

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

Industrial Energy Consumers of America, :  
American Forest & Paper Association, R Street :  
Institute, Glass Packaging Institute, Public Citizen, :  
PJM Industrial Customer Coalition, Coalition of :  
MISO Transmission Customers, Association of :  
Businesses Advocating for Tariff Equity, Carolina :  
Utility Customers Association, Inc., Pennsylvania :  
Energy Consumer Alliance, Resale Power Group :  
of Iowa, Wisconsin Industrial Energy Group, :  
Multiple Intervenors (NY), Arkansas Electric :  
Energy Consumers, Inc., Public Power :  
Association of New Jersey, Oklahoma Industrial :  
Energy Consumers, Large Energy Group of Iowa, :  
Industrial Energy Consumers of Pennsylvania, :  
Maryland Office of People's Counsel, :  
Pennsylvania Office of Consumer Advocate, :  
Consumer Advocate Division of the Public :  
Service Commission of West Virginia, and :  
Missouri Industrial Energy Consumers, :

Complainants :  
:

Docket No. EL25-44-000

Avista Corporation; Idaho Power Company :  
MATL LLP; NorthWestern Corporation; :  
PacifiCorp; Portland General :  
Electric Company; Puget Sound Energy, Inc.; :  
Duke Energy Florida, LLC; Florida Power & :  
Light Company; Tampa Electric Company; :  
Dominion Energy South Carolina, Inc.; :  
Duke Energy Carolinas, LLC and Duke Energy :  
Progress, Inc.; Louisville Gas and Electric :  
Company and Kentucky Utilities Company; :  
Southern Company Services Inc., as agent for :  
Alabama Power Company, Georgia Power :  
Company, Georgia Power Company and :  
Mississippi Power Company; Arizona Public :  
Service Company; Black Hills Power, Inc.; :  
Black Hills Colorado Electric Utility Company, :  
LP; Cheyenne Light, Fuel & Power Company; :  
El Paso Electric Company, NV Energy, Inc.; :  
Public Service Company of Colorado; Public :

Service Company of New Mexico; Tucson :  
Electric Power Company; UNS Electric, Inc.; :  
California Independent System Operator, Inc.; :  
Southwest Power Pool, Inc.; PJM Interconnection, :  
L.L.C.; Midcontinent Independent System Operator :  
Inc.; New York Independent System Operator, Inc.; :  
and Independent System Operator of New England :  
Inc., :

Respondents :

## PROTEST OF WIRES

Pursuant to Rule 211 of Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”)<sup>1</sup> and the Commission’s notices issued in this proceeding,<sup>2</sup> WIRES, on behalf of its members,<sup>3</sup> submits this protest in response to the Complaint filed on December 19, 2024, in the captioned docket.<sup>4</sup> The Complainants<sup>5</sup> allege that the local

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<sup>1</sup> 18 C.F.R. § 385.211 (2024).

<sup>2</sup> *Industrial Energy Consumers of America, et al. v. Avista Corp., et al.*, Combined Notice of Filings #1, Docket No. EL25-44-000 (Dec. 20, 2024); *Industrial Energy Consumers of America, et al. v. Avista Corp., et al.*, Notice of Extension of Time, Docket No. EL25-44-000 (Jan. 7, 2025) (granting EEI/WIRES’ motion requesting an extension of time for answer, interventions, comments, and protests to the complaint to on or before March 20, 2025).

<sup>3</sup> 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. This filing is supported by the full supporting members of WIRES but does not necessarily reflect the views of the Regional Transmission Organization/Independent System Operator (“RTO/ISO”) members of WIRES. For more information about WIRES, please visit [www.wiresgroup.com](http://www.wiresgroup.com). WIRES filed a timely motion to intervene in this proceeding on December 23, 2024. See *Industrial Energy Consumers of America, et al. v. Avista Corp., et al.*, (doc-less) Motion to Intervene of WIRES, Docket No. EL25-44-000 (Dec. 23, 2024).

<sup>4</sup> *Industrial Energy Consumers of America, et al. v. Avista Corp., et al.*, Complaint of Consumers for Independent Regional Transmission Planning for All FERC-Jurisdictional Transmission Facilities at 100 kV and Above, Docket No. EL25-44-000 (Dec. 19, 2024) (“Complaint” or “IECA Complaint”).

<sup>5</sup> The Complainants include: Industrial Energy Consumers of America, American Forest & Paper Association, R Street Institute, Glass Packaging Institute, Public Citizen, PJM Industrial Customer Coalition, Coalition of MISO Transmission Customers, Association of Businesses Advocating for Tariff Equity, Carolina Utility Customers Association, Inc., Pennsylvania Energy Consumer Alliance, Coalition of MISO Transmission Customers, Association of Businesses Advocating for Tariff Equity, Carolina Utility Customers Association, Inc., Pennsylvania Energy Consumer Alliance, Resale Power Group of Iowa, Wisconsin Industrial Energy Group, Multiple Intervenors (NY), Arkansas Electric Energy Consumers, Inc., Public Power Association of New Jersey, Oklahoma Industrial Energy Consumers, Large Energy Group of Iowa, Industrial Energy Consumers of Pennsylvania, Maryland Office of People’s Counsel, Pennsylvania Office of Consumer Advocate, Consumer Advocate Division of the Public Service Commission of West Virginia, and Missouri Industrial Energy Consumers (collectively, the “Complainants”).

planning tariff provisions of the named Respondents inappropriately authorize individual transmission owners to plan FERC-jurisdictional transmission facilities at 100 kV and above without regard to whether such local planning processes result in more efficient or cost-effective transmission projects.<sup>6</sup> For the reasons discussed more fully below, WIRES requests that the Commission deny this Complaint.

## **I. INTRODUCTION**

Continued robust investment in electric transmission infrastructure remains critical to reliably, resiliently, and effectively serving customers and the Nation. Utilities are facing potentially overwhelming demand driven by data centers, and artificial intelligence. Investment in transmission infrastructure will enable the interconnection of new generation, the service of new load demands, and efficient operation of the grid. It is essential to an increasingly electrified economy and is a recognized national priority. On January 20, 2025, President Trump issued an Executive Order declaring a national energy emergency.<sup>7</sup> The Order underscored the criticality of addressing this country's energy needs by directing that energy infrastructure projects be expedited. Despite this mandate, Complainants seek to overturn established Commission rules, nearly two decades of Commission precedent, and more than a century of industry practice, without justification.

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<sup>6</sup> Complaint at 6.

<sup>7</sup> See Exec. Order No. 14156, 3 C.F.R. § 301 (2025) ("Executive Order") at <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/>.

Specifically, Complainants attack tariff provisions adopted in compliance with Order Nos. 890<sup>8</sup> and 1000<sup>9</sup> (issued more than 10 years ago) claiming that such tariff provisions inappropriately authorize individual transmission owners to locally plan transmission facilities 100 kV and above without regard to whether the projects authorized are what they consider to be the “right projects” for the interconnected grid.<sup>10</sup> Complainants claim that the Commission recognized the shortcomings of local planning in Order No. 1920, “but did not address [l]ocal [p]lanning in that order, necessitating this Complaint.”<sup>11</sup> Incorrect. Moreover, Complainants provide no evidence that projects completed to meet identified needs have harmed customers or are the “wrong” projects, let alone that the existing processes they would jettison, are systemically flawed.

In particular, Complainants blame local transmission planning for the lack of development of regional transmission projects. Not so. Complainants’ proofs rest merely on conclusory observations that the number of locally planned projects has increased, not that these projects were wrongly identified or that they have somehow crowded out regional solutions. However, such “proofs” ignore the critical fact that this transmission is necessary.

Furthermore, Complainants completely ignore the fact that substantial numbers of regional projects are actively being planned and built today. By way of example,

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<sup>8</sup> *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119 (2007) (“Order No. 890”), *order on reh’g and clarification*, Order No. 890-A, 121 FERC ¶ 61,297 (2007) (“Order No. 890-A”), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>9</sup> *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (“Order No. 1000”), *order on reh’g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *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).

<sup>10</sup> Complaint at 8 and 41.

