

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

Building for the Future Through Electric Regional
Transmission Planning and Cost Allocation and
Generator Interconnection

Docket No. RM21-17-000

**REPLY COMMENTS OF
AMERICANS FOR A CLEAN ENERGY GRID**

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Americans for a Clean Energy Grid (ACEG)¹ submits these Reply Comments in strong overall support of the Commission's proposals in the Notice of Proposed Rulemaking (NOPR) in the captioned docket.² Nearly 200 sets of preliminary comments were filed in the docket, and the overwhelming majority of commenters supported the Commission enacting proactive policies to improve long-term transmission planning, including state regulators, consumers and consumer advocates, utilities, public power, merchant transmission and generation developers, federal representatives, manufacturers, environmental organizations, and members of the public. While many commenters included specific suggestions on how to improve the policies set forth in the NOPR, the support for long-term transmission planning was clear. Such planning enhances and promotes reliability and greater resilience, efficient and competitive wholesale electricity markets, and just and reasonable transmission service for customers.

¹ ACEG represents a diverse coalition of stakeholders focused on the need to expand, integrate and modernize the high-capacity grid in the United States. The ACEG coalition includes multi-state utilities and merchant transmission owners that develop, own, and operate transmission, trade groups that include transmission owners and transmission equipment manufacturers among their members, renewable energy trade groups and advocates, environmental advocacy organizations, buyers and consumers of energy, and energy policy experts. ACEG seeks to educate the public, opinion leaders, and public officials about the needs and potential of the transmission grid. These comments do not necessarily reflect the views of individual members.

² *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (2022) (NOPR).

I. INTRODUCTION AND SUMMARY

The record in this docket makes it plain that now is the time for the Commission to utilize its Federal Power Act (FPA) authority and build on Order No. 1000 to modernize transmission planning rules. Changes over the past decade have been significant and observable – the changing mix of electric generation resource due to policy, demand, and economics; increasing usage due to electrification of transportation and buildings; the need to replace aging infrastructures; new opportunities in advanced transmission technologies; and recurring incidences of high-impact, extreme weather events. Significant development of large scale regional infrastructure is needed to meet these challenges. Regrettably, recent investment in regional and interregional electric transmission has neither kept pace with these developments nor sufficiently prepared the grid for demands to come.

ACEG therefore urges the Commission to move forward on its proposal to deploy a proactive, long-term, scenario-based planning framework. The new planning framework can both create greater uniformity in the standards and processes governing planning and cost allocation across system-to-system and region-to-region in order to help maximize the benefits of investment to all consumers and also preserve regional flexibility where it is productive. ACEG applauds the Commission's leadership for its transparency and invitation for all elements of the industry and the public to engage in open dialogue on these issues. That said, the grid is a key component of interstate commerce that should not be hindered unreasonably by parochial economic and social interests. After a quarter century of restructuring and evolution in energy needs, the electric transmission system and bulk power markets require a major tune-up. As the widespread support in the record makes clear, the Commission is well-positioned to develop a

Final Rule in this proceeding that will ensure that expansion and modernization of the electric transmission network supports customers' needs for both today and the future.

II. REPLY COMMENTS

A. Commission Action to Establish Pro-Active, Long-Term, Multi-Benefit Transmission Planning is Supported by Substantial Evidence.

1. *Most Commenters Agree with the Commission's Goal to Establish Holistic, Not Piecemeal, Transmission Planning Processes.*

Most NOPR and ANOPR commenters agree with the Commission's direction and goals as a policy and technical matter and they support the Commission's determination that there is a need for long-term, proactive transmission planning to meet needs driven by projected changes in the resource mix and demand. ACEG agrees with the many parties who say that current transmission planning processes are not functioning sufficiently on a regional basis to account for the changing resource mix and demand. This appears to be an issue in both regions that have seen a dearth of transmission build and in regions that have built a lot of regional transmission. For example, the SPP Market Monitoring Unit claims that in SPP today, the 20-year planning scenarios do not result in build orders and only vaguely inform the 10-year planning that does create build orders.³ To support the efficient and cost-effective planning of the system, the Commission should resolve this issue on a broad-based federal level with state input, and not rely on piecemeal decisions.

In addition, most commenters agree that long-term transmission planning should be conducted using multiple scenarios that are based on a minimum of 20 years for the planning

³ SPP MMU Comments at 4.

horizon.⁴ ACEG agrees with the many customers and consumer advocates that the current, piecemeal planning processes are inefficient and not cost effective.⁵ Moreover, a 20 year planning horizon is consistent with the enduring nature of the facilities and the multi-decade forecast period that applies to most integrated resource plans already developed. Utilities as varied as Georgia Power,⁶ NV Energy,⁷ and Ameren Missouri⁸ submit integrated resource plans

⁴ E.g., *Comments of ACORE* at 1 (“ACORE strongly supports the centerpiece of the proposed rule – the requirement for transmission providers to conduct long-term transmission planning to meet transmission needs driven by projected changes in the resource mix and demand, using multiple scenarios and a minimum 20-year horizon.”); *Comments of SPP Market Monitoring Unit* at 4-6; *Comments of Renewable Northwest* at 3-7 (“Improvements made to transmission planning now will lead to a more efficient and reliable grid that will save ratepayers money and unlock significant economic benefits.”); *Comments of Hannon Armstrong Sustainable Infrastructure Capital, Inc.* at 2 (Recommending that “identified utility and corporate goals, and federal, state and local goals that apply to reduce carbon in the future resource mix should be incorporated in at least 1 of the 4 required Long-Term Scenarios.”); *Comments of the California Public Utility Commission* at 21 (“The CPUC supports the Commission’s proposal to require grid operators to incorporate scenario analyses into transmission planning and agrees that ‘[d]eveloping a range of scenarios with different assumptions allows’ grid operators ‘to consider a variety of potential scenarios . . .’”).

