

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

Advanced Notice of Proposed Rulemaking	)	Docket No. RM21-17-000
Building for the Future Through Electric	)	
Regional Transmission Planning and Cost	)	
Allocation and Generator Interconnection	)	

**REPLY COMMENTS OF THE STATE AGENCIES**

Pursuant to the Federal Energy Regulatory Commission’s (the Commission) July 15, 2021 Advanced Notice of Proposed Rulemaking<sup>1</sup> (Notice or ANOPR) in Docket No. RM21-17-000, “Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,”<sup>2</sup> and the Notice of Extension of Time, issued by the Commission on September 3, 2021, the signatory state parties (together, the State Agencies) provide the following reply comments.

The ANOPR considers the need for various transmission- and interconnection-related reforms in light of the evolving resource mix and location of resources and anticipated needs on the electric power system. Through the ANOPR, the Commission is seeking comments on a wide variety of transmission issues including reforming planning processes to accommodate anticipated future generation needs, cost allocation for transmission facilities, potential changes to funding and cost recovery for interconnection related network upgrades, enhanced transmission oversight, consumer protection, and other related topics.

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<sup>1</sup> NOPR, 170 FERC ¶ 61,204.

<sup>2</sup> The Transmission ANOPR can be accessed here: <https://www.ferc.gov/media/e-1-rm21-17-000>.

The State Agencies filed their initial comments in this docket on October 12, 2021. Those initial comments agree with the Commission's statements in the ANOPR that significant upgrades are needed to the nation's transmission system to facilitate new generation resources, including those promoted through state policies, to better protect consumers and the public welfare, to enhance reliability and resilience, and to efficiently and equitably accommodate the transition to the electric power system of the future.

The State Agencies file these reply comments for the limited purpose of addressing two issues raised by certain commenters, specifically: 1) whether the Commission should revisit Order No. 1000's elimination of the federal right of first refusal (ROFR) for transmission developers, and 2) whether regional transmission operators and independent system operators (RTOs/ISOs) should have an entity that functions as an Independent Transmission Monitor. Regarding the ROFR, the State Agencies strongly object to what amounts to a collateral attack on an Order established ten years ago after full Commission review and consideration. In terms of the merits of the commenters' arguments, the federal ROFR is an anti-competitive and discriminatory obstacle to open and transparent competition in transmission planning and development and harms ratepayers. The State Agencies also reject the commenters' objections to the establishment of an Independent Transmission Monitor in RTOs/ISOs and urge the Commission to create such an entity.

#### **THE PARTIES**

The Connecticut Attorney General (CTAG) is an elected Constitutional official and the chief legal officer of the State of Connecticut. The Connecticut Attorney General's responsibilities include intervening in various judicial and administrative proceedings to protect the interests of the citizens and natural resources of the State of Connecticut and in ensuring the

enforcement of a variety of laws of the State of Connecticut, including Connecticut's Unfair Trade Practices Act and Antitrust Act, so as to promote the benefits of competition and to assure the protection of Connecticut's consumers from anti-competitive abuses. The Attorney General is an elected Constitutional official and the chief legal officer of the State of Connecticut. The CTAG's responsibilities include intervening in various judicial and administrative proceedings to protect the interest of the citizens and natural resources of the State of Connecticut and in ensuring the enforcement of a variety of laws of the State of Connecticut, including Connecticut's Unfair Trade Practices Act and Antitrust Act, so as to promote the benefits of competition and to assure the protection of Connecticut's consumers from anti-competitive abuses.<sup>3</sup>

The Connecticut Department of Energy and Environmental Protection (Connecticut Department) has statutory authority over the state's energy and environmental policies and for ensuring that the state has adequate and reliable energy resources.<sup>4</sup> The Connecticut Department is tasked with interacting with the regional transmission operator in response to state and regional energy needs and policies.

