

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

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

**COMMENTS OF THE
ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON)**

The Electricity Consumers Resource Council (ELCON) respectfully submits these comments on the April 21, 2022 Notice of Proposed Rulemaking (NOPR)¹ in the above-captioned docket, in which the Federal Energy Regulatory Commission (FERC or Commission) proposes and seeks comment on potential reforms to improve the electric regional transmission planning and cost allocation processes.

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies create a wide range of products from virtually every segment of the industrial community. We own and operate hundreds of major facilities and are significant consumers of electricity in the footprints of all organized markets and other regions throughout the United States. Reliable electricity supply at just and reasonable rates is essential to our members' operations. Further, ELCON members rely on the transmission of electricity by FERC-jurisdictional utilities. Many of ELCON's members also generate electricity and maintain interconnections for excess power sales. Accordingly, any changes to the Commission's transmission planning and cost allocation policies will have a direct financial impact on ELCON members.

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

SUMMARY

After more than a decade since the issuance of Order No. 1000,² the Commission acknowledges that the goals set forth in the final rule have not been achieved as intended.³ Few large-scale transmission projects have been proposed and developed with smaller local projects constituting the bulk of development over the last decade. This incremental, piecemeal planning and development has unnecessarily cost consumers more with little of the benefit of widescale transmission solutions. Thus, the Commission seeks input on how best to ensure that future transmission needs are anticipated and that consumers benefit from the lowest-cost and most reliable power delivery.

The Commission proposes to require public utility transmission providers to:

(1) conduct long-term regional transmission planning on a sufficiently forward-looking basis to meet transmission needs driven by changes in the resource mix and demand; (2) more fully consider dynamic line ratings and advanced power flow control devices in regional transmission planning processes; (3) seek the agreement of relevant state entities within the transmission planning region regarding the cost allocation method or methods that will apply to transmission facilities selected in the regional transmission plan for purposes of cost allocation through long-term regional transmission planning; (4) adopt enhanced transparency requirements for local transmission planning processes and improve coordination between regional and local transmission planning with the aim of identifying potential opportunities to “right-size” replacement transmission facilities; and (5) revise their existing interregional transmission coordination procedures to reflect the long-term regional transmission planning reforms proposed in this NOPR.⁴

The Commission’s proposal also would eliminate the ability of transmission providers to seek recovery of Construction-Work-In-Progress (CWIP) for transmission

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (Order No. 1000).

³ NOPR at P 24.

⁴ *Id.* at i-ii.

facilities selected in the regional planning process for cost allocation but would permit the exercise of rights of first refusal (ROFR) for those incumbent transmission providers who establish joint ownership, with non-affiliates, for facilities chosen for regional cost allocation.⁵

The reforms proposed in the NOPR build upon the goals of Order No. 1000 “to improve transmission planning processes and cost allocation mechanisms under the *pro forma* Open Access Transmission Tariff (OATT) to ensure that the rates, terms and conditions of service provided by public utility transmission providers are just and reasonable and not unduly discriminatory or preferential.”⁶ The Commission recognizes that the efforts since Order No. 1000 have fallen short of those goals.⁷ As consumers, ELCON is concerned that instead of reducing the all-in cost of power for customers, Order No. 1000 resulted in perverse incentives and unintended consequences. Instead of promoting coordination and identification of large transmission projects with multiple consumer benefits, Order No. 1000 further entrenched a piecemeal, incremental approach to transmission build-out. Transmission planners became adversaries, and open discussions with state regulators and regional transmission organizations and independent system operators (RTOs/ISOs) regarding transmission plans ceased so as not to appear favoring one developer over another.

While regional differences are important to consider, too much flexibility was provided to transmission providers in Order No. 1000 that allowed some regions to skirt open competitive solicitations. It also created a patchwork of planning processes further complicating planning and fostering additional balkanization of the grid, making interregional projects almost impossible.

⁵ *Id.*

⁶ Order No. 1000 at P 1.

⁷ NOPR at P 24 (“It has now been more than a decade since Order No. 1000... and there is mounting evidence that the Commission’s regional transmission planning and cost allocations requirements may be inadequate to ensure Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential.”).

Order No. 1000 provided no real oversight or accountability for discipline in the stakeholder planning process or enforcement of commitments made in winning competitive proposals. Several winning proposals incorporated cost caps or rate caps; however, there currently is no periodic review of performance or recourse for exceeding those guarantees.

ELCON commends the Commission for being open to transmission planning reforms. Along with the issues laid out in the NOPR, we urge FERC to consider reforming policies enacted as part of Order No. 1000 that we opposed a decade ago and continue to oppose. Given customers' experience of rising costs due to piecemeal planning,⁸ it is important that states, grid operators, and all stakeholders have a clear-eyed vision of a range of possible futures that allow for delivering value for customers.⁹

Though many of the proposals are steps in the right direction to ensure we do not continue to plan our transmission grid in an incremental, inefficient, and costly way, ELCON is concerned about the legal durability of the Commission's finding of unjust and unreasonable rates here, as well as mandates on transmission planning and cost allocation.¹⁰

In response to the specific proposals in the NOPR, ELCON

- supports requiring long-term scenario planning to inform transmission providers regarding potential future transmission needs; however, long-term scenario planning should not be limited to anticipated resource mix but also take into consideration impacts on reliability and congestion management;
- believes that long-term scenario planning should be regarded as informative but not a means of identifying necessary projects;

⁸ See The Brattle Group, "Transmission Planning for the 21st Century: Proven Practices that Increase Value and Reduce Costs," p. 3 (Oct. 2021).

⁹ April 2022 Commission Meeting: Opening Remarks of Commissioner Allison Clements (Apr. 21, 2022), available at: <https://www.ferc.gov/news-events/news/april-2022-commission-meeting-opening-remarks-commissioner-allison-clements>.

¹⁰ See NOPR, 179 FERC ¶ 61,023 (Danly, Comm'r, dissenting at P 21).