⁵ *Comments of Joint Consumer Advocates* at 5-6 (Iowa Office of Consumer Advocate and Indiana Office of Utility Consumer Counselor) (“current processes for developing transmission tend to arrive at piecemeal and inefficient solutions. Electricity consumers must be protected from the unreasonable costs and risks that result from inefficient transmission planning processes.”); *Comments of the Office of the People’s Counsel for the District of Columbia and Maryland Office of People’s Counsel* at 5 (“Like the Commission, we view transmission reform as not merely desirable, but necessary to ‘to remedy deficiencies in the Commission’s existing regional transmission planning and cost allocation requirements to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential.’”); *Comments of Clean Energy Buyers Association* at 10; *Electricity Consumers Resource Council* at 2 (“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.”). See also *Comments of Public Interest Organizations* at 5-7 (“PIOs”) (“Consumers ultimately bear the costs of these inefficiencies and suffer from the reliability risks they create.”).

⁶ Georgia Power’s Transformational Plan for State’s Energy Future Approved, Helps Ensure Company Will Continue to Meet Needs of Customers and State, News Release (July 21, 2022) available at <https://www.georgiapower.com/company/news-center/2022-articles/georgia-power-transformational-plan-for-states-energy-future-approved-helps-ensure-company-will-continue-to-meet-needs-of-customers-and-state.html>.

⁷ Nevada Administrative Code at 704.9215.2.

⁸ Ameren Missouri, 2020 Integrated Resource Plan, Executive Summary at 5, available at <https://www.ameren.com/-/media/missouri-site/files/environment/irp/2020/ch1-executive-summary.ashx>.

that include forecasts of the next 20 years either by law or by common practice, and frequently look even further into the future to meet ambitious resource goals. Though there is a range of reasonable time periods, all of these are longer than the three-year planning horizon currently considered under Commission rules. A 20 year planning horizon is appropriate as a minimum time frame for the Long-Term Regional Transmission Planning, and the Commission should consider a longer planning horizon of up to 40 years, to match the expected asset life. Long term planning is especially important for understanding and managing the consequences of this transitional period in grid development.

Additionally, a well-planned transmission system, updated to meet today's needs, is required to ensure system reliability. ACEG agrees with NERC and the Regional Entities that “[t]he BPS has been planned, built, and operated based on certain assumptions that are now changing. The electric system across North America is in a state of immense transition as new technologies and climate change present unprecedented challenges. To account for these changes, the transmission system needs to adapt to ensure continued reliability and security of the BPS.”⁹ NERC further states that it “support[s] the Commission’s attention to improvements in transmission planning that would better support the advancement of a modern, coordinated, transmission system prepared to serve the needs of a modern grid.”¹⁰ NERC asserts that the NOPR recognizes that existing regional transmission planning requirements do not produce sufficiently long-term assessments of transmission needs, and that regional transmission planning can ensure that sufficient amounts of transmission capacity will be available to address

⁹ *NERC Comments* at 5.

¹⁰ *Id.* at 5-6.

more frequent extreme weather conditions.¹¹ According to NERC, “[c]omprehensive transmission planning supported by robust interregional coordination is essential for a reliable transition to a modern BPS.”¹² As these statements demonstrate, reliability requires long term transmission planning that incorporates known and knowable information about the future resource mix. The Commission is the only entity in the country that can require the needed transmission planning practices to be performed to ensure a reliable power system.

2. Commenters Expressed Broad Support for Minimum Benefits.

Additionally, in assessing whether regional transmission planning has been conducted in a way that is just and reasonable, commenters expressed broad support for the Commission to require certain categories of minimum benefits and allow flexibility in how transmission planners address these categories in accordance with regional needs. As advocated in initial comments, considering these elements in categories will reduce the risk of double-counting or miscalculating benefits and allow flexibility to apply specific benefits best suited to each region. The following three categories of minimum benefits to be evaluated in long-term transmission planning were identified by multiple participants in the opening round of comments:¹³

- Capacity benefits, where there are savings due to a reduction in planning reserve margin and capacity investments. These savings include several proposals by the Commission, such as the reduced loss of load probability or reduced planning reserve margin (#2), capacity cost benefits from reduced peak energy losses (#8), and deferred generation capacity investments (#9).
- Dispatch efficiency, which provides access to less expensive resources or adjusted production cost savings. This category of benefits would capture production cost savings (#3), access to lower cost generation (#10), reduced transmission energy losses (#4), and reduced congestion due to transmission outages (#5).