The Connecticut Public Utilities Regulatory Authority (CT PURA) is the state commission charged with regulating utilities and setting retail utility rates within Connecticut. The CT PURA, like the Commission, must balance the interests of utilities

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<sup>3</sup> The CTAG has previously initiated or intervened in a number of recent FERC proceedings addressing important policy issues affecting the electric industry and electric ratepayers in Connecticut and New England. These proceedings include FERC Docket Nos: AD18-7, *Grid Resilience in Regional Transmission Organizations and Independent System Operators*; RM18-1, *Grid Reliability and Resiliency Pricing*; RP16-301, *Iroquois Gas Transmission System, LP*; ER16-1023, *ISO New England, Inc., et al*; EL16-19, *ISO New England, Inc.*; CP16-21, *Tennessee Gas Pipeline Company, L.L.C.*; ER-13-185, *ISO New England, Inc.*; EL-13-033; *Environment Northeast, et al. v. Bangor Hydro-Electric Company, et al.*; ER09-197, *ISO New England, Inc. Comments of Southern New England State Agencies, ISO New England Inc. and New England Power Pool*; ER09-197, *ISO New England, Inc.*; *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*; PL19-3.

<sup>4</sup> Conn. Gen. Stat. §§ 22a-2d; 16a-3a.

providing services with those of ratepayers who must pay a fair price – but no more – for those services. The CT PURA is authorized by General Statutes of Connecticut § 16-6a to participate in proceedings before federal agencies and courts on matters affecting utility services rendered or to be rendered in Connecticut.

The Connecticut Office of Consumer Counsel is the statutorily designated ratepayer advocate in all utility matters concerning the provision of electric, natural gas, water, and telecommunications services. The Office of Consumer Counsel is authorized by statute to intervene and appear in any federal or state judicial and administrative proceedings where the interests of utility ratepayers are implicated.

The Attorney General for the District of Columbia (DC Attorney General) is independently elected and is charged with conducting all law business on behalf of the District of Columbia (the District).<sup>5</sup> By common law and statute, the DC Attorney General is responsible for upholding the public interest, including initiating and intervening in lawsuits brought in the District's name to uphold the public interest.<sup>6</sup> In exercising the aforementioned duties, the DC Attorney General has participated in a number of proceedings before this Commission to protect the health and economic welfare of the District's residents, and to advance the District's clean energy laws and policies.<sup>7</sup>

Kathleen Jennings is the duly elected Attorney General of the State of Delaware, and the chief legal officer for the State of Delaware, whose constitutional, common law, and statutory

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<sup>5</sup> D.C. Code § 1-301.81(a)(1).

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

<sup>7</sup> Examples of FERC proceedings in which the DC Attorney General has recently participated include: RM20-10-000, *Electric Transmission Policy Under Section 219 of the Federal Power Act*; PL18-1, *Certification of New Interstate Gas Facilities*; RM19-15, *Qualifying Facility Rates and Requirements*; and AD16-16, *Implementation Issues Under the Public Utility Regulatory Policy Act of 1978*.

powers include initiating litigation or appearing on behalf of the State of Delaware in any court or tribunal in which the State of Delaware may be a party or have an interest, including matters to protect the safety, health, and economic well-being of the State of Delaware's residents.<sup>8</sup>

The Attorney General of Maryland is the state's chief legal officer with general charge, supervision, and direction of the State's legal business. Md. Const. art. V, § 3(a)(2); Md. Code Ann., State Gov't § 6-106.1. Pursuant to that authority the Attorney General of Maryland has intervened in numerous proceedings before the Commission.

The Maryland Office of People's Counsel is an independent state agency that represents the interests of Maryland residential consumers in utility cases. Pursuant to Maryland Public Utilities Code Annotated, §2-205(b)(2019), the People's Counsel "may appear before any federal or state agency as necessary to protect the interests of residential...users [of gas, electricity or other regulated services]."