- highlights that in addition to the “beneficiary-pays” doctrine, “cost-causation” should apply in allocating the costs of transmission;
- encourages state participation in developing selection criteria and cost allocation methodologies to assist with getting projects approved and built;
- advocates for greater standardization of accepted data sources, minimum sets of benefits, and cost containment offramps;
- supports the removal of the Construction Work in Progress incentive in order to protect consumers from bearing the risks and costs of a project that is not yet in service;
- seeks greater coordination between the transmission planning process and the generator interconnection process;
- encourages implementation and consideration of grid enhancing technologies in proposed projects, with greater weighting given to those projects that incorporate grid enhancing transmission technologies in their proposals;
- opposes any reinstatement of a right-of-first refusal (ROFR) for incumbents, but encourages better cooperation in transmission planning and competitive solicitations, including joint ownership; and
- seeks better consistency, oversight, and enforcement of competitive solicitations and projects selected for development.

ELCON is also concerned about what is missing from the NOPR that was included in the Advanced Notice of Proposed Rulemaking,¹¹ namely an independent transmission monitor, which is necessary to ensure compliance with tariff provisions in RTO and non-RTO regions. Stricter interregional planning requirements are another area not addressed in this NOPR that ELCON hopes will be subject to a future NOPR. There are many opportunities to fine tune interregional planning obligations to reach the original goal of Order No. 1000.¹²

¹¹ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Advanced Notice of Proposed Rulemaking, 176 FERC ¶ 61,024 (2021) (ANOPR).

¹² Order No. 1000 at P 368 (“Clear and transparent procedures that result in the sharing of information regarding common needs and potential solutions across the seams of neighboring transmission planning regions will facilitate the identification of interregional transmission facilities that more efficiently or cost-effectively could meet the needs identified in individual regional transmission plans.”).

I. LONG-TERM PLANNING SHOULD BE VIEWED HOLISTICALLY TO ACHIEVE RELIABILITY AT LEAST COST

A. Removing Silos Must Be Part of Long-Term Scenario Planning.

In Order No. 1000, the Commission sought to reform transmission planning and cost allocation through greater participation, transparency, competition, and coordination, which FERC hoped would spur innovative and cost-effective transmission projects to meet economic, reliability, and public policy needs. While Order No. 1000 directed transmission providers to formalize a process for transmission project review, it did not mandate certain outcomes. However, in implementing Order No. 1000, the Commission anticipated that specific outcomes would be achieved, such as utilities building long-distance transmission lines to bring energy from far away resources to load at just and reasonable rates.¹³ Unfortunately, those outcomes seldom came to fruition and, in some respects, Order No. 1000 may have discouraged them.¹⁴

ELCON acknowledges that the Commission's transmission planning framework needs additional reforms. Further, certain proposals in the NOPR could help in meeting some of FERC's recent goals towards building a robust, reliable, and flexible grid of the future as well as satisfying FERC's statutory obligation to ensure reliability at just and reasonable rates for consumers. Taking into consideration longer-term needs in multiple scenarios helps transmission providers plan for the future and determine which transmission projects or solutions would, as the NOPR states, "maximize benefits

¹³ See NOPR at P 18.

¹⁴ S&P Global, "Pointing to 'perverse incentive' under Order 1000, FERC's Glick calls for changes" (Oct. 11, 2019), available at: <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/electric-power/101119-pointing-to-perverse-incentive-under-order-1000-fercs-glick-calls-for-changes>; see also NOPR at P 350, ("[G]iven the investment trends observed since Order No. 1000's implementation, it is possible that the Commission's Order No. 1000 nonincumbent transmission developer reforms may in fact be inadvertently *discouraging* investment in and development of regional transmission facilities to some extent. Incumbent transmission providers, as a result of those reforms, may be presented with perverse investment incentives that do not adequately encourage those incumbent transmission providers to develop and advocate for transmission facilities that benefit more than just their own local retail distribution service territory or footprint.") (emphasis in original).

to consumers over time without over-building transmission facilities.”¹⁵ Given the seven-to-ten-year timeline for building transmission, we also agree that planning for the future in a holistic way that benefits consumers must start now.

ELCON is concerned, however, that the NOPR’s limited focus on regional long-term planning *solely* to address changes in resource mix and demand, if adopted, could fail to produce better outcomes for customers and exceed FERC’s authority under the Federal Power Act (FPA). The NOPR, more so than Order No. 1000, also appears to be more direct in advancing specific outcomes (*e.g.*, ensuring transmission is built to connect renewable resources) rather than just creating a transparent planning process.

ELCON remains steadfast in advocating for reliable power at least cost for consumers while also recognizing the evolution of the generation mix. There is no question that to achieve state clean energy goals, meet corporate and consumer expectations for environmentally sustainable electric power, and interconnect a changing resource mix, this nation will need to build significant amounts of transmission. Further, if the goal is to achieve a net zero electricity sector, some estimate that the cost of the required transmission buildout is approximately \$2 trillion.¹⁶

To identify the most beneficial solutions, it is necessary to reform the Commission’s siloed approach of relying on separate planning processes for the transmission drivers set out in Order No. 1000.¹⁷ Specifically, all proposed transmission solutions should be reviewed by the transmission provider for reliability, economic efficiency, and public policy-related needs, rather than solving for only one driver. Short-term planning addresses more immediate needs, such as remedying reliability

¹⁵ NOPR at PP 241-42, 245-46.

¹⁶ See Princeton University, *Net-Zero America: Potential Pathways, Infrastructure, and Impacts*, p. 108 (Oct. 29, 2021).

¹⁷ See Order No. 1000 at PP 11, 47, 689. Current drivers under Order No. 1000 are categorized as reliability, economic, and public policy.

violations and contingencies, easing congestion, and connecting more resources to the grid. However, these drivers should *also* be considered in long-term scenario planning, as they will have an impact on future transmission performance and needs.

The categories of factors cited in the NOPR to include in long-term planning captures many of the anticipated impacts on future transmission needs.¹⁸ However, beyond factors affecting the resource mix and load profiles, other factors should be considered, including (1) climate change and future weather patterns; (2) the interconnectedness to the backbone grid; (3) transfer capabilities between seams; and (4) adoption rates of distributed energy resources, energy efficiency, and demand response. Accounting for these factors provides transmission providers the ability to develop and consider solutions that may solve for multiple drivers and offer greater benefits to more consumers. We acknowledge that there may be uncertainty around the magnitude of each factor and its impact on future transmission needs. But these factors do have some level of historical data as well as prospective outlooks, which can and should be taken into account.