¹¹ *Id.*

¹² *Id.* at 6.

¹³ *Initial Comments of the Entergy Operating Companies* at 21; *Initial Comments of American Electric Power Service Corporation* at 23-27; *Comments of Exelon Corporation* at 15-16.

- Reliability and resilience, where savings are obtained due to avoided projects that would otherwise address resilience or local reliability needs. This category of benefits encompasses avoided or deferred reliability transmission facilities and aging transmission infrastructure replacement (#1), mitigation of weather and load uncertainty (#7), and mitigation of extreme events and system contingencies (#6).

3. Proposed Reforms Should Apply Throughout the Country.

The arguments of those opposed to the Commission enacting proactive long-term planning policies fall under three main categories: (1) that the policies should not apply outside organized markets,¹⁴ (2) that sufficient planning already takes place in their regions,¹⁵ and (3) that the Commission has provided no basis for an FPA Section 206 finding that rates are unjust and unreasonable under the existing transmission tariffs and planning requirements or that a replacement transmission planning process is warranted.¹⁶ None of these claims is supported by the record.

ACEG contends that the proposed reforms should apply throughout the country. The need for well-planned transmission to meet changing circumstances is not limited to organized markets.¹⁷ Further, the Commission's findings – that existing planning requirements do not adequately identify transmission needs that address changes in resource mix and demand, and that failure to identify such needs causes customers to pay for less efficient or cost-effective transmission investments than that which could otherwise be achieved – are un rebutted by

¹⁴ *E.g. Idaho Power Company Comments* at 2-3 (urging flexibility and discouraging mandatory requirements for non-RTO areas in the West).

¹⁵ *E.g., Alabama Public Service Commission Comments* at 3; *Utah Public Service Commission Comments* at 9-12; *NRECA Comments* at 11; *North Carolina Utilities Commission Comments* at 14.

¹⁶ *E.g. Utah PSC Comments* at 8.

¹⁷ See *Southeastern Public Interest Organizations Comments* at 9-24 (commenting that SERTP, SCRTP, and FRCC planning processes are unsuited to proactively plan for changing resource mix).

comments in this docket.¹⁸ While the non-RTO regions face unique challenges – such as incomplete or inaccurate data collection mechanisms,¹⁹ lack of regional focus,²⁰ lack of fully open participation,²¹ and cost allocation disparities – these require more thoughtful and tailored solutions, not a complete disregard of the problems.²²

Moreover, there is broad support for the NOPR, even outside organized markets. The Georgia Public Service Commission and New Orleans City Council, as well as the non-RTO

¹⁸ *Alabama Public Service Commission Comments* at 2-3; *Utah Public Service Commission Comments* at 9-12; *NRECA Comments* at 11; *Idaho Power Company Comments* at 2-3; *Comments of Duke Energy Corporation* at 6-9; *North Carolina Utilities Commission Comments* at 14. See *Joint Comments of Avista, PGE, PSE and Tacoma Power* at 9-10.

¹⁹ *Comments of Western PIOs* at 5 (“since the inception of the ADS [Anchor Data Set] data collection process in 2018, ensuring its overall accuracy has proved challenging”). *Comments of Renewable Northwest* at 5 (“While some utilities include resource additions and retirements from their IRPs, others submit data based only on what is currently in their queue.”). *Comments of Western PIOs* at 10 (regarding NorthernGrid, “resource data may vary depending on how each submitting entity views the likelihood of new resources becoming available. Some members will include resource additions included in Requests for Proposals (‘RFPs’) and IRPs, while others will include only completed new resources or those that are under construction and will not submit anything that is still considered ‘pending’ (which often includes resources in IRPs or RFPs). This leads to inconsistent data being used for regional transmission plans, as well as inaccurate forecasts of future load growth.”).

²⁰ *Comments of Western PIOs* at 5-6, 12 (“While WestConnect and Northern Grid operate in accordance with Order 1000’s requirements, as in other non-RTO regions of the country, the lack of truly independent and transparent regional planning in the West has led to primarily intrastate transmission projects that are planned and implemented by the regulated and unregulated utilities, with little thought being paid to regional transmission expansion. To date, not one non-incumbent project has been included in a final Regional Transmission Plan for Northern Grid.”).

²¹ *Comments of Western PIOs* at 7 (“participation in technical working sub-groups, where much of the assessment and review for the final Regional Transmission Plan occurs, is limited to members of NorthernGrid and others, including proponents of studies conducted by NorthernGrid, may be excluded.”). See also *Comments of American Municipal Power, Inc.* at 18 (Regarding lack of open participation in RTO regions: “AMP has observed behavior that is analogous to regulatory capture by the incumbent transmission owners on the transmission planning front, where . . . [RTOs] have ceded most transmission planning responsibility to individual transmission owners. This behavior precludes achieving the most cost effective and efficient results.”).