<sup>11</sup> *Id.* at 12.

- The Board of Directors of Midcontinent Independent System Operator, Inc. (“MISO”) recently approved “the largest portfolio of projects in the nation’s history.” The combination of local, Tranche 2.1, and MISO-SPP Joint Targeted Interconnection Queue (“JTIQ”) projects consists of 488 new projects spanning 15 states, including a 765 kV backbone; five JTIQ projects to enable generation on MISO’s seam with the Southwest Power Pool; and over 400 projects that will improve infrastructure and meet load growth needs at the local level.<sup>12</sup>
- Over the last two years, the Board of Managers of PJM Interconnection, L.L.C. (“PJM”) approved over \$12 billion in regional transmission projects, including \$6.7 billion in new transmission projects approved this February, to bolster reliability across the PJM region. Notably, approximately \$4.6 billion is regional transmission backbone.<sup>13</sup>
- In October 2024, the Southwest Power Pool, Inc. (“SPP”) approved its largest regional transmission portfolio. The SPP portfolio is estimated to cost \$7.7 billion and consists of 89 transmission projects, representing 2,333 miles of new transmission, and 495 miles of rebuilds — including SPP’s first 765-kV lines. The portfolio addresses increasing load growth and changes in the region’s generation fleet. SPP expects the portfolio’s benefits to exceed costs by a ratio of at least 8-to-1.<sup>14</sup>

Likewise, Complainants’ claim that “the *cumulative* effect of tariff provisions allowing [l]ocal [p]lanning of transmission projects over 100 kV and above results in unjust and unreasonable transmission rates”<sup>15</sup> is an unsubstantiated and erroneous conclusion. The mere assertion that ‘more is bad’ is neither evidence nor a compelling argument. Indeed, Complainants proffer no evidence to conclude that existing local planning processes have not been implemented appropriately or that existing Commission-approved tariffs are producing unjust and unreasonable outcomes. It does not by any means follow that additional transmission, regional and local, is the

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<sup>12</sup> Media Release. <https://www.misoenergy.org/meet-miso/media-center/2024/miso-board-approves-historic-transmission-plan-to-strengthen-grid-reliability/>.

<sup>13</sup> PJM Staff White Paper, Transmission Expansion Advisory Committee (TEAC) Recommendations to the PJM Board (Feb. 2025) at <https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/2025/20250204/20250204-pjm-board-whitepaper-february-2025.pdf>.

<sup>14</sup> SPP Media Release at <https://spp.org/news-list/spp-board-approves-77-billion-plan-for-transmission-builds-upgrades/>.

<sup>15</sup> Complaint at 11 (Complaints state that they “do[ ] not challenge the rates for any *specific* [l]ocally [p]lanned project as unjust and unreasonable.”).

result of unjust and unreasonable rates. Nor does it follow that increasing spending to build more transmission needed to support reliability, load growth, and new generation interconnections will make current oversight processes unjust and unreasonable or that the Order No. 1920 reforms will not be adequate.

In addition to Complainants' failure to meet their burden under FPA section 206 is the fact that the significant (and highly disruptive) changes proposed in this Complaint would unravel the existing planning processes and threaten timely development of essential transmission investment. The reality is transmission infrastructure is needed now to meet the needs of a changing resource mix, significant increases in the number of new resources seeking transmission service, shifts in load patterns, significant customer growth, the impact of increasing extreme weather events on the bulk power system ("BPS"), the increasing electrification of the economy, and growing cyber and physical security threats. This is not the time to delay or add confusion to the development of critically needed transmission infrastructure. Nor have Complainants provided justification for the creation of an independent transmission system planner ("ITP"). Their ITP proposal would likely be illegal and should be rejected.

WIRES urges the Commission to deny this Complaint. Broad changes of the nature and scope suggested by Complainants require considerable scrutiny due to their significance, *i.e.*, the utility's right to plan for its local system needs based on its local planning criteria. This FPA section 206 Complaint is not the appropriate vehicle through which to address these substantial policy considerations of general applicability to the Commission's past rules and orders on transmission planning across all regions of the country. Moreover, the relief sought would inevitably frustrate, delay, disrupt and complicate the ability to develop both local and regional transmission infrastructure essential to our Nation's needs, as well as potentially increase costs for

customers. Importantly, litigating this Complaint will serve only to delay necessary transmission infrastructure development, to the detriment of the economy and customers, and contrary to the Administration’s declaration of a national energy emergency.<sup>16</sup>

## II. SUMMARY

Complainants allege that local planning processes, coupled with the absence of an ITP, have produced “inefficient planning and projects that are not cost-effective, resulting in unjust and unreasonable rates for both individual projects and cumulative regional transmission plans and portfolios.”<sup>17</sup> In support of their allegations, Complainants argue that the Respondents’ local planning tariff provisions “allow individual transmission owners to plan FERC-jurisdictional transmission facilities at 100 kV and above without regard to whether it is the right project for the interconnected grid, resulting in unjust and unreasonable rates.”<sup>18</sup> These claims have no merit and should be denied.

First, the Complaint fails to meet the threshold burden under the Federal Power Act (“FPA”) section 206 of demonstrating that the FERC-accepted local planning tariff provisions are unjust and unreasonable.<sup>19</sup> Nor do Complainants demonstrate that their proposed remedies are just and reasonable or within the Commission’s jurisdiction to implement.

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<sup>16</sup> *See supra* n. 7.

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 8.

<sup>19</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) (citations omitted) (although *Hope* addressed Section 5 of the Natural Gas Act, the Commission properly applies these bedrock principles to the analogous provisions of the FPA); *see, e.g., Cal. Mun. Utils. Ass’n v. Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,315, at P 70 - 71 (2009), *order on reh’g*, 143 FERC ¶ 61,174 (2013) (stating “in meeting its FPA section 206 burden, a challenging party must furnish the Commission with a satisfactory evidentiary record that demonstrates how and why the existing rate is unjust and unreasonable, then, and only then, may a challenging party submit an alternative rate or revision to the filed rate proffered as just and reasonable, and must provide evidence as to the justness and reasonableness of the new rate.”).

Second, by filing this Complaint pursuant to FPA section 206, Complainants are admitting that their assertions go beyond the scope of Order Nos. 890 and 1000 requirements.<sup>20</sup> Thus, by definition, such allegations are collateral attacks on existing FERC-accepted tariff provisions.<sup>21</sup> Additionally, similar reforms seeking to upend the current local planning processes were sought in the context of Order No. 1920 but were rejected by the Commission as such reforms were found to be beyond the scope of Order No. 1920.<sup>22</sup>

Third, despite the fact that the Commission has never imposed a universal voltage-based threshold for regionally planned transmission, Complainants seek to do so in this Complaint based on nothing more than their opinion that 100 kV and above facilities are “regionally impactful.”<sup>23</sup> Nowhere do Complainants attempt to justify, much less explain, why imposing a voltage threshold used for operational purposes should now replace the current transmission planning process that depends on functional characteristics.<sup>24</sup>

Fourth, Complainants misjudge the feasibility, impracticality, and inappropriateness (let alone legality) of mandating a centralized regional planner to conduct all transmission planning functions on facilities 100 kV and above, including making asset management decisions for transmission owner assets such as end-of-life determinations and processing local retail customer

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<sup>20</sup> Complainants acknowledge that the Complaint “does not challenge the rates for any *specific* (l)ocally (p)lanned project as unjust and unreasonable.” Nor do they allege any specific tariff violations against any named Respondent. Instead, Complaints argue that “the cumulative effect of tariff provisions allowing (l)ocal (p)lanning of transmission projects 100 kV and above results in unjust and unreasonable transmission rates.” Complaint at 11.

<sup>21</sup> *Id.* at 227 (stating the Complaint “does not challenge the Commission’s prior interpretation of Order No. 890;” rather, Complainants rely on the “extensive evidence referenced [in the Complaint] regarding the interconnected nature of the transmission grid . . .”).