The Massachusetts Attorney General is the chief legal officer of the Commonwealth of Massachusetts and is authorized by both state common law and by statute to institute proceedings before state and federal courts, tribunals, and commissions as she may deem to be in the public interest. The Massachusetts Attorney General is further authorized expressly by statute to intervene on behalf of public utility ratepayers in proceedings before the Commission and has appeared frequently before the Commission.<sup>9</sup>

The Minnesota Attorney General is a public officer charged by common law and by statute with representing the State of Minnesota, the public interest, and Minnesota citizens,

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<sup>8</sup> *Darling Apartment Co. v. Springer*, 22 A.2d 397, 403 (Del. 1941); Del. Code Ann. tit. 29, § 2504.

<sup>9</sup> Mass. Gen. Laws ch. 12, § 11E.

including with respect to electric or gas industry matters that affect electric or gas consumers in Minnesota. The Minnesota Attorney General is specifically authorized by Minnesota Statutes section 8.33 to intervene in federal matters to further the interests of small business and residential utility consumers.

The New Jersey Attorney General is authorized to represent the state in all legal matters where the rights and interests of the state are involved.<sup>10</sup>

The New Jersey Board of Public Utilities is an administrative agency, comprised of a five-member board of commissioners. It is charged under New Jersey law with the general supervision, regulation, and control over public utilities in the State, including electric utilities.<sup>11</sup>

The Rhode Island Attorney General is a public officer charged by common law and by statute with representing the State of Rhode Island, the public interest, and the people of the State. This includes representation with respect to energy matters affecting consumers in Rhode Island. In Rhode Island, “the Attorney General is entitled to act with a significant degree of autonomy, particularly since the Attorney General is a constitutional officer and is an independent official elected by the people of Rhode Island.”<sup>12</sup> Under the common law, he is the representative of the public, obligated to protect the public interest and empowered to bring actions to redress grievances suffered by the public as a whole.<sup>13</sup> The Attorney General, through his designated Environmental Advocate, and pursuant to the Environmental Rights Act, R.I. Gen. Laws § 10-20-1, *et seq.*, also has a separate statutory right and obligation to “take all possible action” to protect the right of each Rhode Islander to “the protection, preservation, and

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<sup>10</sup> N.J.S.A. §§ 52:17A-1, *et seq.* and 52:17B-1 *et seq.*

<sup>11</sup> N.J.S.A. §§ 48:2-1, 48:2-13, and 48:2-21.

<sup>12</sup> *State v. Lead Indus., Ass'n, Inc.*, 951 A.2d 428, 474 (R.I. 2008).

<sup>13</sup> The Rhode Island Attorney General “has a common law duty to protect the public interest.” *Id.* at 471 (*quoting Newport Realty, Inc. v. Lynch*, 878 A.2d 1021, 1032 (R.I. 2005)).

enhancement of air, water, land, and other natural resources located within the state.” *See* R.I. Gen. Laws § 10-20-1 and § 10-20-3(d)(5).

The Attorney General of Vermont is authorized to represent the state of Vermont in civil matters involving the state’s interests, when, in his judgment, the interests of the state so require.<sup>14</sup>

### COMMENTS OF THE STATE AGENCIES

#### **I. Competition Provides Important Protections for Consumers.**

As an initial matter, the Commission has “broad authority to remedy unduly discriminatory behavior,” including transmission planning.<sup>15</sup> Impeding open and transparent competition can be unduly discriminatory behavior especially when such behavior results in the imposition of excessive and unjust costs on ratepayers.<sup>16</sup> In this regard, the Commission must closely scrutinize any proposed transmission reforms, especially those that impact competition, in a manner consistent with its duty under the Federal Power Act (FPA)<sup>17</sup> to ensure that consumers are not charged excessive costs. *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016); *see also Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1207 (D.C. Cir. 1987) (“The Commission stands as the watchdog providing ‘a complete, permanent and effective bond of protection from excessive rates and charges.’” (Starr, J., concurring (quoting *Atl. Ref. Co. v. Pub. Service Comm’n*, 360 U.S. 378, 388 (1959))); *California ex rel. Lockyer v.*

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<sup>14</sup> Vt. Stat. Ann. tit. 3 ch.7.