²² *Comments of the Pacific Northwest State Agencies* at 6 (“Unless non-jurisdictional parties choose to engage in negotiations over cost allocation for a specific transmission facility, only enrolled parties, or jurisdictional utilities, will be subject to cost allocation for facilities selected in the NorthernGrid process. This clearly has rate implications for customers of jurisdictional utilities, over which the Washington and Oregon utility commissions have a significant interest, and creates potentially significant inequities between customers of jurisdictional and non-jurisdictional entities.”).

states in the National Association of State Utility Consumer Advocates (“NASUCA”), expressed general support for the NOPR’s proposed reforms. For example, non-RTO states in the NASUCA express support for “increasing state involvement in transmission planning and cost allocation”²³ and they agree with the Commission that Long-Term Regional Transmission (LTRT) planning is a necessary step toward alleviating the generation interconnection issues that are occurring across the country.”²⁴

Further, ACEG disagrees with those who argue that sufficient planning already occurs in their non-RTO regions.²⁵ No evidence was provided of any regional reliability or economic planning performed by those regional planning entities that is equal or superior to the techniques or outcomes in the NOPR, or an appreciation of the most likely results of the future resource mix in a decade or two and how inadequate planning for such developments will impact just and reasonable rates.²⁶ In addition, opponents of the proposals have failed to undermine or even challenge the NOPR’s significant evidence that most new transmission facilities built since Order No. 1000 have been built for local needs, thereby resulting in less efficient and less cost

²³ *Joint Comments of the Non-RTO NASUCA States Comments* at 2 (including consumer advocates from North Carolina, Utah, Wyoming, and South Carolina).

²⁴ *Id.* at 4 (the non-RTO states “applaud the Commission for taking the next steps to move this process forward”).

²⁵ *E.g. Southern Company Comments* at 5-6, Exhibit 2 at 2-3. *Alabama PSC Comments* at 2-3 (asserting that the Southeastern Regional Transmission Planning (“SERTP”) identifies more efficient or cost-effective transmission solutions at the regional level that better integrate the state-regulated resource determinations).

²⁶ This is not to say that RTOs or non-RTO planners never perform the kind of forward planning or administer planning methods that recognize multiple benefits and anticipate coming market developments, but it is clear that such planning is not occurring consistently and with grid expansion and upgrade results that prepare the nation’s electrical systems for the influences and coming developments. The lag in regional and interregional transmission development is itself evidence of this failing.

effective transmission development that does not address the larger needs of the transmission system for reliability and resilience.²⁷

The Commission’s showing of the need for transmission planning reform to ensure that transmission rates are just and reasonable in the face of a changing resource mix and demand is valid throughout the country.

B. The Final Rule Should Prescribe Planning Methods, Not Just Information Exchanges.

The Commission should reject arguments that the Long-Term Regional Transmission Planning requirements should be “informational” only.²⁸ The Commission has noted in the past that transmission planning requirements are needed to ensure a grid where access is open and fairly implemented at rates that are just and reasonable.²⁹ Adopting the proposed transmission planning methods is essential to accomplishing the Commission’s responsibilities and, as the Commission noted in the NOPR, less stringent requirements have not led to much-needed development of high-capacity transmission throughout the country. Providing “informational” reports will do little to remedy undue discrimination and achieve actual transmission plans.³⁰

²⁷ *Comments of PIOs* at 7 (citing Brattle-Grid Strategies Report at 19–20) (“While the Commission’s open access and transmission planning rules have led to some significant improvements, those improvements are uneven and transmission-owner market power continues to dominate the transmission system, both within RTO/ISOs and especially in non-RTO/ISO regions where regional planning of transmission facilities is functionally nonexistent. Even in RTO/ISO regions, regional transmission projects are more of an exception than the norm, and overwhelming evidence indicates that transmission owners are largely able to evade the requirements of Order No. 1000 and, in the decade since its issuance, have primarily invested in local projects.”).

²⁸ See *Alabama PSC Comments* at 7-8; *NRECA Comments* at 11.

²⁹ Order 890, FERC Stats. & Regs. ¶ 31,241 at P 39.

³⁰ For example, NRECA recognizes that significant transmission infrastructure will be needed, but it does not explain how informational reports alone will achieve the necessary transmission investment. *NRECA Comments* at 5, 11 (“this transformation, which will entail the retirement and replacement of many generation resources and the electrification of energy consumption, will require substantial transmission infrastructure investment”).

C. Greater Uniformity and Predictability Among Regional Planning Practices is Necessary and Regional Flexibility is Only Justified if It Can be Shown to be Necessary and Productive.

Although increasingly integrated, the nation's power systems have been adapted historically to meet specific local, state, and regional needs and policies, and thus, electric generation resources continue to vary from region to region. As such, many parties request regional flexibility in planning methods, factors, responsibilities between organizations, scenarios, and benefits. ACEG agrees that regions vary in important ways, such as in regional resource mixes, the amount of non-jurisdictional entities, geographic distance between load centers, and the degree of reliance on competition for generation and retail service. These factors may lead to more or less need for transmission and differences in which organizations and entities are responsible.