Proposed transmission projects may not provide meaningful benefits in each planning category. But maintaining a siloed approach (as FERC proposes in the NOPR)¹⁹ reinforces inefficient, piecemeal, incremental development that costs

¹⁸ NOPR at P 104, (“[W]e propose to require that public utility transmission providers incorporate, at a minimum, the following categories of factors into the development of Long-Term Scenarios: (1) federal, state, and local laws and regulations that affect the future resource mix and demand; (2) federal, state, and local laws and regulations on decarbonization and electrification; (3) state- approved utility integrated resource plans and expected supply obligations for load serving entities; (4) trends in technology and fuel costs within and outside of the electricity supply industry, including shifts toward electrification of buildings and transportation; (5) resource retirements; (6) generator interconnection requests and withdrawals; and (7) utility and corporate commitments and federal, state, and local goals that affect the future resource mix and demand.”) (internal footnotes omitted).

¹⁹ *Id.* at P 72, (“With respect to transmission needs associated either with maintaining reliability or for addressing economic considerations and their associated cost allocation, we do not propose in this NOPR to change Order No. 1000’s requirements for public utility transmission providers to create a regional transmission plan that will identify transmission facilities that more efficiently or cost-effectively meet the region’s reliability and economic requirements. In other words, public utility transmission providers may continue to rely on their existing regional transmission planning and cost allocation processes to comply

consumers more in the long run than taking a broader view of customer transmission needs and benefits. As such, we can no longer plan transmission through one lens. Focusing solely on public policy needs, whether in short-term or long-term planning, risks investing in projects that may not be the most cost-efficient or beneficial. In many cases, solving for one driver may cause the need for additional transmission solutions due to the interconnected nature of the nation's transmission system. A holistic forward-looking approach considering all trends in transmission needs is a more comprehensive approach.

ELCON is concerned that the Commission's proposal to prioritize long-term regional transmission planning to connect renewable generation²⁰ over, *e.g.*, long-term planning for economically necessary transmission, may exceed FERC's FPA authority if it drives transmission rates higher for the benefit of a handful of stakeholders. For example, ELCON has always believed that planning for disparate state energy priorities is at odds with market-driven, efficient, and cost-effective transmission planning.²¹ In comments on Order No. 1000, ELCON stated "[a]pplication of the bedrock principle of 'cost causation' would be resource neutral and driven by the needs of consumers and their willingness to face allocated costs to achieve measurable benefits. To do otherwise is a recipe for inefficient planning and investment."²² In other words, the NOPR's siloed approach could require customers to pay higher costs to connect distant renewables when a lower-cost project would provide the same reliability or economic benefits. Congress did not give the Commission express authority to balance the FPA's

with Order No. 1000's requirements related to transmission needs driven by reliability concerns or economic considerations.")

²⁰ See *id.* at P 47; (Danly, Comm'r, dissenting at fn 3).

²¹ Comments of ELCON and Associated Industrial Groups, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities* Notice of Proposed Rulemaking, Docket No. RM10-23-000 at p. 3 (filed Sept. 29, 2010) (ELCON Order 1000 Comments), (ELCON is "particularly concerned with the... mandatory interjection of state 'public policy' considerations into the transmission planning process and how, in practice, this is expected to work. There is currently no consensus among the states on renewable energy policy...").

²² *Id.* at pp. 2-3.

just and reasonable rates requirement with the policy goal of connecting renewable resources to the grid.²³ Thus, extra-statutory policy goals and resource preferences must necessarily cede to the FPA's requirement that rates be just and reasonable if the two are in conflict.²⁴

B. A 20-Year Scenario Planning Horizon Should Inform the Need for Transmission Expansion but Not Dictate Project Selection.

Standard transmission development can take between seven and ten years on average given the complex planning, siting, and permitting process. As such, the proposed 20-year long-term planning horizon is, at minimum, necessary to anticipate future needs.²⁵ A 20-year, long-term planning horizon allows transmission providers to run multiple likely scenarios that include state goals, generation resource locations, planned retirements, resource variability and performance, and potential load patterns. Multiple scenarios are necessary because forecasts become more imprecise the further out in the future. However, long-term transmission planning should not rely solely on these projections to develop projects saddling consumers with unnecessary costs. These 20-year scenarios should be regarded as informative as to potential future needs but should not be the basis for selecting transmission projects to be built. Selection should occur in near-term planning (*i.e.* 10-15 years) when there is greater certainty that there is

²³ Although the Commission has authority under the FPA “to facilitate transmission expansion to meet the reasonable needs of load-serving entities to satisfy [their] service obligations,” the Commission cannot unilaterally choose which resources meet those service obligations. *See* 16 U.S.C. § 824q (b)(4) (2018). Additionally, under FPA section 219, ratemaking incentives are solely for the purpose of “ensuring reliability and reducing the cost of delivered power by reducing transmission congestion” and to “promote reliable and economically efficient transmission and generation of electricity.” 16 U.S.C. § 824(s) (a)-(b)(1). Commissioner Christie puts a finer point on this issue: “States can prefer, mandate or subsidize specific types of generation resources, but the Commission cannot use its authority over transmission to pressure, steer or require regional planning entities to act as the Commission’s agents and do indirectly what the Commission cannot do directly.” NOPR, 179 FERC ¶ 61,208 (Christie, Comm’r, concurring at P 3).

²⁴ The Supreme Court has said “[w]e expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance.” *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014) (internal quotations omitted). This has recently been referred to as the “major questions doctrine.” *See W.V. v. EPA*, 142 S. Ct. 2587, 2595 (2022).

²⁵ NOPR at PP 92, 97.

a specific transmission need.

In addition, because of the uncertainty inherent in planning for 20 or more years, a probability and sensitivity analysis should be included in each scenario to determine the likelihood of certain conditions. However, as stated above, these scenarios should include forecasts for reliability needs and congestion. Focusing primarily on the generation mix fails to properly account for all potential system needs and, in turn, risks that selected projects will not be the most cost-effective option.