<sup>15</sup> *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 687 (D.C. Cir. 2000); *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 57-69 (D.C. Cir. 2014).

<sup>16</sup> These comments support allowing competition to reduce costs to ratepayers. The State Agencies recognize, however, that some states have adopted laws that impose a right of first refusal for transmission projects. These comments concern a federal right of first refusal and do not address of the merits of duly adopted state laws.

<sup>17</sup> 16 U.S.C. § 824, *et seq.*

*FERC*, 383 F.3d 1006, 1017 (9th Cir. 2004) (noting the FPA’s “‘primary purpose’ of protecting consumers”); *City of Chicago v. FPC*, 458 F.2d 731, 751 (D.C. Cir. 1971).

As noted in the State Agencies initial comments, there are significant consumer interests involved in transmission planning. Numerous studies have suggested that hundreds of billions of dollars of transmission upgrades will be needed in the coming decades.<sup>18</sup> For example, a Brattle Group study estimated that the United States would need approximately \$300 billion of capital investments in the transmission grid by 2030 to facilitate the transition to a modern clean energy power grid.<sup>19</sup> A recent study prepared for the Eastern Interconnection States Planning Council (EISPC), National Association of Regulatory Utility Commissioners (NARUC), and the Department of Energy (DOE) similarly projected approximately \$1 trillion in generation investment needs over the next 20 years, with at least \$50–\$110 billion of interregional transmission needed to support those generation investments.<sup>20</sup> Given that ratepayers will need to spend billions more to reach clean energy goals, we cannot afford inefficient, non-transparent and non-competitive planning and procurement processes.

However, several commenters challenge the idea that competition is necessary or even beneficial. Specifically, the Edison Electric Institute’s (EEI) initial comments in this docket noted Order NO. 1000’s direction to eliminate the ROFR for projects selected for regional cost allocation and concluded that this “policy has resulted in a near standstill in transmission development for regional projects and a substantial increase in process-related costs. It has also

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<sup>18</sup> See, Comments of Wires, Docket No. RM20-10, p.8.

<sup>19</sup> Chupka *et al.* (2008).

<sup>20</sup> EISPC (2013).



stifled the cooperation and collaboration that has historically existed among transmission owners, as well as regional planning entities.”<sup>21</sup> EEI continued:

Competitive processes for transmission projects have had the natural effect of stifling the cooperation and collaboration that has historically existed between transmission owners, as well as regional planning entities as stakeholders have become competitors and independent planning entities have become neutral administrators of competitive solicitations. This approach to transmission development does not foster collaboration and is not focused on the best interest of the customer.<sup>22</sup>

EEI concluded:

Reinstating the federal ROFR will address the inefficiencies caused by the competitive process and help get needed transmission built in a cost-effective, timely manner as it allows the entities with the expertise, the knowledge of the existing system, the relationship with customers and regulatory agencies and the obligation to provide safe reliable service to build the lines selected in the regional process.<sup>23</sup>

EEI is not alone. Eversource’s initial comments in this docket say essentially the same thing:

[I]n Eversource’s experience, the competitive transmission processes put in place in response to Order No. 1000 have created delays and limited the opportunities for transparent dialog between transmission developers, market participants, and RTOs/ISOs in addition to not delivering desired outcomes. Instead of collaboration, these processes have led to disagreements. Further, it is unclear what benefits can be shown from these competitive transmission processes, particularly where transmission owners already use competitive bidding within procurement processes and are subject to substantial oversight. . . .<sup>24</sup>

Unsurprisingly, Eversource reaches the same conclusion as EEI:

Given the dubious benefits of competition and the indisputable negative impacts competition has on collaboration. . . Eversource would support any effort by the Commission to limit the requirement for Order No. 1000 competitive solicitation processes to only those narrow instances where

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<sup>21</sup> Initial Comments of the Edison Electric Institute, Docket No. RM21-17, p. 6 (Oct. 12, 2021).