<sup>22</sup> *Building for the Future Through Elec. Reg. Transmission Planning and Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068 at P 1648 (“Order No. 1920”), *order on reh’g and clarification*, Order No. 1920-A, 189 FERC ¶ 61,126 at P 1648 (2024) (“Order No. 1920-A”) (collectively, “Final Rule”).

<sup>23</sup> Complaint at 181. It is noteworthy that Complainants offer no citations to justify their conclusion.

<sup>24</sup> Order No. 1000 at P 101



transmission service requests. As discussed in greater detail below, the idea that an ITP or a regional transmission organization (“RTO”) or independent system operator (“ISO”) (collectively, “RTO/ISO”) acting as an ITP, could step into the shoes of each individual public utility and simply plan for *all* transmission facilities at or above 100 kV fundamentally miscomprehends how transmission planning works in practice, how regional and local planning differ, as well as the separate and distinct roles of the RTO/ISO and individual transmission owners in the regional and local planning processes. In Order No. 1920, the Commission recognized the valuable interplay between these two processes stating that “[l]ocal and regional transmission planning processes serve *essential and complementary roles* in ensuring that customers’ transmission needs are identified and met at a just and reasonable cost . . . .”<sup>25</sup> Contrary to what Complainants seem to believe, these two planning processes are not interchangeable. Local and regional transmission planning processes serve different needs and solve different problems.

Fifth, Complainants’ misguided attempt to use the GridStrategies Report *Fostering Collaboration Would Help Build Needed Transmission*<sup>26</sup> to reinforce their arguments misunderstand (or deliberately choose to misrepresent) the point of the Report and its inapplicability to this Complaint.

Sixth, the Commission should deny the Complainants’ proposed ITP construct. as beyond the Commission’s jurisdiction to mandate. Complainants have failed to provide any evidence that demonstrates a lack of independence by the existing RTOs/ISOs or the transmission owners in

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<sup>25</sup> Order No. 1920 at P 1570 (emphasis added).

<sup>26</sup> See Rob Gramlich, Richard Doying and Zach Zimmerman, GridStrategies, LLC, *Fostering Collaboration Would Help Build Needed Transmission* (Feb. 20, 2024) (“*Fostering Collaboration Report*”) at <https://wiresgroup.com/fostering-collaboration-would-help-build-needed-transmission/>.

non-RTO/ISO transmission planning regions to justify their unorthodox proposals. Furthermore, Complainants have offered no legal justification for this extraordinary relief.

### III. PRECEDENT SPECIFIC TO LOCAL TRANSMISSION PLANNING

#### A. *Order No. 890*

In 2007, the Commission issued Order No. 890.<sup>27</sup> The Commission found that the country had “witnessed a decline in transmission investment relative to load growth in the ten years since Order No. 888 was issued,”<sup>28</sup> and concluded that transmission providers lacked incentives to plan and develop new transmission facilities in a manner consistent with the public interest.<sup>29</sup>

In Order No. 890, the Commission focused on establishing the process leading to development of a transmission plan, not the construction of specific transmission facilities identified in that transmission plan.<sup>30</sup> Order No. 890 amended the existing *pro forma* Open Access Transmission Tariff (“OATT”) to require each transmission provider to establish a coordinated,

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<sup>27</sup> *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119 (2007) (“Order No. 890”), *order on reh’g and clarification*, Order No. 890-A, 121 FERC ¶ 61,297 (2007) (“Order No. 890-A”), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>28</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, 75 FERC ¶ 61,080 (1996), *order on reh’g*, Order No. 888-A, 78 FERC ¶ 61,220 (1997), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Pol’y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. N.Y. v. FERC*, 535 U.S. 1 (2002).

<sup>29</sup> Order No. 890 at P 421; *see Preventing Undue Discrimination and Preference in Transmission Service*, Notice of Proposed Rulemaking, 115 FERC ¶ 61,211 at P 206 (2006) (“Order No. 890 NOPR”) (stating “transmission capacity per MW of peak demand has declined in every NERC region and it has been estimated that capital spending must increase significantly to ensure system reliability and to accommodate wholesale electric markets.”).

<sup>30</sup> Order No. 890 at P 438 (noting that “the planning obligations imposed in [Order No. 890] do not address or dictate which investments identified in a transmission plan should be undertaken by transmission providers,” nor do the planning obligations “address whether or how investments identified in a transmission plan should be compensated.” Rather, it is through the planning principles that the Commission “establish[es] a process through which transmission providers must coordinate with customers, neighboring transmission providers, affected state authorities, and other stakeholders in order to ensure that transmission plans are not developed in an unduly discriminatory manner.”); Order No. 890-A at P 178 (affirming Order No. 890 and explaining that “there may be reasons a transmission provider declines to undertake a particular project given the complexity of the transmission grid and changing conditions of supply and demand. Our focus is therefore on the process leading to the transmission plan and not the construction of specific facilities.”).

open, and transparent transmission planning process on *both a local<sup>31</sup> and regional level* that complied with nine planning principles.<sup>32</sup> RTOs/ISOs were directed to indicate in their compliance filings how participating transmission owners within their respective regions will comply with the Order No. 890 planning requirements.<sup>33</sup>

*B. Order No. 1000*

The Order No. 1000 reforms were intended to build on the Order No. 890 transmission planning principles,<sup>34</sup> to ensure an open and transparent regional planning process that produces a regional transmission plan.<sup>35</sup> The reforms required each transmission provider to participate in a regional transmission planning process that complies with the Order No. 890 planning principles. The Commission further noted that, consistent with Order No. 890, Order No. 1000 does not propose regional transmission planning requirements that address or dictate which investments identified in a transmission plan should be undertaken by public utility transmission providers.<sup>36</sup>

The Commission clarified that the obligation to participate in a regional transmission planning process that produces a regional transmission plan that satisfies the Order No. 890

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<sup>31</sup> Order No. 890. at P 440 (requiring that individual transmission owners, to the extent they perform transmission planning within an RTO or ISO, must comply with Order No. 890).

<sup>32</sup> *Id.* at P 435; *see also* Order No. 890-A at P 171 (noting that in Order No. 888-A, the Commission placed “no affirmative obligation on transmission providers to coordinate with their customers in transmission planning or otherwise publish the criteria, assumptions, or data underlying their transmission plans, nor were transmission providers required to coordinate planning activities with other transmission providers in their region.”).

<sup>33</sup> *Id.* at P 154.

<sup>34</sup> *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 at P 51 (2011) (“Order No. 1000”), *order on reh’g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *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). (reducing Order No. 890’s planning principles to seven by not including the regional participation or cost allocation transmission planning principles with respect to regional transmission planning processes because those issues were addressed by other Order No. 1000 reforms).

<sup>35</sup> *Id.* at P 150; Order No. 1000-A at P 188.

<sup>36</sup> *Id.* at P 66 (stating that “[n]othing in this Final Rule requires that a facility in a regional transmission plan or selected in a regional transmission plan for purposes of cost allocation be built, nor does it give any entity permission to build a facility. Also, nothing in the Final Rule relieves any developer from having to obtain all approvals required to build such facility.”); *see also, id.* at P 400.

transmission planning principles “is not intended to appropriate, supplant, or impede any local transmission planning processes that public utility transmission providers undertake.”<sup>37</sup>

Order No. 1000 also adopted reforms requiring transmission providers to participate in a regional transmission planning process that evaluates, in consultation with stakeholders, alternative transmission solutions that may resolve the planning region’s needs more efficiently or cost-effectively than solutions identified by individual public utilities in their local transmission planning processes. By focusing on transmission facilities selected in a regional transmission plan for purposes of cost allocation, the Commission made clear that it did not intend to disturb regional practices regarding other transmission facilities that also included in the regional transmission plan.<sup>38</sup> Nor did the Commission intend that its reforms “preclude the ability of states to actively plan at the local level.”<sup>39</sup>

In affirming Order No. 1000, the U.S. Court of Appeals for the D.C. Circuit stated, “the Commission expressly ‘decline[d] to impose obligations to build or mandat[e] processes to obtain commitments to construct transmission facilities in the regional transmission plan.’”<sup>40</sup> The Court noted FERC “disavowed that it was purporting to ‘determine what needs to be built, where it needs to be built, and who needs to build it.’”<sup>41</sup>

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<sup>37</sup> *Id.* at P 161; *see also Id.* at P 63 (defining a “local transmission facility” to mean “a transmission facility located solely within a public utility transmission provider’s retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.”); and P 68 (defining “local” transmission planning process to mean “the transmission planning process that a public utility transmission provider performs for its individual retail distribution service territory or footprint pursuant to the requirements of Order No. 890.”).

