

**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)	

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

The Electricity Consumers Resource Council (ELCON) respectfully submits these supplemental 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. ELCON continues to support open, transparent, and common-sense transmission planning that provides multiple benefits at least cost to consumers.

An important component of transmission planning and development is the ability to collaborate with all interested stakeholders to ensure that all transmission

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).

solutions are considered and that the best and least-cost solution, whether it be wires or non-wires, is ultimately planned and implemented. As one of the key drivers of future load growth, large commercial and industrial consumers understand the need for transmission expansion to provide reliable, affordable service.

A workable competitive process for developing necessary transmission solutions is essential to meeting these transmission needs. ELCON has unequivocally supported competition in both generation procurement and transmission development.² However, ELCON has recognized that some regional competitive processes established under Order No. 1000³ have resulted in unintended adverse results and thus needs significant reforms to remedy costly anti-competitive and litigious behavior.⁴

As ELCON stated in its original comments to the NOPR:

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...

² See Comments of the Electricity Consumers Resource Council (ELCON), Docket No. RM17-21-000, p. 5 (“[ELCON] 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...”) (August 17, 2022) (“ELCON Initial Comments”); *id.* at p. 22 (“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”).

³ *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).

⁴ See ELCON Initial Comments, pp. 21-22, (“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”).

[T]oo 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.

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.⁵

ELCON thus supported several proposed reforms to supplement Order No. 1000 to ensure the development of necessary and beneficial transmission and that cost discipline was instilled in the process. These reforms included the concept of joint ownership and an independent transmission monitor (“ITM”) that provides consumers with insight and confidence that transmission planning and cost allocation is done in a just and non-discriminatory way.

In the decade since the implementation of Order No. 1000, ELCON has not seen evidence that its reforms serve consumers. Instead, we have witnessed a dearth of long-range, multi-value transmission projects (though we commend MISO for its Long Range Transmission Planning portfolio); zero interregional projects to ensure access to least-cost generation and reliability enhancement through capacity transfer capabilities; an explosion of inefficient, costly local projects; delays in building needed transmission due to disagreements and litigation; and a lack of savings for consumers. While competitive solicitations for transmission solutions benefit consumers by encouraging innovation and cost savings, consumers have instead witnessed states entrenching right-of-first refusal (“ROFR”) laws, costly and time-consuming litigation over solicitation awards and these ROFR laws, and a lack of cost discipline even with proposed cost caps.

⁵ ELCON Initial Comments, pp. 3-4.

For example, the DCR Transmission project in California was competitively awarded, in part because of its economic benefits and cost containment commitments. However, these commitments to cap transmission costs at \$242 million were quickly exceeded causing DCR Transmission to seek additional amendments to allow cost recovery at more than *double* the initial cost cap to the tune of \$553 million. As Commissioner Christie noted in his concurrence of settlement proceedings:

What this example shows is that a cost cap agreed upon at the time of project approval may subsequently be honored more in the breach than in the observance; in other words, the cost cap applies until it doesn't. This, of course, undermines the entire justification for approving a developer's economic project... [a]nd if "cost caps" are not expected to be binding, one must also question their purpose, given that the Project's agreed-upon cost containment mechanisms were the reason why CAISO selected the Project in the first place... [W]hile competitive solicitation for large, costly regional projects may be preferable to no such requirement, in and of itself it does not cure or in any way prevent consumers from being hit with exorbitant and ever rising costs from transmission being built not to serve their need for reliable power, but to serve other interests.⁶

As part of the transmission planning and cost allocation reforms the Commission is currently considering, a transparent, binding, and enforceable cost containment provision must be included in competitive solicitations to protect consumers. In addition, development of an ITM role is crucial to provide consumers with transparency into project costs and ensure that awarded projects meet the commitments of its project proposals.

ELCON again thanks the Commission for its work to improve upon Order No. 1000 and encourages the Commission to take action that improves transmission planning coordination among all stakeholders, mitigates unintended consequences of the competitive process, and provides consumer protections including cost containment and increased oversight by an ITM.

⁶ *DCR Transmission, L.L.C.*, 184 FERC ¶ 61,199 (2023) (Christie, Comm'r, concurring at PP 3-5).

CONCLUSION

ELCON appreciates the Commission's efforts to re-examine transmission planning and cost allocation. As discussed above, ELCON supports competitive processes to ensure beneficial transmission solutions at least cost but encourages the Commission to consider reforms that mitigate the unintended consequences of Order No. 1000.

Respectfully submitted,

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