The uncertainty of future conditions in long-term planning will require periodic review and the scenarios should be updated to ensure more accuracy in forecasting transmission needs. As Commissioner Christie noted, “[b]ased on my experience as a state regulator with [integrated resource plans] and computer models purporting to predict the future two or more decades down the road, I regard 20-year projections of this sort as, at best, occasionally interesting, but they certainly provide no basis whatsoever for saddling consumers with the costs of a billion-dollar transmission line.”²⁶ The NOPR proposes a standard reassessment of long-term scenarios at least every three years.²⁷ This reassessment and revision of each scenario provides the opportunity to consult recent data and update the probability of each scenario, which will produce better outcomes in the planning process. We have seen a tremendous evolution within the electric industry over the last decade that is expected to continue. Therefore, a reassessment is necessary to capture political, technological, and operational changes in the nearer term. We strongly recommend that the Commission hold a technical conference after the first three-year reassessment period to allow transmission providers to offer their experiences and best practices with long-term scenario planning. At such time, the Commission may revise its requirements to incorporate real-life experiences.

²⁶ *Id.*, (Christie, Comm’r, concurring at P 10).

²⁷ *Id.* at PP 93, 97.

Regarding the factors that the NOPR identifies for inclusion in the various long-term scenarios, ELCON agrees that those are acceptable as a minimum set of requirements for consideration of the future resource mix.²⁸ The requirement to consider the availability of certain resources should be easy to implement because transmission providers already use publicly available information and data about retirements, the interconnection queue, trends in electrification, and state integrated resource plans in their transmission planning. However, incorporating state and federal laws and regulations into transmission plans may require some expertise as political winds can change frequently over a 20-year period. Some level of political savvy will need to be incorporated into transmission planning that may not currently be available to transmission providers. It bears noting that the factors proposed in the NOPR represent the bare minimum of categories to be considered. We strongly agree that transmission providers and stakeholders should have the option to incorporate additional factors that may be relevant to their transmission planning.²⁹

Similarly, ELCON supports the NOPR proposal requiring the use of a minimum of four scenarios in each long-term transmission planning cycle. As with the input factors, transmission providers and stakeholders should have the option to consider different scenarios that are relevant to their particular circumstances.³⁰ All methodologies and inputs used in determining scenarios and factors should be posted on each utility's Open Access Same-Time Information System (OASIS) in a clear and transparent manner to allow other stakeholders to understand the methodology and replicate results.

The NOPR would require transmission providers to use "best available inputs," which is defined as "data inputs that are timely and developed using diverse and expert perspectives, adopted via a process that satisfies the transparency planning principle ...

²⁸ See *supra* n. 18.

²⁹ NOPR at P 105.

³⁰ *Id.* at P 123.

and reflect the list of factors that public utility transmission providers must incorporate into Long-Term Scenarios.”³¹ Greater clarity may be necessary for what data is considered “timely.” For example, the Commission should not establish a mandate in favor of using historical data (*e.g.*, actual data from the previous 12 months) because historical data may not necessarily reflect current and future operational needs. On the other hand, utilities should consider whether a data source’s historical projections ultimately proved to be accurate when identifying “best available” inputs. As part of the three-year reassessment, the Commission may decide that identifying or standardizing data inputs and sources may be helpful to ensure transmission providers are consistently using timely and widely accepted data. However, flexibility in using other data inputs should be permitted.

C. The Generator Interconnection Process and Long-term Transmission Planning Should be Integrated.

In the absence of greater coordination between the generator interconnection process and long-term transmission planning, consumers are left with piecemeal planning that is, in aggregate, more expensive than coordinated planning. As stated in the NOPR, the “expansion of the high voltage transmission system is apparently increasingly occurring outside of the regional transmission planning process, and in a piecemeal fashion through other avenues, such as the generator interconnection process primarily in response to individual (or a small cluster of) interconnection requests.”³² This piecemeal, incremental development raises costs to consumers and fails to take into consideration larger transmission solutions that encompass several drivers and needs.³³ Our grid cannot be developed solely through the generator interconnection process. Instead, long-term regional planning should be integrated with the generator

³¹ *Id.* at P 131 (internal footnotes omitted).

³² *Id.* at P 26.

³³ See NOPR, 179 FERC ¶ 61,028, (Phillips, Comm’r, concurring at P 4) (“[T]ransmission expansion is increasingly occurring in a piecemeal and inefficient fashion outside of the regional transmission planning process, which may not be cost-effective for consumers in the long run.”).

interconnection queue, which will identify needed transmission when taken together with the other factors ELCON suggests above.³⁴ Additionally, regular workshops should be held at the Commission to review best practices for coordinating the interconnection queue, current regional transmission planning, and long-term transmission planning to produce better outcomes for customers.

Coordinating the regional planning and interconnection processes could also lead to greater competition. Incremental upgrades developed through the interconnection process are not subject to competition. Conversely, a more comprehensive review of transmission needs may result in a larger regional project that incorporates generator interconnection needs, which would be eligible for competitive bidding. Larger projects also may provide interconnection for more than one project in the queue, thus potentially reducing backlogs.

II. GREATER TRANSPARENCY REGARDING COSTS, SELECTION CRITERIA, AND BENEFICIARIES WILL REQUIRE COORDINATION WITH STATES

A. Cost Allocation Must Remain True to the “Cost Causation” Doctrine.

ELCON has always posited that “[t]he touchstone of [just and reasonable rates] is cost causation, which provides an important feedback loop to policymakers and state regulators on the cost consequences of their policies by identifying the total delivered costs of alternative resource choices.”³⁵ The basic tenet of cost causation protects consumers from transmission costs they did not incur or for which they derive no benefit.³⁶ Of course, the definition of “beneficiary” or “benefit” has been controversial

³⁴ See *supra* at p. 8.

³⁵ ELCON Order 1000 Comments at p. 3.