<sup>38</sup> *Id.* at P 64.

<sup>39</sup> *Id.* at P 84.

<sup>40</sup> *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 57 (D.C. Cir. 2014) (“*South Carolina*”) (quoting Order No. 1000 at P 159).

<sup>41</sup> *Id.* at 57-58 (D.C. Cir. 2014) (quoting Order No. 1000 at P 49).

C. *Order No. 1920*

On May 13, 2024, the Commission issued Order No. 1920. In the Final Rule, the Commission rejected requests (similar to the wholesale changes proposed in this Complaint) “to incorporate local transmission planning into Long-Term Regional Transmission Planning specifically or regional transmission planning more generally, as well as requests to require transmission providers to evaluate and approve local transmission facilities in regional transmission planning.”<sup>42</sup> In rejecting such requests, the Commission stated that its findings “are not intended to call into question the justness and reasonableness of either generator interconnection processes or local transmission planning processes, which *each serve important roles in ensuring reliability and integrating new resources onto the transmission system.*”<sup>43</sup> In clarifying the interplay between local and regional transmission planning processes, the Commission stated:

***Local and regional transmission planning processes serve essential and complementary roles in ensuring that customers’ transmission needs are identified and met at a just and reasonable cost, including through the identification, evaluation, and selection of more efficient or cost-effective transmission solutions through regional transmission planning.*** Information and transmission solutions developed through local transmission planning serve as a foundation for regional transmission planning, and it is therefore critical that the processes are appropriately designed and aligned to ensure that transmission providers and stakeholders have the information needed, including from the local transmission planning process, to conduct effective regional transmission planning. While the broader reforms directed in this final rule are focused on improving the regional transmission planning process, *we nonetheless have identified discrete deficiencies in the local transmission planning process and its coordination with the regional transmission planning process* that also must be addressed to ensure that FERC-jurisdictional rates are just and reasonable.<sup>44</sup>

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<sup>42</sup> Order No. 1920 at P 247.

<sup>43</sup> *Id.* at P 111 (emphasis added).

<sup>44</sup> *Id.* at P 1570 (emphasis added).

Thus, consistent with the planning framework adopted in Order Nos. 890 and 1000, Order No. 1920 requires transmission providers to adopt on compliance enhanced transparency requirements for local transmission planning processes and to improve coordination between regional and local transmission planning with the aim of identifying potential opportunities to “right-size” replacement transmission facilities.<sup>45</sup>

With regard to those reforms, the Commission elaborated:

[T]he first reform will result in transmission providers providing enhanced transparency for stakeholders while providing those same stakeholders with opportunities to more effectively engage in local and regional transmission planning processes . . . [and] the second reform will result in transmission providers identifying, evaluating, and selecting replacement transmission facilities that more efficiently or cost-effectively address Long-Term Transmission Needs. Taken together, we find that these reforms will ensure that Commission-jurisdictional rates are just and reasonable and not unduly discriminatory or preferential.<sup>46</sup>

Given such reforms, Complainants’ argument that the Commission’s failure to address local planning in Order No. 1920 necessitated this Complaint<sup>47</sup> is untrue.

#### **IV. CORRESPONDENCE AND COMMUNICATIONS**

All correspondence and communications with respect to this protest should be sent to the following individual, who should be included on the official service lists compiled by the Secretary of the Commission in this proceeding:

Larry Gasteiger  
Executive Director  
WIRES  
529 Fourteenth Street, NW  
Suite 1280  
Washington, DC 20045  
Phone: (703) 980-5750  
[lgasteiger@exec.wiresgroup.com](mailto:lgasteiger@exec.wiresgroup.com)

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<sup>45</sup> *Id.* at PP 10, 247, and 1577.

<sup>46</sup> *Id.* at P 1577 (citation omitted).

<sup>47</sup> Complaint at 12.

## V. PROTEST

### A. Complainants Seek to Undo Existing Local Planning Processes but Fail to Demonstrate that Respondents, Individually or Collectively, Have Violated Their Respective Tariffs or that Their Existing Tariff Provisions are Unjust and Unreasonable

#### 1. Complainants Have Failed to Meet Their Burden under FPA section 206

Under FPA section 206, the burden of proof is on the complainant to demonstrate that the existing rate, charge, classification, rule, regulation, practice or contract is unjust, unreasonable, unduly discriminatory or preferential.<sup>48</sup> The Commission, and the courts, have long recognized that a complainant must do more than make unsubstantiated allegations.<sup>49</sup> Instead, a complainant must furnish the Commission with a satisfactory evidentiary record that demonstrates how and why the existing rate is unjust and unreasonable.<sup>50</sup> Thus, if a complainant fails to put forward substantial evidence that the existing tariff provisions are unjust and unreasonable, the Complaint must be denied.<sup>51</sup>

The basis for this Complaint is that Respondents' FERC-accepted local planning tariff provisions that allow individual transmission owners "to plan transmission facilities at 100 kV or

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<sup>48</sup> 16 U.S.C. § 824e(b). *See also FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014); *see also Blumenthal v. FERC*, 552 F.3d 875 (D.C. Cir. 2009).

<sup>49</sup> *Interstate Power and Light Co. v. ITC Midwest, LLC*, 135 FERC ¶ 61,162 at P 18 (May 9, 2011) (noting that complainant alleged that costs and expenses increased but "did not do more than make bald assertions that costs and expenses were too high.").

<sup>50</sup> *Cal. Mun. Utils. Ass'n v. Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,315, at PP 71-72 (2009), *order on reh'g*, 143 FERC ¶ 61,174 (2013) (finding that a party challenging a rate pursuant to section 206 will have failed to provide a sufficient evidentiary record "if the entirety of the challenging party's submittal is comprised of unsubstantiated speculation . . . disputed facts cannot be mere allegations."); *see also Californians for Green Nuclear Power, Inc. v. No. Am. Elec. Reliability Corp., et al.*, 174 FERC ¶ 61,203 at PP 49-50 (2021) (Complainant failed to "specifically identify or explain which of the four requirements of this Reliability Standard it alleges is being violated or will be violated.").

<sup>51</sup> Substantial evidence "is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," *Murray Energy Corp. v. FERC*, [629 F.3d 231, 235](#) (D.C.Cir.2011) (internal quotation marks omitted), and requires "more than a scintilla" but "less than a preponderance" of evidence, *Fla. Gas Transm. Co. v. FERC*, [604 F.3d 636, 645](#) (D.C.Cir.2010) (quoting *FPL Energy Me. Hydro LLC v. FERC*, [287 F.3d 1151, 1160](#) (D.C.Cir.2002)).

above that [they] alone declare[] necessary, on criteria [they] alone set[], notwithstanding the regional impact of the planned transmission,” render those tariff provisions unjust and unreasonable to the extent they apply to transmission at 100 kV and above.<sup>52</sup> According to Complainants, such practice leads to inefficient planning because too many local projects circumvent regional planning; and, therefore, the “right projects” are not being constructed, resulting in unjust and unreasonable transmission rates.<sup>53</sup>

Under Order Nos. 890 and 1000, all RTOs/ISOs and all jurisdictional public utilities were required to submit compliance filings providing for regional and local planning processes. Notably, Complainants do not challenge that such tariff provisions are inconsistent with their compliance filings. Nor have Complainants made a showing of changed circumstances sufficient to overcome their burden. Instead, Complainants rely on mere assertions that “too many local projects are being constructed,” and subjective claims that the “right projects” are not being constructed, and “too much money is being spent on local projects” without demonstrating how and why the existing practices are unjust and unreasonable. Additionally, conclusory remarks such as “there is no review to determine the appropriate project,”<sup>54</sup> or “disparate planning timelines allow individual transmission owners to circumvent regional review of holistic alternatives,”<sup>55</sup> or “[a]n after-the-fact [prudency] review of an implemented project provides no ability to determine whether there was a more efficient or cost effective project from the outset,”<sup>56</sup> are also inadequate (and factually incorrect) to satisfy the burden of proof required under FPA section 206.