<sup>22</sup> *Id.* at p. 21

<sup>23</sup> *Id.* at p. 23.

<sup>24</sup> Comments of Eversource Energy, Docket No. RM21-17, p. 13-14 (Oct. 12, 2021).

they would not delay needed transmission development or undermine needed collaboration.<sup>25</sup>

The State Agencies do not agree. In fact, neither has the Commission in prior Orders. For example, in Order No. 890, the Commission embarked on a process of reforming transmission rules because it concluded that it could not “rely on the self-interest of transmission providers to expand the grid in a non-discriminatory manner.”<sup>26</sup> In Order No. 1000, the Commission went further and concluded that the “federal rights of first refusal in favor of incumbent transmission providers deprive customers of the benefits of competition in transmission development and associated potential savings.”<sup>27</sup> The discriminatory effect of the ROFR and its anti-competitive impact have been fully reviewed and evaluated by the Commission and there is no reason to reopen that settled matter.

Beyond that, it is not entirely clear what Eversource is referring to with its claims that there are “indisputable negative impacts . . . on collaboration” from competition and that “the competitive transmission processes put in place in response to Order No. 1000 have created delays,” because Eversource has not faced any material competition in ISO New England (ISO-NE). For the same reason, Eversource has faced no discernable delays in its projects due to competition because only one competitive project had been identified by ISO-NE, and Eversource won that single solicitation.<sup>28</sup>

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<sup>25</sup> *Id.* at p. 14.

<sup>26</sup> Order No. 890 at P 422.

<sup>27</sup> Order No. 1000 at PP 284-285

<sup>28</sup> ISO-NE, *Boston 2028 Request for Proposal (RFP) - Review of Phase One Proposals* 31–32 (2020), [https://www.iso-ne.com/static-assets/documents/2020/07/final\\_boston\\_2028\\_rfp\\_review\\_of\\_phase\\_one\\_proposals.pdf](https://www.iso-ne.com/static-assets/documents/2020/07/final_boston_2028_rfp_review_of_phase_one_proposals.pdf); Memorandum from Brent Oberlin, Dir., Transmission Planning, ISO-NE, to Barry Ahern, Dir., Transmission Asset Mgmt. & Planning, National Grid & Jacob Lucas, Dir., Transmission System Planning, Eversource (Sept. 29, 2020), [https://www.iso-ne.com/static-assets/documents/2020/09/boston\\_2028\\_mystic\\_retirement\\_preferred\\_solution\\_notification.pdf](https://www.iso-ne.com/static-assets/documents/2020/09/boston_2028_mystic_retirement_preferred_solution_notification.pdf).

The facts are that Eversource has only been involved in one competitive transmission procurement in New England, a procurement that was done quickly and cooperatively with no discernable delay and has widely been considered effective.

As noted in an illuminating paper prepared for the Massachusetts Institute of Technology by Dr. Paul Joskow: “[i]n principle, ISO-NE has agreed to implement competitive procurement for projects. . . However, its 2017 Regional System Plan states no projects have met its criteria for competitive procurement.”<sup>29</sup> This situation is not unique to New England; Dr. Joskow adds that a general lack of competition extends to other RTOs/ISOs, as well:

it is important to recognize that the ISOs have adopted a variety of policies that significantly limit the projects that are solicited through a formal open competitive procurement. Factors that determine whether or not a project is open to competitive procurement include time until project is needed, subject to regional or local reliability criteria, type of project (reliability, public interest, market efficiency), upgrades of existing facilities, voltage, type of equipment (e.g. substations) and other considerations that are not particularly transparent. . . . [M]eaningful competitive solicitations account for a tiny fraction of transmission projects approved since Order 1000 went into effect.<sup>30</sup>