³⁶ See, e.g., *Cal. Power Exchange Corp.*, 106 FERC ¶ 61,196 at P 17 (2004) (the “well-established principle of cost causation requires that costs should be allocated, where possible, to customers based on customer benefits and cost incurrence”); see also *Cal. Independent Sys. Operator Corp., et al.*, Opinion No. 463, 103 FERC ¶ 61,114 at P 26 (2003) (“While this fundamental idea of matching costs to customers is often referred to in terms of cost causation, it has also often been described in terms of the costs which ‘should be borne by those who benefit from them.’”) (quoting *Gulf Power Co. v. FERC*, 983 F.2d 1095, 1100 (D.C.

due, in part, to the difficulty in quantifying certain societal benefits and the lack of standardization in how utilities assess measurable benefits.

Although the Commission declines to define “benefit” or establish a minimum set of benefits to be considered, the NOPR lays out several observable and measurable benefits of transmission development.³⁷ Recognizing that regional flexibility is important, the Commission should be able to establish a “minimum” list of benefits that are universally applicable to most, if not all, transmission providers.³⁸

Further, utilities’ cost allocation proposals must comply with the cost causation principle “by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.”³⁹ The Commission should continue to direct transmission providers to “adhere to the ‘cost causation’ principle that assumes that non-trivial benefits can be reasonably identified, reasonably measured, and reasonably assigned to beneficiaries – including unintentional beneficiaries.”⁴⁰

Beyond looking at who benefits, the Commission, transmission providers, and transmission owners must evaluate the drivers of the specific transmission need and who caused the need for additional transmission in the first place. ELCON remains concerned that, in an effort to reach specific public policy goals, costs will be socialized among all consumers without consideration of the cost causers. To this point, ELCON

Cir. 1993)).

³⁷ NOPR at P 185, Table 1.

³⁸ For example, avoided or deferred costs (congestion charges, upgrades, reconstruction and emergency procurements due to extreme weather events); avoided or deferred investment (transmission and generation); reduced frequency of load loss through increased interconnectivity and access to other generation resources; and production cost savings (lower cost resources, fuel prices and availability).

³⁹ ELCON Order 1000 Comments at p. 18 (citation omitted); see also Request for Rehearing or Clarification of ELCON, AF&PA, and Associated Industrial Groups, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Docket No. RM10-23-001 at p. 6 (filed Aug. 22, 2011) (Order 1000 Request for Rehearing).

⁴⁰ ELCON Order 1000 Comments at p. 22.

shares some of Commissioner Danly's concerns about the purpose of the NOPR.⁴¹ Allocating costs to those who benefit cannot be divorced from allocating costs to those that drove the need for transmission expansion. For example, should additional load be introduced to the transmission system or an intermittent resource connected to the grid causes instability, they would be allocated some of the cost of the transmission solution in addition to consumers benefitting from the increased reliability.

B. Selection Criteria Must Be Transparent.

With the potential for billions and even a trillion dollars of transmission investment expected in the next 10 to 25 years,⁴² it is vitally important that consumers be protected from any unnecessary costs. To that end, selection criteria must incorporate metrics for reliability and economic efficiency in addition to accommodating a changing resource mix, as specified in the NOPR.⁴³ To meet the Commission's goal "to maximize benefits to customers over time without over-building transmission facilities,"⁴⁴ selection criteria must incorporate all potential drivers with greater weight given to those projects that produce benefits in more than one category.

This is not to suggest that transmission developers should propose inflated transmission projects that saddle consumers with unnecessary costs. Rather, they should consider net benefits across reliability, economic efficiency, and the goal of accommodating the future generation mix to ensure those projects with a greater benefit-to-cost ratios are ultimately selected.

⁴¹ See NOPR, (Danly, Comm'r, dissenting at P 3 ("The majority seeks to establish policies designed to encourage the massive transmission build-out that will doubtless be required to transition to an aspirational renewable future. To do so, they need to socialize the costs of this transmission across as broad a population of ratepayers as possible. Thus, they seek to use the FPA, a statute that sounds in rate regulation and reliability, as a tool to achieve a particular (and inapposite) policy goal."))

⁴² See Princeton University, *Net-Zero America: Potential Pathways, Infrastructure, and Impacts*, p. 108.

⁴³ NOPR at P 241.

⁴⁴ *Id.* at P 242.

Further, while ELCON supports the NOPR's proposal for flexibility to develop selection criteria in each region, the selection criteria and their proper weighting must be clear and easily accessible to consumers through the transmission providers' OASIS and tariff. Protecting consumers requires absolute transparency into how projects are reviewed and ultimately selected in regional and interregional transmission planning.

C. States Should Play a Role in Transmission Planning Decisions.

It is critically important that developers coordinate with state entities in identifying transmission planning selection criteria, as this promotes cooperation and will hopefully result in more efficient siting and permitting at the state level. Giving states the opportunity to shape transmission criteria on the front-end increases the probability that those projects selected in regional, interregional, and long-term planning will receive the necessary state approvals and protect state ratepayers from unjust and unnecessary costs.

With respect to cost allocation for such transmission projects, a state regulator's fundamental responsibility is to protect the ratepayer. Thus, it stands to reason that utilities' cost allocation methodologies and decisions should incorporate input from the states. Additionally, cost allocation remains one of the prominent challenges in building transmission, and states often reject long-range transmission projects where they fail to see benefits for their constituents. Thus, providing states with a meaningful say could help more transmission projects get across the finish line and potentially resolve challenges from states that see no benefit from a particular project. Incorporating state input on selection criteria and cost allocation also protects consumers and creates a more cooperative and coordinated transmission planning process.

However, the Commission should emphasize that one state's public policy goals cannot supplant the cost causation principle or be used to impose costs on customers in

states that do not have the same goals.⁴⁵ Commissioner Christie articulated this in his concurrence, stating, “regardless of any ultimate cost allocation arrangement agreed to in a regional entity, no individual state’s consumers can be forced to bear the costs of another state’s policy-driven project or element of a project against its consent.”⁴⁶

The NOPR also considers whether state entities should have the option to fund or partially fund a project in order to meet their clean energy goals.⁴⁷ ELCON agrees that participant funding is consistent with cost causation⁴⁸ and should apply to states, transmission developers, or interconnection customers. Participant funding can shield ratepayers from some of the costs of transmission development as well as deflect risk from customers. However, several questions remain as to how states can elect to fund projects to meet their energy goals. For instance, the NOPR asks “what mechanism would be appropriate to document agreement from the relevant state entities to voluntarily fund (e.g., *commit customers within the state to fund*) the cost of, or a portion of the cost” of a transmission project.⁴⁹

While transmission developers and interconnection customers have access to private capital, it appears that states can only commit to having electricity customers or taxpayers fund transmission. ELCON acknowledges that a state regulator’s primary function is to protect its ratepayers from unjust and unreasonable costs. However, we remain concerned that captive customers will be obligated, either through an increase in electric rates or state taxes, to shoulder the burden and risk of transmission investment driven by state legislative mandates to build certain amounts of specific generation resources. To limit the harm to customers, any self-funding mechanism should be

⁴⁵ See Order 1000 Request for Rehearing at p. 12.