Such variation, however, does not change the need for each region to proactively plan for the future resource mix, consider certain factors in determining the future resource mix, adapt the system to meet problematic scenarios including severe weather, plan portfolios of lines that work together as a network, and evaluate a set of consumer economic and reliability benefits as the Commission describes. This general planning methodology should be applied in all regions, RTO and non-RTO, to remedy undue discrimination and ensure that rates are just and reasonable.³¹

ACEG agrees with the Institute for Policy Integrity at NYU Law School's recommendation that a final rule should

recognize that the present multiplicity of analytical approaches for planning and project selection is an impediment to rates that are just, reasonable, and not unduly discriminatory or preferential and, as a remedy, impose greater uniformity on transmission planning and project selection. Such a remedy would not involve eliminating all regional flexibility, which is, to an extent, valuable to retain.

³¹ ACEG believes that such foresight and analysis is needed and is well within the planning process the court allowed in *S. Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 57–69 (D.C. Cir. 2014).

Establishing national parameters for modeling and planning, and designating a given set of effects as cognizable need not entail the complete specification of all aspects of planning or the characterization of all effects for the purpose of comparing and selecting among projects or project portfolios. Thus, remedying the problem of analytical diversity with a common baseline can be compatible with calls for allowing regions to reflect their ‘specific and unique needs’ in project planning.³²

CAISO and other RTOs expressed interest in preserving some regional differences that exist in their current tariffs, particularly their current approach to assessing the changing resource mix.³³ ACEG supports allowing planning entities to continue integrated planning in their near term economic and reliability planning approaches. This is especially justified in CAISO given the size and significance of the California market, consistent with the concerns ACEG has outlined above. ACEG is open to preserving some specific tariff provisions in ISO/RTO tariffs in the compliance stage if they are consistent with or superior to the final rule. While some process differences may be appropriate, all transmission providers should be part of a process that performs the required planning methods and practices.

D. The Actions Proposed in the NOPR are Fully Supported by the Federal Power Act and Commission Precedent.

Several commenters challenge the Commission’s legal authority under the FPA to proceed with its proposed transmission planning reforms. ACEG finds those objections to be without foundation. In fact, ACEG believes the FPA would support even bolder action. The Commission should take a step further in planning for the future by requiring a 20-year (or more)

³² *ANOPR Reply Comments of Institute for Policy Integrity at NYU School of Law* at 7-8 (Nov. 30, 2021) (footnotes omitted).

³³ *E.g. CAISO Comments* at 2-3 (“The CAISO is particularly concerned that the NOPR could force the CAISO to modify its tariff to discontinue its assessment of public policy needs and transmission solutions in its annual transmission planning process, and instead require the CAISO to consider needs driven by public policy requirements only as part of the proposed Long-Term Regional Transmission Planning process . . .”).

planning horizon in all regions in order to forge a more integrated transmission system to serve future needs. The Commission should therefore reject such challenges to its legal authority and proceed undeterred.

As discussed in greater detail in ACEG’s initial comments on the NOPR, the Commission’s “broad authority to remedy unduly discriminatory behavior” pursuant to FPA Section 206 applies to transmission planning and cost allocation.³⁴ Order Nos. 890 and 1000 were both transmission planning rules promulgated pursuant to FPA Section 206 to remedy unduly discriminatory behavior and they either were not appealed or they were upheld by the Federal court, respectively.³⁵ So too, the NOPR finds that existing regional transmission planning and cost allocation processes are resulting in unjust, unreasonable, unduly discriminatory, and preferential Commission-jurisdictional rates and proposes transmission

³⁴ Refer to *ACEG’s Initial Comments* at 12-22. *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 687 (D.C. Cir. 2000); *S. Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 57–69 (D.C. Cir. 2014). Harvard Electricity Law Initiative ANOPR Comments at 1-2. Harvard Electricity Law Initiative’s ANOPR Comments, ANOPR Reply Comments, and NOPR Comments detail legal support for the Commission’s authority to adopt the NOPR’s transmission planning reforms.

³⁵ *S. Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 57-69, 71, 76-77, 91 (D.C. Cir. 2014) (upholding Order No. 1000 on the grounds that, *inter alia*, “[b]ased on its expertise and experience, the Commission’s determination that the current planning and cost allocation practices were unjust or unreasonable ‘warrants substantial deference from this court’” and “at least in circumstances where it would be difficult or even impossible to marshal empirical evidence, the Commission is free to act based upon reasonable predictions rooted in basic economic principles.”) (citing *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 688-87 (D.C. Cir. 2000); *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006)); Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 41 (relying on commenters that had experienced or perceived discriminatory conduct by transmission providers as evidence, noting “courts have made clear that the Commission need not make specific factual findings of discrimination in order to promulgate a generic rule to eliminate undue discrimination.”); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 at P 99 (2011) (“We note that no party sought judicial review of the Commission’s authority under Order No. 890 to adopt those reforms that we seek to enhance and improve upon here.”), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom.*, *S. Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

planning requirements.³⁶ Consistent with Commission and Federal court precedent, it is appropriate for the Commission to implement a broad remedy pursuant to FPA Section 206.³⁷ Indeed, Section 206 of the FPA requires the Commission to act.³⁸

1. *The Proposed Rule Recognizes and, Where Appropriate, Accommodates State Interests; It Does Not Infringe on State Jurisdiction.*

Several commenters argue that the NOPR’s proposed reforms infringe on state jurisdiction to conduct resource planning and determine the preferred electric supply mix.³⁹ ACEG disagrees. While the FPA establishes state jurisdiction “over facilities used for the generation of electric energy,”⁴⁰ the same is not true for transmission. In Order No. 1000, FERC was upheld in establishing certain transmission processes while leaving the authority over “those specific substantive matters traditionally reserved to the states, including integrated resource planning, or authority over such transmission facilities,” in the hands of the states.⁴¹ The NOPR does not propose to change that jurisdictional separation. Transmission planning requirements are clearly within the Commission’s jurisdiction. The reforms of Orders Nos. 890 and 1000 have not solved the problems identified in those rules, or the new problems related to grid challenges today, so further reforms from the Commission are needed.