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<sup>52</sup> Complaint at 181.

<sup>53</sup> *Id.* at 180.

<sup>54</sup> *Id.* at 182.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*



In what appears to be a recognition by Complainants of their inability to satisfy their FPA section 206 burden, they argue that “it is impractical to challenge individual transmission projects, individual tariffs, or the cost allocation for individual projects when the issue is one for which the unjust and unreasonable nature of the tariff provisions is not individualized but instead the excessive retained rights are unjust and unreasonable across the country.”<sup>57</sup> There is no “impracticality” exception under the FPA that relieves Complainants of their burden. Complainants chose case-by-case adjudication to pursue their grievances. Having made that choice, Complainants cannot then rely upon the generalized nature of the alleged problem to relieve them of their burden of providing substantial evidence based on specific facts about specific violations.<sup>58</sup> Thus, contrary to Complainants’ insistence that “[t]he Commission is obligated by [s]ection 206 to act,”<sup>59</sup> they have failed to offer the substantial evidence required under FPA section 206 for the Commission to take action. Therefore, the Complaint must be denied.

*2. The Complaint is an Impermissible Collateral Attack on Commission Orders Accepting Local Planning Tariff Provisions*

The Complaint also should be rejected as an impermissible collateral attack<sup>60</sup> on the Commission’s Order Nos. 890 and 1000, which approved tariff provisions on compliance

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<sup>57</sup> *Id.* at 191 - 192.

<sup>58</sup> *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144 at 1166-1167 (D.C. Cir. 1985).

<sup>59</sup> *Id.* at 182.

<sup>60</sup> *New England Conference of Public Utilities Commissioners, Inc. v. Bangor Hydro-Electric Co., et al.*, 135 FERC ¶ 61,140 at P 27 (May 19, 2011) (stating that “[a] collateral attack is ‘[a]n attack on a judgment in proceeding other than a direct appeal; and is generally prohibited.’”); *see also Oregon v. Guzek*, 546 U.S. 517, 526-27 (2006) (“The law typically discourages collateral attacks . . . .”) (*citing Allen v. McCurry*, 449 U.S. 90, 94 (1980) (“As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.”)).

requiring local planning processes for locally planned projects.<sup>61</sup> Complainants attempt to challenge currently effective local planning tariff provisions is nothing more than an attempt to resurrect the arguments previously raised and addressed in those dockets.

Additionally, Order No. 1920 rejected requests “to incorporate local transmission planning into Long-Term Regional Transmission Planning specifically or regional transmission planning more generally, as well as requests to require transmission providers to evaluate and approve local transmission facilities in regional transmission planning.”<sup>62</sup> Instead, Order No. 1920 adopted requirements “to enhance the transparency of local transmission planning and examine opportunities for right sizing in-kind replacements of existing transmission facilities, including local transmission facilities.”<sup>63</sup>

Complainants fail to allege any relevant changed circumstances since issuance of Order Nos. 1920 and 1920-A. Rather, they use this Complaint to express their dissatisfaction with those orders in attempt to relitigate previously rejected arguments in the rulemaking proceedings, thereby bypassing proper judicial review. WIRES urges the Commission to deny the Complaint and allow the Order No. 1920 rulemaking docket to proceed before considering any further modifications to local planning.

Moreover, in addition to being procedurally defective, allowing litigation of this Complaint would consume resources of the Commission, transmission owners, transmission providers and

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<sup>61</sup> A “collateral attack” occurs when the time for seeking review of an earlier order has passed and an objection is aimed not at the order purportedly under review but instead at an earlier order. *See Sacramento Mun. Util. Dist. v. FERC*, 428 F.3d 294, 299 (D.C. Cir. 2005); *Cent. Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92, 103 (2d Cir. 2015) (citing *Sacramento Mun. Util. Dist. v. FERC*, 428 F.3d 294, 298-99); *see also Pacific Gas & Elec. Co. v. FERC*, 533 F.3d 820, 825 (D.C. Cir. 2008) (“[A] challenge made outside of the statutory period is a collateral attack over which [the court has] no jurisdiction.”).

<sup>62</sup> Order No. 1920 at P 1648. (noting that the Order No. 1920 NOPR did not propose such changes to local transmission planning processes and, thus, such requests are beyond the scope of Order No. 1920.).

<sup>63</sup> Order No. 1920 at P 247.

customers without clear and compelling evidence of a problem, not to mention interfering with the compliance of Order No. 1920, potentially delaying the effectiveness of the new regulations, but also the goals of this Administration, *i.e.*, the immediate and pressing priority of expanding energy infrastructure from coast to coast.<sup>64</sup>

**B. Complainants Fail to Provide any Reasonable Justification as to Why the Commission Should Require the Use of a 100 kV Operational Threshold for Regional Planning**

Complainants argue for a bright-line 100 kV threshold for regional planning of all transmission facilities. In support of their argument, Complainants point to EPLRA 2005, section 1211,<sup>65</sup> stating that “[a]t Congress’ direction, the Commission has recognized the interconnected nature of today’s grid by establishing reliability standards for Bulk Power System<sup>66</sup> facilities 100 kV and above.”<sup>67</sup> Complainants then criticize the Commission stating that “[d]espite recognizing the interconnected nature of the grid . . . the Commission nevertheless continues to allow individual transmission owners to plan at the ‘local’ level without regard to voltage or whether the planned project is the right project for the regional grid, or even for the supposed local area.”<sup>68</sup> Complainants, in their critique of the Commission, overlook the fact that section 1211 is specific to the safe and reliable operation of the interconnected system, not transmission planning.<sup>69</sup>

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<sup>64</sup> See *supra* n. 7.

<sup>65</sup> See Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>66</sup> *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, 118 FERC ¶ 61,218 at PP 50 - 51 (Mar. 16, 2007) (“Order No. 693”) (in explaining the difference in meaning between FPA section 215 “Bulk Power System” and “bulk electric system,” the Commission noted that the NERC glossary stated that Reliability Standards apply to the “bulk electric system” which “is defined by its regions in terms of a voltage threshold and configuration.”).

<sup>67</sup> Complaint at 41.

<sup>68</sup> *Id.*

<sup>69</sup> 16 U.S.C. 824o.

The 100 kV threshold is set forth in the NERC definition of the “bulk electric system.”<sup>70</sup> The definition is intended to include all facilities operated at or above 100 kV (except defined radial facilities)<sup>71</sup> that are “necessary for *operating* an interconnected electric transmission network.”<sup>72</sup>

The distinction between the rules for planning and the rules for operation of the transmission system was acknowledged by the Commission in Order No. 1000 and Order No. 1000-A. In Order No. 1000, when the Commission’s FPA section 206 authority to adopt transmission planning reforms was challenged under FPA section 202(a),<sup>73</sup> the Commission responded stating that the Order No. 1000 reforms were adopted “to address remaining deficiencies in transmission planning and cost allocation processes so that the transmission grid can better support wholesale power markets and thereby ensure that Commission-jurisdictional transmission services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential.”<sup>74</sup> The Commission elaborated that “[t]ransmission planning is a process that occurs prior to the interconnection and coordination of transmission facilities. The transmission planning process itself does not create any obligations to interconnect

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<sup>70</sup> No. Am. Elec. Reliability Corp., *Bulk Electric System Definition Reference Document* (Version 3) (Aug. 2018) at [https://www.nerc.com/pa/Stand/2018%20Bulk%20Electric%20System%20Definition%20Reference/BES\\_Reference\\_Doc\\_08\\_08\\_2018\\_Clean\\_for\\_Posting.pdf](https://www.nerc.com/pa/Stand/2018%20Bulk%20Electric%20System%20Definition%20Reference/BES_Reference_Doc_08_08_2018_Clean_for_Posting.pdf).