⁴⁶ NOPR, (Christie, Comm’r, concurring at P 12 (internal citation omitted); see also *id.* (Danly, Comm’r, dissenting at P 13).

⁴⁷ *Id.* at P 252.

⁴⁸ See Order 1000 Request for Rehearing at p. 15.

⁴⁹ NOPR at P 252 (emphasis added).

memorialized in a *pro forma* agreement with express protections for customers as well as a legally binding obligation that is enforceable by state or federal law. If state policy goals require new transmission buildout, funding that buildout through a state's general fund would be consistent with the cost causation principle (because the proximate cost causer is the state legislature).

Regardless of the funding mechanism or approved cost allocation methodology, benefits and risks may change over time as long-term planning scenarios are updated and needs and solutions are reassessed. Therefore, the three-year re-examination of long-term scenarios must also review cost allocation to ensure that cost causers and willing beneficiaries continue to be assessed project costs over the lifetime of the project. At such time, states and transmission providers would allow for obvious and much-needed revisions, *e.g.*, to relieve existing ratepayers and incorporate new beneficiaries. Although we support reassessments of costs and benefits, we urge caution in opening cost allocation to relitigated on a continuous basis.

Finally, ELCON agrees with the Commission's proposal to disallow the CWIP incentive as it shifts risk from utilities and shareholders to consumers in cases where a project does not go into service.⁵⁰ Instead, the use of Allowance for Funds Used During Construction (AFUDC) appropriately provides that construction costs can be recovered *after* a project is completed and fully in service with benefits accumulating to customers. Requiring customers to fund projects under construction is contrary to the "beneficiary pays" doctrine and the "used and useful" standard for ratemaking, as customers are yet to receive any benefits and may be responsible for costs of cancelled projects from which they do not and will not receive any benefits.

⁵⁰ *Id.*, (Christie, Comm'r, concurring at P 15 ("CWIP is, of course, passed through as a cost to consumers, making consumers effectively and involuntary lender to the developer.")).

III. GRID ENHANCING TECHNOLOGIES WILL ALLEVIATE THE NEED FOR SOME TRANSMISSION DEVELOPMENT

The Commission proposes “to require that public utility transmission providers... more fully consider in regional transmission planning and cost allocation processes... the incorporation into transmission facilities of dynamic line ratings and advanced power control devices.”⁵¹ ELCON’s comments in response to the dynamic line rating (DLR) notice of proposed rulemaking fully supported the use of DLR to improve the accuracy of transmission line ratings and maximize the capacity on existing infrastructure.⁵² By increasing the capacity on existing transmission lines, customers can save money by deferring new infrastructure build and costly upgrades.⁵³

Providing real-time information on system conditions and weather impacts will help transmission providers to better assess their capacity needs. Similarly, advanced power control technologies allow transmission providers to control pathways, send power to lines with additional capacity, and minimize congestion. This saves consumers money by optimizing current transmission infrastructure and reducing the need for new infrastructure or upgrades.⁵⁴

As the original goal of Order No. 1000 was to review and select the most cost-effective transmission solutions, including non-wires alternatives, DLR and advanced power controls must be included in both regional transmission planning and long-term scenario planning. As technologies advance further, other grid enhancing technologies should be incorporated into planning as well. In any planning process, the first action should be ascertaining whether current infrastructure can be improved before reviewing costlier or slower options like greenfield transmission. In addition, more

⁵¹ *Id.* at P 272.

⁵² Initial Comments of the Electricity Consumers Resource Council, Docket No. AD22-5-000 (Apr. 25, 2022) (ELCON DLR Comments).

⁵³ ELCON DLR Comments at p. 5.

⁵⁴ *See* NOPR at P 270.

weight should be placed on new transmission projects that incorporate new technologies, such as DLR and advanced power controls, over other proposed solutions that do not include grid enhancing technologies.

Requiring consideration of DLRs and other grid enhancing technologies should not be limited to RTOs/ISOs. As explained above, one of the shortcomings of Order No. 1000 was providing excessive flexibility in how RTOs/ISOs and non-RTOs/ISOs plan for transmission needs and conduct competitive solicitations. This has led to unequal treatment for customers and a patchwork of planning processes that do not easily translate to more comprehensive planning, especially interregional planning. Non-RTO/ISO regions should be subject to the same requirements as RTOs/ISOs and the Commission should require greater consistency and standardization in transmission planning. This encompasses consideration of DLRs and other grid enhancing technologies. Disparate rules lead to some consumers paying more than other similarly situated customers. Customers in non-RTO/ISO regions should also enjoy the benefit of cost savings offered by DLR and grid enhancing technologies.

IV. COMPETITION REMAINS CRITICAL TO INNOVATION AND LOWER COSTS, BUT THE ORDER NO. 1000 COMPETITIVE PROCESS MUST BE REVISED

A. The Order No. 1000 Competitive Process Has Not Worked as Intended.

The competitive process under Order No. 1000 did not incentivize developers to cooperate and coordinate to build a grid of the future that incorporates the most cost-effective and innovative solutions. Instead, current competition regimes have led eligible developers to retreat to their various corners, which reduces transparency, information sharing, and open dialogue in the planning process. Both incumbent utilities and non-incumbent developers have adopted a zero-sum posture to transmission planning and development. Incumbent utilities regressed to planning only local projects to preserve their economic interests while non-incumbents fought to preclude incumbents from owning new transmission in any capacity. Time and money

have been wasted in the stakeholder process due to infighting, ongoing litigation, and less than forthcoming behavior.