³⁶ NOPR at PP 24-27.

³⁷ *Id.*

³⁸ 16 U.S.C. § 824e. Refer to ANOPR Reply Comments of Institute for Policy Integrity at NYU School of Law at 4-7 (Nov. 30, 2021) (analyzing *NAACP v. Fed. Power Comm’n*, 425 U.S. 662, 671 (1976)).

³⁹ *E.g.*, *Southern Companies Comments* at 6-8, 10-13, 15-21; *Utah Public Service Commission Comments* at 6-9; *Utah Division of Public Utilities Comments* at 1-4; *Joint Comments of the North Carolina Utilities Commission and Staff* at 6-9; *Comments of the State of Tennessee* at 6-8, 14-15 (“seems to impose a federal view of the future that supersedes the legal decision-making authority of states on these matters embedded in the FPA.”); *SERTP Comments* at 2-3, 15-21, 30.

⁴⁰ 16 U.S.C. § 824(b)(1).

⁴¹ Order No. 1000, 136 FERC ¶ 61,051 at PP 107, 156 (2011).

SERTP relies on *Altamont Gas Transmission Co. v. FERC* to argue against scenario planning on the grounds that “FERC is prohibited from doing indirectly what it is prohibited from doing directly.”⁴² SERTP’s reliance on *Altamont* is misplaced. In *Altamont*, the DC Circuit vacated FERC’s orders that explicitly intended to affect the California Public Utilities Commission’s rate-setting for an *intrastate*, local-distribution Hinshaw pipeline, when the rate-setting authority for that pipeline was undisputedly within the state’s sole jurisdiction.⁴³ In this proceeding, the Commission is proposing to promulgate a rule for *interstate* transmission planning, the area of regulation where the Commission’s authority is at its apex.⁴⁴ The NOPR does not establish or purport to regulate electric supply mix and it does not infringe on state-jurisdictional integrated resource planning. As Commissioner Christie’s NOPR Concurrence emphasized, the Commission is not acting as a “national integrated resource planner.”⁴⁵ Rather, the NOPR and the ensuing Final Rule fit squarely within the Commission’s cooperative federalism role envisioned in the FPA, as states’ future resource plans should be integrated into long-term transmission plans. As the D.C. Circuit reasoned when distinguishing *Altamont*,

⁴² *SERTP Comments* at 17 (citing *Altamont Gas Transmission Co. v. FERC*, 92 F.3d 1239, 1248 (D.C. Cir. 1996) (*Altamont*)).

⁴³ *Altamont*, 92 F.3d at 1248 (finding that lowering an interstate pipeline’s rate of return until the pipeline could demonstrate that its state jurisdictional intrastate rates were not discriminatory against interstate shippers, was an improper attempt by FERC to regulate intrastate rates indirectly, which it could not do directly).

⁴⁴ The Commission has exclusive jurisdiction over the “transmission of electric energy in interstate commerce,” over the “sale of electric energy at wholesale in interstate commerce,” and over “all facilities for such transmission or sale of electric energy.” FPA Section 201(b) (16 USC 824(b)). *New York v. FERC*, 535 U.S. 1, 15 (2002) (the Court has “construed broadly” the grant of jurisdiction in FPA Section 201); *S. Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 58-59 (D.C. Cir. 2014) (“the Commission reasonably interpreted Section 206 to authorize the Final Rule’s planning mandate”).

⁴⁵ NOPR, Christie Concurrence at P 2.

“FERC did not seek to do indirectly what it could not do directly: rather it simply acted directly in an area in which it found that it had the right to act.”⁴⁶

The Utah Public Service Commission claims that the Supreme Court would not uphold the Commission’s “claimed authority to prescribe a single, onerous national regime for transmission planning”⁴⁷ As a threshold matter, the NOPR provides considerable flexibility and opportunities for state involvement in the proposed transmission planning process.⁴⁸ As to the Commission’s authority, the Supreme Court and appellate courts have repeatedly upheld the Commission’s authority to mandate nation-wide transmission planning regulations. For example, the Federal Courts upheld the Commission’s landmark, nation-wide Order Nos. 888 and 1000, and Order No. 890 was not appealed.⁴⁹ In Order No. 1000, changing circumstances in the electric industry and undue discrimination necessitated changes to, *inter alia*, transmission planning.⁵⁰ So too, in this proceeding, the NOPR finds that there are “large, systemic changes in the electric industry”⁵¹ and that current regional transmission planning and cost allocation processes are resulting in unjust, unreasonable, unduly discriminatory, and preferential Commission-jurisdictional rates.⁵² The NOPR identifies a need for remedial action to make rates

⁴⁶ *California PUC v. FERC*, 143 F.3d 610, 616 (D.C. Cir. 1998). In distinguishing *Altamont*, the DC Circuit in *California PUC* found that FERC had jurisdiction to declare invalid a state PUC rate charged to interstate shippers. *Id.*

⁴⁷ *Utah PSC Comments* at 8.