<sup>71</sup> *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 133 FERC ¶ 61,150 at P 1 (Nov. 18, 2010) (“Order No. 743”), *order on reh’g*, Order No. 743-A, 134 FERC ¶ 61,210 at P 1 (Mar. 17, 2011) (“Order No. 743-A”) (revising the definition of “bulk electric system” to address “the Commission’s technical and policy concerns . . . [to] ensure that the definition encompasses all facilities necessary for operating an interconnected electric transmission network, pursuant to [FPA] section 215.”).

<sup>72</sup> *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 P 1 (2012) (“Order No. 773”), *order on reh’g*, Order No. 773-A, 143 FERC ¶ 61,053 (2013) (“Order No. 773-A”) (finding that the proposed “core” definition, together with the more granular inclusions and exclusions, should produce consistency in identifying bulk electric system elements across the reliability regions.”) (Order Nos. 693, 743, 743-A, 773 and 773-A are referred to collectively as “BES Orders”).

<sup>73</sup> 16 U.S.C. § 824a(a).

<sup>74</sup> Order No. 1000 at P 99.

or operate in a certain way.”<sup>75</sup> Rather, Order No. 1000 was focused on the transmission planning process “used to identify and evaluate transmission system needs and potential solutions to those needs,”<sup>76</sup> which the Commission found is “separate and distinct” from any specific system operations.<sup>77</sup> The Commission further clarified “[n]othing in th[e] Final Rule is tied to the characteristics of any specific form of system operations, and nothing in [Order No. 1000] requires any changes in the way existing operations are conducted.”<sup>78</sup> This Final Rule simply requires compliance with certain general principles within the transmission planning process regardless of the nature of the operations to which that process is attached.”<sup>79</sup>

Importantly, nothing in the Commission’s BES orders<sup>80</sup> adopting a 100 kV voltage threshold for system operations (subject to NERC Reliability Standards) mentions the transmission planning process. Moreover, nothing in those orders leads to the conclusion that the 100 kV bright-line threshold was intended to apply to the identification of transmission facilities subject to regional transmission planning processes - the focus of this Complaint.<sup>81</sup> That is not an oversight. Rather, as the Commission explained, “the planning process for transmission facilities[] [is] a separate and distinct set of activities that occur before the operational activities.”<sup>82</sup> Put simply,

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<sup>75</sup> *Id.* at P 101 (emphasis added); Order No. 1000-A at PP 123 - 125 (further clarifying that “[t]he requirements of Order No. 1000 explicitly pertain only to the coordination of transmission planning, not the coordination of operations of generation and transmission facilities.”); *see also* Order No. 743 at P 81 (stating that “one of the main justifications for the Final Rule is to reduce inconsistencies across the regions in order to increase the effectiveness of the NERC Reliability Standards.”)..

<sup>76</sup> Order No. 1000-A at P 105 (citing Order No. 1000 at P 107).

<sup>77</sup> *Id.* at P 143.

<sup>78</sup> Order No. 1000 at P 103; Order No. 1000-A at P 141.

<sup>79</sup> Order No. 1000 at P 103.

<sup>80</sup> *See supra* nn. 66, 71, and 70.

<sup>81</sup> Throughout the Complaint, Complainants ignore this distinction. *See* Complaint at 222, n. 1002 (relying on operational rationales to justify extending a bright-line 100 kV and above threshold to planning).

<sup>82</sup> Order No. 1000 at P 105.

planning the system (which requires forecasting system needs using drivers, not voltage) is wholly different than operating the system.

Given the Commission's clear and concise explanations of the differences between planning and operational rules, as affirmed by the U.S. Court of Appeals for the D.C. Circuit,<sup>83</sup> Complainants must do more than criticize the Commission for not applying its operational rules to its Order Nos. 890 and 1000 planning processes to satisfy their FPA section 206 burden.<sup>84</sup>

**C. Requiring an ITP to Assume Responsibility for All FERC-Jurisdictional Transmission Facilities Operating at or Above 100 kV is Impractical, Infeasible, and Inappropriate**

*1. The Complaint Does Not Adequately Recognize or Grapple with the Differences Between Regional and Local Planning*

In proposing a one-size-fits all approach to regional and local planning for all transmission facilities 100 kV and above, Complainants fundamentally misunderstand and significantly underestimate the differences between the two processes. This misunderstanding also results in Complainants underestimating the challenges (both legal and practical) associated with consolidating both planning processes under a centralized regional planner, such as an ITP or an RTO/ISO acting as an ITP. Rather, as discussed more fully below, the processes serve distinct but complementary purposes, are performed differently, serve different needs, and require very different types of expertise and system knowledge. In fact, the expertise and system knowledge of each individual utility cannot practically or feasibly be transferred to the regional transmission planner, nor can it be legally mandated.

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<sup>83</sup> *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 59 - 60,

<sup>84</sup> Mr. Giberson's assertion that "it is logical to apply the rationales that drove reliability rules to a bright-line requirement to the rules governing planning" is inconsistent with the Commission's recognition that system planning is "separate and distinct from any specific system operations." *Compare* Complaint, Attachment C at 31 – 33 with Order No. 1000 at P 105.

Today, the scope of work and responsibility of regional transmission planning is essentially focused on criteria designed to address reliability standards, market congestion, and public policy initiatives. Regional transmission planners use regional (market) drivers to evaluate the overall reliability of the system. Potential system overloads are generally due to new generation additions, retirement of existing generation, or changes in load forecasts and consumption patterns. The regional transmission planner's job is to run power flow analyses (as well as stability analyses, short circuit studies, etc.) to identify system overloads using power flow base cases that include the latest information and assumptions related to load, resources, and transmission topology. Importantly, neither the regional transmission provider nor the individual local utility conducts planning analysis to identify system reliability needs knowing in advance which facilities will be built or upgraded. Thus, Complainants' proposal to set a universal and arbitrary kV planning threshold makes no sense. A regional or local planner only determines the kV of the solution *AFTER* the planning exercise, *i.e.*, after identifying a need and after identifying the appropriate engineering solution to address that need. Complainants' proposal requiring regional transmission providers to perform regional and local planning for all transmission facilities 100 kV and above is unworkable in this real world context.

Unlike the individual utility, regional transmission planners have little to no visibility into the physical nature of the actual transmission assets as they exist on the system, nor is that their job. Conversely, individual utilities, performing local planning, are responsible for taking into account the existing physical transmission assets and other system equipment, and addressing specific system needs related to reliability, resilience, asset management, customer service, customer impact, and operational flexibility that are the focus of local transmission planning using local system criteria. The Complainants' misunderstanding of these basic differences between

regional and local planning is demonstrated by their incomplete reference to what constitutes local transmission planning.

While Complainants were quick to point to the WIRES report on fostering collaboration,<sup>85</sup> they conveniently overlooked the WIRES-sponsored report by Charles River Associates (“Charles River”) on the *Value of Local Transmission Planning*.<sup>86</sup> In that report, Charles River discussed and compared the regional and local planning processes and explained that “the local and regional planning processes are complementary because they capture different sets of benefits produced by different needs.”<sup>87</sup> Specifically, local planning benefits include both reliability benefits not necessarily captured at the regional planning level, as well as other benefits produced by utility-specific needs.

Regarding reliability benefits at the local planning level, utilities conduct more granular local studies that go beyond standardized reliability requirements. Such studies account for the impacts to the distribution system(s), incorporate input from customers affected by local transmission operations, and analyze detailed load scenarios applicable to zone-specific weather patterns, among other factors. These granular local studies help ensure there is adequate transmission capacity to reliably serve load all hours of the year.<sup>88</sup> Such studies also ensure that the transmission system is maintained so that it remains reliable, resilient, and flexible from an engineering and operational standpoint. Thus, unlike a regional transmission planner who runs transmission planning analyses mainly to, among other things, identify potential bulk electric

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<sup>85</sup> Complaint at 193. See *supra* n. 26.