Many of the RTOs/ISOs have been placed in the uncomfortable position of choosing winners and losers among their stakeholders without the requisite experience, staffing, and expertise. Inconsistent selection criteria among RTOs/ISOs has stifled meaningful interregional planning and development. Meanwhile, non-RTOs/ISOs have enjoyed little scrutiny into their planning processes and whether their project proposals provide adequate benefits to customers. Further balkanization of the grid has occurred as incumbents develop smaller projects that merely benefit their own footprint.

Consumers, including ELCON members, have been denied the benefits of competition in the form of lower transmission costs and access to the cheapest and most reliable resources. The grid continues to suffer under a patchwork of planning and lack of innovation. In order for competition to work as intended, the Commission must instill more discipline and standardization into the transmission planning process. Left to their own devices under current competition rules, developers will act in their own economic self-interest and ignore the best outcome for customers.

B. The Commission Must Facilitate a More Cooperative Transmission Planning Framework.

ELCON fully recognizes the benefits of competition in ensuring cost-effective solutions. Competition has led to more innovation and technological advances throughout the economy, especially in commodity markets. In ELCON's view, competition should thus be applied as broadly as feasible in both generation and transmission development to ensure consumers are paying rates that are just and reasonable and not unduly discriminatory.

However, in developing a complex transmission system that underpins the entire nation's economy, ELCON sees the need for increased cooperation. The success

of the transmission grid (*i.e.*, its ability to provide reliable service, meet customer needs, offer flexibility to accommodate future technological advancements, and continue to operate for generations) will depend on cooperation between stakeholders as well as competition among potential builders of new or upgraded transmission assets.

ELCON disagrees with the Commission's proposal to reinstate a ROFR for incumbents.⁵⁵ As ELCON commented in response to Order No. 1000, "any change to ROFR should establish a true level playing field and not merely shift undue entitlement from incumbents to non-incumbent developers. To the extent that incumbent transmission has cost advantages, as often is the case, such benefits should be fully recognized when assessing the net benefits to consumers."⁵⁶ We reiterate our previous position here and urge the Commission to reconsider its tilting of the playing field in the NOPR.

However, encouraging a cooperation-based planning model, as with the Commission's proposals regarding joint ownership could be helpful and is worth trying. A well-defined partnership could reduce adversity and combine expertise, risk sharing, and innovation. It could also alleviate the zero-sum game in transmission planning and development. Instead, costs, risks, and responsibility could be shared to the benefit of the customer. Collaboration allows for information and idea sharing that has been absent in competition thus far. The partnership model would provide clarity as to who ultimately owns and develops certain transmission solutions while instilling fairness and accuracy of competitive solicitation outcomes.

Joint ownership or other means of increased collaboration could also have broader impacts, beyond remedying the "us versus them" problems with the current regional planning process. Ultimately, increased joint ownership could incent incumbents to pursue larger and more comprehensive transmission solutions to the

⁵⁵ NOPR at P 351.

⁵⁶ ELCON Order 1000 Comments at p. 25.

benefit of customers. Non-incumbents would be incented to reach out to find mutually beneficial opportunities and access to transmission grid investment. Under optimal conditions, joint ownership could foster cooperation as well as innovation that extends beyond the initial project or projects subject to joint ownership.

C. The Commission Must Institute Cost Discipline and Oversight in Transmission Development and Competitive Processes.

Order No. 1000 was not entirely effective because standardization is still lacking in transmission planning. Regional flexibility is always important in addressing specific conditions and needs in regional transmission planning. However, Order No. 1000 provided too much flexibility as entities engaged in transmission planning, criteria selection, competitive solicitations, and project selection. This led to ambiguity and ultimately allowed for inconsistencies in how the process was conducted. Without clear guardrails and standardization, too much was left to interpretation and challenge.

Reforms are therefore necessary. Specifically, the Commission should adopt clear and consistent standards that will apply as universally as possible to regional transmission planning processes. To that end, ELCON has identified several areas where the Commission should adopt and enforce clear guardrails under the NOPR.

A joint ownership model creates the opportunity to properly set thresholds and participation rules that were not contemplated under Order No. 1000. The Commission specifies that any joint ownership should not consist of affiliates but leaves other specifics open for comment.⁵⁷ ELCON suggests that joint ownerships should be structured to require at least a 25 percent ownership for development partners of the transmission facilities. This ownership requirement should provide meaningful participation while not being overly burdensome for non-incumbents. The Commission should encourage some level of cost containment (*e.g.*, cost caps) in competitive bids with additional weights given to projects that include such cost commitments. Finally,

⁵⁷ See NOPR at P 371.

any non-incumbent entering into joint ownership with an incumbent must meet the qualifying developer criteria set forth in Order No. 1000 and the relevant transmission provider's tariff.

To protect customers from unjust and unreasonable rates, whether in regional or local planning, the Commission should eliminate the presumption that transmission investments are prudent. Should an incumbent utility wish to fund a local project, those expenditures should be subject to Commission and stakeholder review as to the prudence of such project and its investments – and not only the specific project at hand, but also the aggregate consumer cost of all relevant projects. Of course, immediate need reliability projects will continue to require expedited treatment; however, this should not be used to skirt prudence reviews. The Commission could institute (1) an expedited review process to determine that immediate need projects are crucial and that the expenditures are just and reasonable and (2) an ex-post review of the cumulative costs of immediate need or local projects over time.

Competitive solicitations require additional discipline and oversight. Any competitive bid with proposed cost caps must be binding and legally enforceable. To assist transmission providers with evaluating project proposals with cost containment commitments, standard cost containment off-ramps should be established and enforced by the Commission to avoid transmission developers gaming the competitive process by promising a cost cap but later asserting that the cost cap is no longer valid due to certain “unforeseen” conditions. Certainly, there are valid reasons for deviating from cost containment guarantees such as supply chain issues, extreme weather events, unforeseen inflation, or regulatory changes. By establishing standard off-ramps, consumers can be reassured that gaming will be minimized and can seek recourse for cost overruns. Rate treatment proposals, such as set returns on equity or performance-based rates, should be reviewed and accepted by the Commission before selection to provide certainty for transmission providers, such as RTOs/ISOs who are transmission planners and not ratemaking authorities.