⁴⁸ *E.g.* NOPR at PP 302-327 (“public utility transmission providers in each transmission planning region would be required to seek the agreement of relevant state entities within the transmission planning region regarding the Long-Term Regional Transmission Cost Allocation Method, State Agreement Process, or a combination thereof.”).

⁴⁹ *New York v. FERC*, 535 U.S. 1 (2002); *S. Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); Order No. 1000, 136 FERC ¶ 61,051 at P 99 (noting that no party sought judicial review of Order No. 890).

⁵⁰ NOPR at PP 281-282 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 497).

⁵¹ *Id.* at P 66.

⁵² *Id.* at PP 24-27.

just and reasonable and provides that remedy through the transmission planning reforms in the NOPR. As with Order No. 1000, the NOPR's proposed reforms to transmission planning are necessary to ensure that transmission rates are just, reasonable, and not unduly discriminatory or preferential. As a result, customers can receive the benefit of increased reliability and reduced costs.⁵³

The Mississippi Public Service Commission states that the Commission should, instead, initiate region-specific investigations pursuant to FPA Section 206.⁵⁴ But siloed and disjunctive planning policies will not solve the problems facing the nation's electric grid. ACEG supports consistency in long-term proactive transmission planning across planning regions on a nationwide basis. If planning regions are required to use a uniform modeling approach with common assumptions, methods, and timelines, interregional planning will become more productive and feasible.⁵⁵

2. Regional Transmission Practices are Helpful to Meeting State Policy Goals.

Not only do the NOPR's proposals respect state jurisdictional boundaries, the NOPR's regional transmission planning practices are necessary to accommodate state goals of all kinds, regardless of whether states have clean energy or carbon-related policies.⁵⁶ Generation resource plans all over the country require regional transmission infrastructure. In each region and state, multiple load-serving entities depend directly or indirectly on more than one transmission

⁵³ *See id.* at PP 25, 33, 50, 64-67.

⁵⁴ *Mississippi PSC Comments* at 15-16.

⁵⁵ *ACEG Comments* at 74.

⁵⁶ Notably, 21 states, plus Washington D.C. and Puerto Rico, representing 42.3% of current US power sales, have 100% clean energy policies, many with a target date of 2040 and 2050. *Comments of Clean Energy States Alliance* at 2-3.

provider to access the generation they rely on, and most transmission owners and providers serve more than one transmission customer or LSE. Coordinated transmission expansion, upgrades, and operations are essential to the ability of transmission providers to ensure adequate transmission service to customers and LSEs.

Regional transmission planning will often benefit state IRP planning. For example, in Minnesota, Xcel's IRP application stated, "At this time, there are no formal plans for new, coordinated transmission expansion in the MISO West region, and as a result we assume that transmission expansion costs associated with new greenfield renewable additions could continue to be relatively high in the near term."⁵⁷ MISO has since developed a Long Range Transmission Plan that helps the state achieve its objectives in a cost effective manner.

The Utah Public Service Commission, Utah Division of Public Utilities, the Louisiana Public Service Commission, the Mississippi Public Service Commission, and the Ohio Public Service Commission claim that the Commission is exceeding its legal authority in the NOPR by favoring renewable energy over other generation types and dictating specific policy outcomes.⁵⁸ These claims are incorrect and misconstrue the NOPR. The Utah Division of Public Utilities undercuts its arguments by conceding, "[t]he NOPR itself is curiously silent on the topic of

⁵⁷ Xcel Energy Supplement to 2020-2034 Upper Midwest Integrated Resource Plan at p. 45, Minnesota PUC Docket No. E002/RP-19-368 (June 30, 2020).

⁵⁸ *Utah Division of Public Utilities Comments* at 2-4 8-9 ("The UDPU believes that parts of the rules as proposed dictate how costs will be allocated for transmission projects required for state renewable energy goals, thus in essence favoring renewable energy over other generation types."); *Utah PSC Comments* at 1-3, 8-9 ("The UPSC will not further belabor these comments with a legal brief on the parameters of FERC's jurisdiction: the UPSC's position is that FERC has no authority to enact any rule for the purpose of influencing the resource generation mix or expanding development of any type of generation."); *Mississippi PSC Comments* at 5 ("Any final rule issued in this docket must respect state jurisdictional authority over generator and transmission siting, generator type and fuel choice used to serve state load. Requiring construction of long-haul transmission to deliver State A's overbuilt energy resources to State B's load without its agreement violates State B's jurisdiction and forces State B to subsidize State A's resource policies."); *Ohio PSC Comments* at 4-6 (opposing transmission build-out for renewable resources as not addressing legitimate requirements under the FPA).

renewables.”⁵⁹ Indeed, the NOPR does not create a preference for renewable resources.⁶⁰ It does not exclude consideration of non-renewable resources from transmission planning. Resource preferences are not included in the proposed planning criteria, factors, or benefits. In the NOPR, the Commission proposes to direct transmission planners to plan the system to “meet transmission needs driven by changes in the resource mix and demand.”⁶¹ Under the NOPR, transmission planners must consider the resource mix as a whole, which necessarily requires considering all types of resources.