Contrary to Eversource’s claims that there are “dubious benefits” from competition, evidence demonstrates that competition in transmission development provides demonstrable, critical protections and benefits for ratepayers.<sup>31</sup> For instance, a recent Brattle Group study shows that “while the scope of competition has been limited to only 2% of total U.S. transmission investments over the last 5 years, competitive processes led to innovations in proposed solutions, low bids, cost caps, cost control measures, and innovative financial

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<sup>29</sup> Paul Joskow, *Competition for Electric Transmission Projects in the U.S.: FERC Order 1000* 48-49 (MIT paper 2019), <http://ceepr.mit.edu/publications/reprints/698>

<sup>30</sup> *Id.*

<sup>31</sup> See, e.g., The Brattle Group, *Cost Savings Offered by Competition in Electric Transmission* 19 (2019), [https://brattlefiles.bl\\_e\\_transmission\\_report\\_final\\_with\\_data\\_tables\\_04-09-2019.pdf](https://brattlefiles.bl_e_transmission_report_final_with_data_tables_04-09-2019.pdf).

structuring.”<sup>32</sup> In fact, a review of competitive projects demonstrated “[w]inning bids average 40% below initial cost estimates while non-competitive projects are completed at 34% above initial estimates, offering 55% of potential cost savings.”<sup>33</sup> The study concluded that transmission savings would provide consumer benefits of \$8 billion over just five years if the scope of the RTO/ISO competitive processes could be expanded to cover a larger portion of total transmission investments.<sup>34</sup>

Notably, the DOE’s initial comments in this docket also highlight the benefits of competition in transmission development.<sup>35</sup> DOE notes the importance of proactive or anticipatory planning and adds that “[r]egional transmission planning and commissioning will also facilitate competition for transmission project development, yielding potential transmission cost savings.”<sup>36</sup> The DOE repeatedly points to the Texas Competitive Renewable Energy Zone (CREZ) model and notes that, with this model, “two factors – good natural resources and competition – ensure that . . . customers will be able to get wind and solar at the lowest reasonable cost.”<sup>37</sup>

The MIT study reviewed the limited experience so far in competitive procurements under Order No. 1000 and concluded that the data shows significant potential for ratepayer savings:

[T]here is quite a bit to learn from the 16 projects selected through an organized competitive procurement process by ISOs since Order 1000 went into effect. . . . FERC presently does little regulation of the reasonableness of the costs presented for inclusion in transmission

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<sup>32</sup> *Id.* at 1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 16.

<sup>35</sup> Comments of the United States Department of Energy, Docket No. RM21-17 (Oct. 12, 2021).

<sup>36</sup> *Id.* at 11.

<sup>37</sup> *Id.*, Appendix A at 65.

operators' revenue requirement and does not apply performance-based mechanisms as have been used in other countries and other industries. It is clear from the data on ISO cost estimates and the range of cost estimates and cost commitments contained in competing proposals that there is a wide range of potential cost realizations. Indeed, perhaps the most striking thing about the proposals submitted in response to these RFPs is the wide range of estimated costs observed between the various proposals for essentially the same project or to meet the same transmission expansion need. Cost containment mechanisms aside, the wide range of cost estimates convinces me that there is substantial potential benefit in competitive procurement per se beyond non-incumbent participation in open regional planning processes unburdened by incumbent rights of first refusal. ISO evaluators and regulators can now see variations in cost estimates that they never saw when the projects were proposed and developed by a single incumbent utility.<sup>38</sup>

The study's ultimate conclusion, contrary to the position of EEI and Eversource that Order No. 1000 should be revisited to limit competition, is that "the experience to date is sufficiently promising to consider *expanding* the use of open competitive procurement solicitations for transmission projects."<sup>39</sup>

Finally, the Electricity Transmission Competition Coalition (ETCC) noted that:

Transmission investment should be driven by the needs of consumers and by competitive market outcomes. Competition in transmission planning and construction reduces costs to consumers, results in project construction to meet reliability requirements and market-driven transmission needs and will help achieve the same public policy objectives that the Commission intends to achieve through the ANOPR.<sup>40</sup>