<sup>86</sup> See Charles River Associates, *Value of Local Transmission Planning*, (Dec. 20, 2021) (“*Value of Local Planning Report*” or “Charles River Report”) at <https://wiresgroup.com/wp-content/uploads/2021/12/Value-of-Local-Transmission-Planning-report-WIRES-CRA.pdf>.

<sup>87</sup> *Id.* at 13.

<sup>88</sup> *Id.* at 12.



system overloads and opportunities to reduce congestion, individual transmission owning utilities, as the local planners, take a detailed system approach to evaluating their transmission assets that:

- Examines corrective maintenance of the facilities;
- Evaluates each utility's inspection data compiled by the utility's field crews (and consultants) who conduct field evaluations of conductors, structures and foundations;
- Looks at the age and performance of an asset by performing risk assessments on each asset;<sup>89</sup>
- Supports field operations and maintenance to replace system components;<sup>90</sup>
- Possesses in-depth, working knowledge of their local transmission and distribution systems;
- Coordinates local planning needs with the utility's distribution companies and/or the utility's customers, as well as neighboring transmission owners;
- Maintains a relationship with its customers, landowners, local municipalities, the businesses within its territory, as well as neighboring transmission owners;
- Develops and maintains long-term relationships with respective state commission(s) and commission staff, while also developing expertise in alignment with state policy goals;
- Takes into account the real estate components of its system, *e.g.*, the utility is aware of its property rights, such as ownership or easements, particularly when planning to add, modify, or expand new or existing transmission facilities; and
- Evaluates aerial rights, water rights, or gas line rights as the utility looks to expand or modify its system.

In order to perform these essential “boots on the ground” responsibilities, each utility maintains an in-house standing body of planning staff supported by transmission engineering,

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<sup>89</sup> For example, field crews are responsible to go out and perform regularly scheduled maintenance. That is the preventative maintenance no regional planner is going to be able to do for every transmission owner's system in the regional planner's transmission planning region.

<sup>90</sup> Even though regional planners have power flow models, including a line's limiting rating, they do not have the situational awareness of the relays, wave traps, breakers, lightening arrestors, or other assets. These are all different system components that may or may not actually need to be replaced in order achieve a specific transmission capacity on the line.

substation experts, including protection and control engineers, real estate specialists, environmental teams,<sup>91</sup> field crews, and system operational personnel, as well as others who possess local jurisdictional knowledge, information, and expertise specific to the utility's footprint, local transmission and distribution assets, and system operations.

Importantly, many utilities have not consolidated those functions on an enterprise-wide basis. For example, a utility may have local teams for each operating company that understand all of the issues specific to that operating company's assets, rights-of-way, environmental issues, weather conditions, history of the system, and what has been built, what has not been built and why. As explained further below, attempting to consolidate all that information, responsibility, and work for all 100 kV and above local utility assets under a single regional planner would be bureaucratic and ineffective, if not impossible. Moreover, Complainants fail to grapple with the practical implications of its requested relief.

## *2. The Challenges to Consolidating Regional and Local Planning for Facilities 100 kV and Above*

Assuming the Commission has the legal authority (which arguably it does not) to direct a regional planner to be responsible for all regional and local planning, including asset decisions such as end-of-life asset decisions, and retail customer transmission service requests, for facilities 100 kV and above for all utilities in its region, the regional planner would require significant additional staff resources and expertise that it currently lacks. Additionally, significant data would have to be exchanged from local to regional planners. Regional planners do not have the subject matter expertise or local presence required to analyze local systems and identify needs related to

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<sup>91</sup> For example, each utility's environmental staff is responsible for knowing both federal and state-specific environmental restrictions and limitations when building new assets or rebuilding existing assets. That knowledge has been built up by the utility over years of experience constructing and maintaining assets on its system.

asset management, resilience, customer impact, or other local needs.<sup>92</sup> Were it even possible for a regional transmission provider to acquire and replicate all of the necessary functions to accommodate the relief requested by the Complainants, the result would be a vast expansion of the organizational scope and responsibilities of regional planning entities under the auspices of federal regulation in a manner that would add costs, administrative processes, and result in significant time delays.

For example, in order to perform local planning on facilities 100 kV and above, the regional planner would have to replicate a public utility's in-house staff, such as transmission and substation engineering experts, real estate specialists, field crews, environmental staff and additional operational personnel at the local system level. It is difficult to conceive how a regional planner could fill those needs in a timely fashion, even if such experts were available for hire. Complainants fail to explain how this transfer or duplication of staff, knowledge or expertise is even reasonable, efficient, or cost effective for customers.

In addition to staffing challenges, the regional planner would be responsible to collect all system planning data from each local utility, including confidential and CEII data, in order to evaluate transmission enhancements driven by asset management, resilience, customer service, and other drivers. None of these needs overcome the potential legal hurdles associated with amending the foundational contracts entered into between RTOs/ISOs and their respective transmission owners that delineate the parties' respective roles and responsibilities as they relate to the planning of transmission owners' assets. The Commission should also consider the possibility that the Commission may be encroaching upon the states' roles and responsibilities as they relate to their respective local utilities.

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<sup>92</sup> *Value of Local Transmission Planning* Report at 2.

Even if the Commission were to consider such a transformative change to the current planning structure, it must assess the practicality, feasibility, and risks of an RTO/ISO significantly increasing its staffing, expanding its infrastructure, and enhancing its knowledge base and expertise regarding each local utility's unique characteristics, as well as overseeing both regional planning and local planning for all of its transmission owners. Alternatively, in non-RTO/ISO regions, larger regional planning collaborative teams would likely be required to expand similar functions. Such accommodation could challenge the careful coordination between local and regional planning that exists today in those regions.

Of course, as Charles River noted in the *Value of Transmission* Report, without a detailed study it is impossible to determine whether such a construct would be more efficient or cost-effective.<sup>93</sup> Complainants do not provide that level of detail in their Complaint.

While Complainants refrain from taking the issue head on in their Complaint, they seem to assume that if the regional planner were to oversee local planning for facilities 100 kV and above, solutions to address all needs, local and regional, would be subject to the RTO/ISO's Order No 1000 competitive solicitation requirements.<sup>94</sup> Putting aside the fact that Complainants have chosen to redefine local planning and to separate it from the current cost allocation processes,<sup>95</sup> such an expansion of the RTO/ISO's competitive solicitation processes would also require significantly more staff and resources. The RTOs/ISOs would be tasked with managing potentially hundreds more local planning needs currently handled by the region's multiple local transmission

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<sup>93</sup> *Id.* at 22.

<sup>94</sup> Complaint at 236.

<sup>95</sup> Complaint at n.12 (stating that for purposes of the Complaint, "local" is used to refer to "Commission jurisdictional transmission facilities planned by individual transmission owners based on criteria set by the transmission owner. The term "local" is not used to refer to the cost allocation for the project, as the Commission defined "local" in Order No. 1000.").

owners. It is challenging to understand how such a construct would not cause greater delays in building critically needed infrastructure, potentially resulting in diminished reliability, particularly at a time when the administration has declared a national energy emergency.<sup>96</sup>

The importance of individual system knowledge and experience, developed over decades by each public utility, to maintain local system reliability and resilience while integrating new customer load and addressing aging infrastructure cannot be overstated. Nonetheless, Complainants naively believe that requiring transmission owners to provide their local criteria to the regional transmission planner is sufficient to ensure that the RTO/ISO or ITP is conducting planning in a way that does not undermine the transmission needed to meet each utility's load-service obligations under FPA section 217.<sup>97</sup> However, maintaining a balance between replacing an asset and not replacing it, while meeting state-mandated public utility service obligations, is a decision-making process not easily replicated by simply turning over each utility's local planning criteria and applying a uniform decision-making approach under a centralized regional planner.

### 3. *Who Will Assume the Risk?*

Finally, each utility has developed its own performance standards and its acceptable level of risk in determining which assets require replacement. For example, one utility may have 90 years old transmission structures it is actively looking to replace; whereas another utility may have assets that are 45 to 50 years old that must be replaced because those structures began to deteriorate sooner than expected. Up to this point, the individual utilities have determined which assets require replacement and have understood and accepted the risk associated with those decisions. Ultimately, the utility is accountable to its regulators and its customers.

