be Commission's concern that if more transmission facilities get built, consumers will have to pay for the costs of those new facilities:

> [I]n light of potential costs of new transmission infrastructure that may be needed to meet the needs of the changing resource mix, we seek comment on whether additional measures may be necessary to ensure that the planning processes for the development of new transmission facilities, and the costs of those facilities, do not impose excessive costs on consumers.[55]

However, simply because more transmission infrastructure may be built to meet the needs of a changing resource mix, [56] and customers will pay the costs of these new transmission facilities (as the case has always been), it does not by any means follow that that additional transmission is more likely to result in unjust and unreasonable rates. Nor does it necessarily follow that increasing spending in order to build more transmission will make current adequate oversight processes unjust and unreasonable. In fact, by the Commission's own reckoning, any transmission that results from the potential reforms to regional transmission planning, cost

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[55] *Id*. at P 160.

[56] ANOPR at P 159.

allocation, and generator interconnection in the proposed ANOPR should be <u>more</u> efficient and cost-effective than before and provide greater protection to customers, thereby making the need for an independent transmission monitor even less necessary and more superfluous.[57]

The fact of the matter is, there already is sufficient oversight and transparency in the transmission planning and cost allocation process and a duplicative layer of review through an independent market monitor is not needed.[58] First, Order No. 1000 required transparent and not unduly discriminatory processes in all regions for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.[59] Each region implemented the requirement and operates under tariffs approved by the Commission. There is no evidence that the existing processes whether in RTO/ISO regions or regions outside of RTOs/ISOs have not implemented their tariffs appropriately or that the process produce unjust and unreasonable outcomes under the Commission approved processes. If there are concerns, an evidentiary showing sufficient to meet the standard under section 206 of the FPA is necessary before any new requirements such as a new and separate oversight authority can be imposed, and that evidentiary burden has not been met.

Second, the FPA charges the Commission, not any outside party, with responsibility for ensuring the justness and reasonableness of transmission rates. The ANOPR's proposed creation and authorization of an independent transmission monitor would constitute an illegal subdelegation of the Commission's authority under FPA sections 205 and 206.[60] Even if an independent transmission monitor were not expressly vested with binding decisional authority

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[57] *Id*.

[58] *Id.* at P 165.

[59] Order No. 1000 at P 328; Order No. 1000-A at P 452.

[60] *See U.S. Telecom Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

over rates, terms and conditions of service, such an entity, essentially deputized by the Commission with authority to review transmission provider spending on transmission facilities, conduct necessary analyses, and to make preliminary determinations and recommendations to the Commission regarding transmission facility costs, would be inherently vested with the veneer of the exercise of federal authority given the role's ability to inhibit, interfere, coerce, and influence transmission planning processes and decisions. There is nothing ministerial or "neutral" about the role or function of a transmission monitor calling balls and strikes with regard to significant, long term, transmission investments as envisioned by the ANOPR, and the creation and authorization of such an entity would exceed the Commission's authority.

Finally, even if there were sufficient findings that the current process is unjust and unreasonable in some respect, the appropriate remedy would be to require appropriate changes to the process to address the flaw instead of adding an additional and duplicative oversight entity replicate existing processes. The existing transmission planning processes are already costly and time-consuming. Rather than facilitate the process, the addition of a market monitor will add another layer of review which will add further delays, result in more costs to consumers, and increase uncertainty at a time when more transmission needs to be built at a faster pace, without any identifiable benefits. A proposed solution that would in practice inhibit the ability to get needed infrastructure constructed is not the answer.

III. CONCLUSION

WIRES respectfully submits these comments for consideration by the Commission as it considers further action on the proposed rule.

Respectfully submitted,

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