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<sup>38</sup> *Competition for Electric Transmission Projects in the U.S.: FERC Order 1000*, Paul Joskow, March 2019, P. 49

<sup>39</sup> *Id.* at 56 (Emphasis added.). This study also noted: "It is sometimes argued that formal competitive procurement that allows incumbents and non-incumbents to compete is not necessary because incumbent transmission owners seek competitive bids for equipment and contracts and primarily provide management oversight. This is not a compelling argument. The competitive procurements demonstrate that competing transmission developers can reduce expected costs by coming up with innovative designs to resolve transmission needs identified through the ISO regional planning process, taking on more performance risk, foregoing certain FERC revenue requirements "incentives" for which they would otherwise be eligible, etc." *Id.* at 50.

<sup>40</sup> Comments of the Electricity Transmission Competition Coalition, Docket No. RM21-17, p. 1 (Oct. 12, 2021).

ETCC concluded that the “absolute best way for the Commission to ensure that transmission planning results in just and reasonable rates is through competition.”<sup>41</sup>

The comments of EEI and Eversource provide nothing but unsupported and illogical allegations and are unabashedly self-serving. Competition reduces costs, compels developers to sharpen their pencils, results in better projects, and saves ratepayers money. The State Agencies urge the Commission to expand competition in transmission tariffs across the country to more categories of projects, not fewer.

## **II. The Commission Should Establish Regional Independent Transmission Monitors.**

In the ANOPR, the Commission sought “comment on whether, to improve oversight of transmission facility costs, it would be appropriate for the Commission to require that transmission providers. . . establish an independent entity to monitor the planning and cost of transmission facilities in the region.”<sup>42</sup> As described in their initial comments, the State Agencies support the establishment of an independent entity to improve oversight of transmission costs. Transmission planning and development is complicated and expensive. As the ANOPR notes: “it is itself a significant investment that represents a major component of customers’ electric bills.”<sup>43</sup> Consumers, and the public generally, have limited insight into and little opportunity to learn and understand about the transmission system that is so very important to their lives. And as the Commission notes, the transition to the grid of the future will require billions of dollars in new infrastructure.<sup>44</sup> The State Agencies, therefore, reiterate that an

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<sup>41</sup> *Id.*

<sup>42</sup> P 163.

<sup>43</sup> P 11 Chairman Glick, Concurring.

<sup>44</sup> See, <https://www.princeton.edu/news/2020/12/15/big-affordable-effort-needed-america-reach-net-zero-emissions-2050-princeton-study>; [https://www.woodmac.com/our-expertise/focus/Power--Renewables/us-renewable-energy-policy-scenario-analysis/?utm\\_campaign=pandr&utm\\_medium=article&utm\\_source=gtm](https://www.woodmac.com/our-expertise/focus/Power--Renewables/us-renewable-energy-policy-scenario-analysis/?utm_campaign=pandr&utm_medium=article&utm_source=gtm).

Independent Transmission Monitor may be an effective way to control costs, review and improve planning and decision-making procedures, and provide increased transparency.

EEI disagrees, stating:

Order Nos. 890 and 1000 provide significant opportunities for stakeholders to receive, seek and evaluate information and to propose alternative solutions to transmission needs and to meaningfully participate in the transmission planning process. Accordingly, additional transparency provisions or a transmission market monitor that increase bureaucracy without any showing of need are not needed.<sup>45</sup>

The fundamental premise contained in these assertions by EEI is incorrect. State officials and the public most certainly do not have sufficient insight or access to information and little to no opportunity to meaningfully participate in the transmission planning process. As repeatedly noted in many of the initial filings in this docket, most transmission planning is either reactive to reliability issues or associated with the developer interconnection process.<sup>46</sup> State officials and planners have little or input in RTO/ISO planning processes and generally only get to see the final result of a reliability study or interconnection study. An Independent Transmission Monitor would provide a technically qualified independent check on a highly technical and essentially opaque process.