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<sup>96</sup> See *supra* n. 7.

<sup>97</sup> Complaint at 234.

For the sake of argument, if the Commission were to adopt a centralized regional planner and the transmission owners were directed to transfer the management decisions regarding their assets to that regional planner, the liability must transfer as well. The Complaint conveniently ignores the critical question of how to deal with this transfer of liability. That is no surprise, as the practical challenges make this task mostly impossible. In practice, the individual utilities, not the regional planner, are accountable to their regulators and customers. This accountability arises from the states' statutory mandates requiring public utilities to provide safe and reliable service to their customers.

#### **D. Complainants' ITP Construct Will Impede Development of Critically Needed Transmission**

Complainants assert that the proposed replacement rate should require that regional planning be conducted by an ITP "to ensure that consumers benefit from the determination of the appropriate project."<sup>98</sup> Complainants cite to the independent transmission monitor ("ITM") proposal in Order No. 1920's Advanced Notice of Proposed Rulemaking,<sup>99</sup> a construct that was not carried forward to the Final Rule. Both the ITM and ITP are flawed constructs that fail on legal and policy grounds.

It is important to recognize that these concepts are distinct and different in nature, and they should not be conflated. Contrary to the ITM construct, Complainants propose that the ITP would assume full responsibility for *conducting* planning on all 100 kV and above transmission facilities, including regional transmission planning, generation interconnection studies,<sup>100</sup> competitive

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<sup>98</sup> Complaint at 14.

<sup>99</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Advance Notice of Proposed Rulemaking, RM21-17-000 at P 163 (July 15, 2021). ("ANOPR").

<sup>100</sup> Complainants offer no allegations or proof in this Complaint to justify rendering any findings related to generation interconnection studies or merchant transmission development.

solicitations, coordination with other regions,<sup>101</sup> and participating in critical stages of merchant transmission development.<sup>102</sup> The ITP's authority would also extend to issuing directives to the respective transmission owners regarding emergency or immediate transmission system needs.<sup>103</sup> Complainants also propose that the Commission could require the ITP to independently evaluate all proposed transmission solutions between 69 kV and 99 kV to determine whether more than one transmission pricing zone benefits from the transmission project.<sup>104</sup>

Although Complainants reference the ITM for support, the scope of the ITP highlights the flaws in their claim. For example, Complaints offer no legal basis on which the Commission may mandate an ITP in an RTO/ISO region, as transmission owners' voluntary participation in an RTO/ISO and agreement to transfer certain explicit transmission planning authority in formational documents would not have contemplated transfer of planning authority to a third party transmission planner with the expansive scope that the Complainants envision for the ITP. Also, if the Commission in Order No. 2000<sup>105</sup> determined that it did not have the authority to *require* utilities to join an RTO, it is unclear how the Commission would have the authority to direct an ITP to perform regional or local planning in non-RTO/ISO regions or to require transmission providers in such regions to relinquish the right to plan their assets to an ITP.

Complainants offer no evidence to impeach the independence of any RTO/ISO or demonstrate that any RTO/ISO or transmission owner in a non-RTO/ISO region conducted its regional planning processes in violation of their respective tariffs. Rather, Complainants' proposed

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<sup>101</sup> Complaint at 237.

<sup>102</sup> *Id.* at 238.

<sup>103</sup> *Id.* at 237.

<sup>104</sup> *Id.* at 242.

<sup>105</sup> *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285 (1999), *order on reh'g*, Order No. 2000-A, 90 FERC ¶ 61,201 (2000).

relief is based on mere accusations and suppositions, such as “existing transmission owners are capable of ‘exert[ing] undue influence over outcomes . . . .’”<sup>106</sup> In fact, Mr. Giberson, in asserting his point against a non-RTO region he jumps to the conclusion in his testimony that because “transmission owners are provided discretion to self-authorize spending on local transmission projects such discretion compromises the independence of the regional transmission planning process . . . even in regions governed by RTOs/ISOs.”<sup>107</sup>

According to Complainants, the supposed “loophole for bypassing scrutiny”<sup>108</sup> allows opportunity for planning decisions that “often” prioritize a utility’s interests over “cost effectiveness, system reliability, and equitable outcomes.”<sup>109</sup> According to Complainants (and Mr. Giberson), an ITP - in theory - would be “instrumental in mitigating these issues” because the ITP would provide “independent oversight.”<sup>110</sup> This conclusion does not explain why an ITP would be more effective than the existing independent RTOs/ISO working in concert with their utilities.

In an attempt to persuade the Commission of the efficacy of this ITP concept, Complainants emphasize that the success and capability of an ITP will require “robust transparency and information sharing.”<sup>111</sup> But, after sifting through all of the speculative arguments, 108 single-spaced pages of tariffs, and broadly drawn, unsubstantiated conclusions, Complainants’ justification for an ITP rests on the same justification as the reforms set forth in Order No. 1920, which provide for enhanced transparency of local transmission planning inputs and improved

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<sup>106</sup> Complaint at 234 (citing Attachment C at 35:1-4).

<sup>107</sup> *Id.*, Attachment C at 35:8-16.

<sup>108</sup> *See, e.g., The Office of the Ohio Consumers’ Counsel v. PJM Interconnection, L.L.C.*, Complaint of OCC, Docket No. EL23-105-000 (Sept. 23, 2003) (alleging a regulatory gap).

<sup>109</sup> Complaint at Attachment C at 35:15-18.

<sup>110</sup> *Id.*, Attachment C at 35:19.

<sup>111</sup> *Id.* at 234.



coordination between local and regional transmission planning processes.<sup>112</sup> As the Commission noted, these reforms are already subject to Order No. 890 transparency requirements.<sup>113</sup> Additionally, the Order No. 1920 local planning reforms are consistent with the current tariffed framework, making them significantly less disruptive compared to Complainants' poorly developed ITP proposal. Finally, even Complainants acknowledge that the ITP proposal is fraught with legal and implementation challenges.<sup>114</sup>

WIRES urges the Commission to stay the course set in Order No. 890, where it declined to mandate an independent third-party transmission observer;<sup>115</sup> and in Order No. 1920, where the Commission did not include such a proposal in the Final Rule.<sup>116</sup> Adding this federally-driven, multi-layered approach to regional and local planning will introduce additional complexity, leading to increased costs and potential delays to much needed transmission infrastructure. Given these flaws, the Commission should not entertain an ITP and should dismiss the Complaint.

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<sup>112</sup>Order No. 1920 at P 1577; *see e.g.*, Order No. 1920-A at P 856 (finding that such reforms to improve transmission transparency of local transmission planning processes and improve coordination between local and regional transmission planning processes “will help reduce the possibility that transmission providers will develop local transmission facilities without adequately considering whether there is a more efficient or cost-effective regional transmission solution that could address their local transmission needs.”).

<sup>113</sup> *Id.* at 856.

<sup>114</sup> Complaint at n. 1010.

<sup>115</sup> Order No. 1000 at P 330.

<sup>116</sup> Order No. 1920 at P 1648 (noting that although some commenters suggested reforms include additional measures, such as establishing an ITM or requiring RTOs/ISOs to assume a larger role in reviewing or approving identified local transmission projects, the Commission did not include such proposals in the NOPR. As a result, the Commission found such requests to be beyond the scope of the proceeding and declined to adopt them.).

## **VI. CONCLUSION**

For the foregoing reasons, the Commission should deny the Complaint.

Respectfully submitted,

/s/ Larry Gasteiger

Larry Gasteiger

Executive Director

WIRES

529 Fourteenth Street, NW

Suite 280

Washington, D.C. 20045

Mobile: (703) 980-5750

[lgasteiger@exec.wiresgroup.com](mailto:lgasteiger@exec.wiresgroup.com)

March 20, 2025

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day had served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 20<sup>th</sup> day of March, 2025.

/s/ Larry Gasteiger

Larry Gasteiger

Executive Director

WIRES

529 Fourteenth Street, NW

Suite 280

Washington, D.C. 20045

Mobile: (703) 980-5750

lgasteiger@exec.wiresgroup.com