Greater oversight and enforcement have the potential to overwhelm FERC staff. To assist the Commission, an independent transmission monitor (ITM), as contemplated in the ANOPR,⁵⁸ should be a priority for the Commission. Although not addressed in the current NOPR, ELCON urges the Commission to reintroduce this proposal in the final rule. The ITM proposal is a major component that should not only be included in the final rule but also should be explored in the Commission's October 6, 2022 technical conference on transmission planning and cost management.

The ITM's role would ensure that transmission planning (local, regional, and interregional) is performed in a transparent and nondiscriminatory manner in both RTOs and non-RTOs according to their tariffs. The ITM would also have a role in reviewing partnership proposals by incumbents in order to satisfy the conditional ROFR. Open solicitations and competitive processes would be subject to ITM review and any project selected would be reviewed periodically by the ITM to ensure that developers adhere to and meet the conditions set forth in their competitive proposal such as cost caps, timelines, and project specifications. As with independent market monitors, the ITM would have the authority to file periodic reports at the Commission detailing each region's transmission planning compliance as well as intervening in transmission-related filings at the Commission, whether in response to an FPA section 206 complaint, prudence review, transmission rate and incentive filing, or other transmission-related compliance filing.

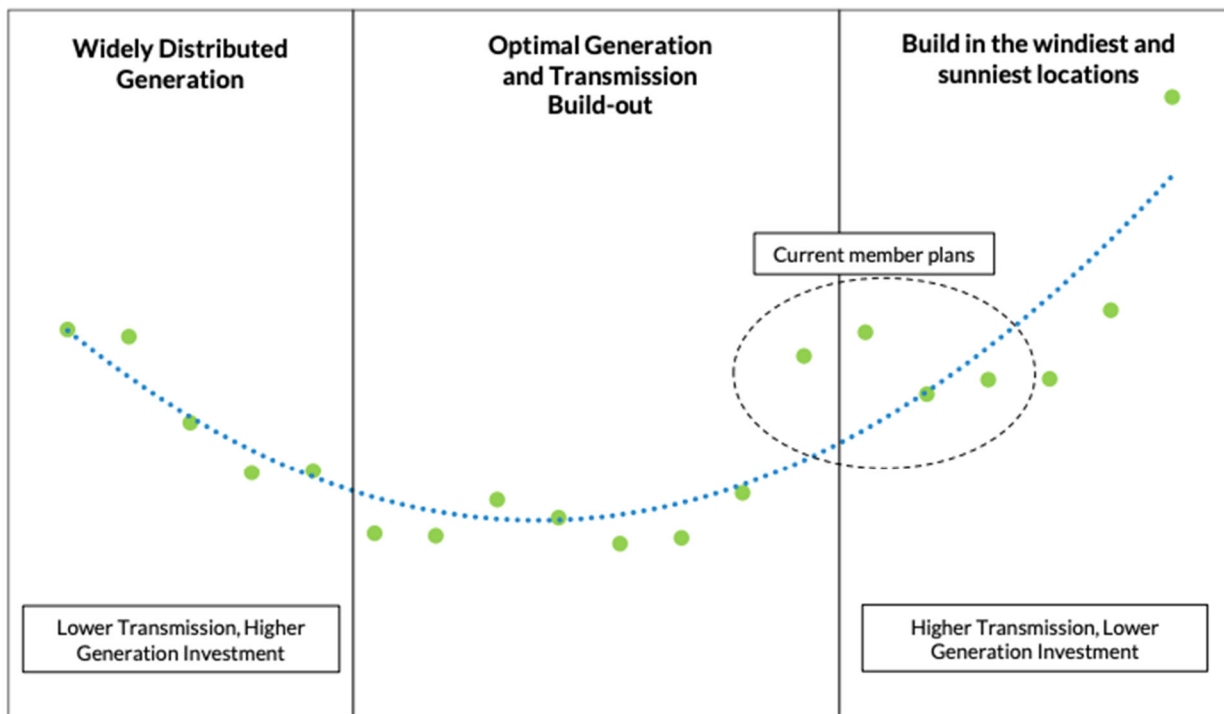
In consumers' ideal case, the independent market monitor and ITM would collaborate to assess the all-in cost of electricity at the wholesale level. Specifically, as illustrated in the "smile curve" below from the Midcontinent Independent System Operator (MISO), consumers would derive immense savings if regulators would minimize the combined costs of generation and transmission.⁵⁹ To ELCON's

⁵⁸ ANOPR at PP 163-175.

⁵⁹ MISO Planning Advisory Committee, Long Range Transmission Planning - Preparing for the Evolving

knowledge, the Commission does not explicitly co-optimize the cost of generation and transmission, or even attempt to do so. Creating an ITM for all regions would be a step in the right direction towards transparency and analysis of generation and transmission alternatives for the benefit of consumers.

Total MISO Projected Generation and Transmission Cost



Finally, ELCON fully supports the Commission’s proposal to include in regional transmission planning local “replacement in kind” transmission projects, which replace infrastructure that has reached the end of its useful life.⁶⁰ Reviewing local projects as part of the regional transmission planning process can establish whether a larger or “right sized” project can provide more benefits to a wider customer base. ELCON also agrees that there should be increased transparency and scrutiny as to the need for the

Future Grid, p. 7 (Aug. 12, 2020); available at: <https://cdn.misoenergy.org//August%2012%202020%20PAC%20Item%2003c%20Long%20Range%20Transmission%20Planning%20Presentation541070.pdf>.

⁶⁰ NOPR at P 400.

replacement, as well as ample opportunity for review and input from stakeholders.

CONCLUSION

ELCON appreciates the Commission's efforts to re-examine transmission planning and cost allocation. As discussed above, ELCON supports a de-siloed long-term assessment to inform transmission providers of potential future needs and a more cooperative planning process with states' input and potential for joint ownership to ensure that consumers are benefitting from transmission development and are not unduly bearing the high costs of uncoordinated, incremental development.

Respectfully submitted,

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Dated: August 17, 2022