Another benefit of having an Independent Transmission Monitor would be to have a realistic and objective check on costs. As the MIT paper notes:

FERC does not have a well-developed process to scrutinize the costs presented to it for inclusion in the transmission owners' revenue requirements or a history of disallowing unreasonable costs. To a first approximation FERC cost of service regulation is cost pass through regulation with little scrutiny of costs.<sup>47</sup>

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<sup>45</sup> EEI Comments, p. 7.

<sup>46</sup> See, Comments of the State Agencies, Docket No. RM21-17, pp. 18-20 (Oct. 12, 2021).

<sup>47</sup> MIT Paper at p. 17.

An Independent Transmission Monitor with expertise in evaluating transmission development costs, and the best means of controlling those costs, would give ratepayers an important additional protection and an unbiased entity to guard their interests.

Ultimately, in addition to specifics like cost containment, an important benefit of an Independent Transmission Monitor is that such an entity can act as a check on the inherent economic self-interest of transmission owners.<sup>48</sup> The Commission has noted this issue many times in the past. As discussed earlier, in Order No. 890, the Commission embarked on a process of reforming transmission rules because it concluded that it could not “rely on the self-interest of transmission providers to expand the grid in a non-discriminatory manner.”<sup>49</sup> The Commission identified the key issue in this regard: “It is in the economic self-interest of transmission monopolists, particularly those with high-cost generation assets,”<sup>50</sup> to oppose transmission expansion “when doing so stimulates new entry or greater competition . . . or would allow cheaper power to displace [a transmission owner’s] higher-cost generation or otherwise make new entry more profitable.”<sup>51</sup> Therefore, a “transmission provider has little incentive to upgrade its transmission capacity with its interconnected neighbors if doing so would allow competing suppliers to serve the customers of the transmission provider.”<sup>52</sup> The Commission was even more blunt in Order No. 1000: “It is not in the economic self-interest of incumbent transmission providers to permit new entrants to develop transmission facilities.”<sup>53</sup>

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<sup>48</sup> See, Reply Comments of Potomac Economics, Docket No. RM11-17 at p.4.

<sup>49</sup> Order No. 890 at P 422.

<sup>50</sup> Order No. 888 at 21,567; Order No. 890 at P 39.

<sup>51</sup> Order No. 890 at P 422.

<sup>52</sup> *Id.* a P 522.

<sup>53</sup> Order 1000 at P 59.



It is in this context in which transmission owners not only publicly oppose or attempt to limit competition but continue to retain both the incentive and the motivation to resist new entrants. In addition, the incumbent transmission owners are aware that neither state entities (either through being stakeholders during transmission planning processes, or through “needs” assessments during state siting processes) nor the Commission have sufficient information and capacity to scrutinize the actual transmission plans, the design and engineering of the projects, or the final costs of transmission projects to determine whether the investments spent are the most optimal way to deliver the transmission needs for each region. An Independent Transmission Monitor could provide an important and objective evaluation of the planning and evaluation process of the RTOs/ISOs especially because state officials lack transparent access to important parts of the process. It is for these reasons, among others set forth in the initial comments, that the State Agencies continue to support the establishment of such an entity.<sup>54</sup>

Please note that the State Agencies offer these comments on the proposed Independent Transmission Monitor primarily in the context of such a position in regions with RTOs/ISOs. For the bulk of the West, where there is no centralized RTO transmission planning and procurement process to be monitored, the Commission should provide more details on how such a monitor would be authorized and function.

### **CONCLUSION**

The State Agencies appreciate the Commission’s solicitation of public input on these matters. We respectfully urge the Commission to consider the above comments, in addition to the State Agencies’ initial comments, as it considers potential reforms.

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<sup>54</sup> See, Reply Comments of Potomac Economics, RM11-17 at p.2 regarding use of an Independent Transmission Monitor in the planning horizon and addressing concerns that such an entity would duplicate current RTO/ISO planning processes.

Respectfully Submitted

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