Moreover, long term transmission planning could also comprehensively address economic and reliability projects, based on the development of the future resource mix. This reflects how transmission planners already plan future transmission facilities – acknowledging that most lines will address more than one category.

ACEG believes the NOPR accommodates and supports state interests, and that the Commission has provided states with deference to the maximum extent possible under the Federal Power Act, through the provisions for state input into the process.

⁵⁹ *Utah Division of Public Utilities Comments* at 1-2.

⁶⁰ The NOPR is structured to allow for different resource mix scenarios, which may be different in different regions. NOPR at PP 84, 113 (“We propose to define Long-Term Scenarios as a tool to identify transmission needs driven by changes in the resource mix and demand—and enable the evaluation of transmission facilities to meet such transmission needs—across multiple scenarios that incorporate different assumptions about the future electric power system over a sufficiently long-term, forward-looking transmission planning horizon. . . . Developing a range of scenarios with different assumptions allows public utility transmission providers to consider a variety of potential scenarios and associated transmission needs driven by changes in the resource mix and demand and, in turn, possibly different regional transmission facilities to more efficiently or cost-effectively meet those needs.”).

⁶¹ *E.g.* NOPR at P 3.

E. Cost Containment and the NOPR’s Proposed Planning Reforms Help Manage Uncertainty.

Many parties commented that there is too much uncertainty in long-term planning and, as a result, they are concerned about the cost of “speculative projects.”⁶² ACEG counters that the Commission’s proposal, implemented as a whole, will successfully mitigate such risks. As a threshold matter, long term scenario-based planning will obviate or reduce the risk of speculative projects vis-à-vis current siloed planning processes as it will require planning to be based on measurable and quantifiable information. It is generally the case that resource and load areas are well-known and can be reliably predicted. Transmission development is customarily based on long-term planning for assets that provide benefits for decades. For example, Renewable Northwest demonstrated the ability to assemble the factors driving demand for the NorthernGrid region using a “ground-up approach” to create scenarios with a 20-year outlook by compiling publicly available data, including state law, utility goals, load forecasts, electrification forecasts, and generation and retirements.⁶³ This approach could easily be adopted, utilizing publicly available utility commitments and IRPs, as well as applicable laws and regulations. Once future generation and load plans are assembled, transmission planners can develop project proposals to connect generation and load. That is essentially the process MISO recently undertook for its Long Range Transmission Plan and be replicated by other planning entities.

Some commenters also express concern that safeguards should be in place to ensure that facilities are not overbuilt or are not the subject of overspending. Prudence is important, and there is scant evidence that such overbuilding has occurred to date. Additionally, there are

⁶² *E.g. APPA Comments* at 3, 24-25, 26-30; *LPPC Comments* at 7-9, 23-27; *Omaha Public Power District* at 3-4; *Ohio PUC’s Office of the Federal Energy Advocate Comments* at 19; *Dominion Energy Services Inc. Comments* at 16, 32, 72.

⁶³ *Comments of Renewable Northwest* at 22-23.

existing methods that can be used or modified to ensure costs are well managed. For example, the MISO tariff provides for supplemental processes if costs exceed 25% of initial estimate and developers hold competitive processes for components of building transmission projects.⁶⁴ Even though long-range transmission facilities may not be fully subscribed when first energized, experience has shown that it has not taken long for them to become congested and yield benefits far in excess of the initial investment.⁶⁵

Nevertheless, ACEG understands that the Commission needs to ensure that any buildout of significant transmission is efficiently planned and cost-effectively built. To that end, ACEG looks forward to the October 6 Technical Conference on Transmission Planning and Cost Management and any related proceedings as a complement to this docket.⁶⁶ The Commission's October 6 Technical Conference provides an opportunity to explore current practices and improvements to those practices to ensure that the plans for transmission result in well-designed projects, taking costs and reliability into account; and, that the costs of transmission projects are transparent and understood throughout the evolution of a project.

⁶⁴ MISO Tariff – Attachment FF, I.B and IX.C.1.

⁶⁵ *E.g.* MISO MTEP2021 Report Addendum: Long Range Transmission Planning Tranche 1 Executive Summary and Report at 6 (Regarding its Multi-Value Projects (“MVPs”): “MISO was required to periodically reassess the projected benefits to determine if modifications to the MVP criteria were necessary. Each of those analyses found that the projected benefits remained consistent with, and were sometimes greater than, initially estimated, as shown in Figure 2-1. This, along with the fact that all but one of the 17 MVP projects are currently (as of June 2022) in service and fully utilized, demonstrates the effectiveness of MISO’s value-based planning process and the use of future scenarios to bookend uncertainty and identify robust solutions, and to project benefits.”), *available at* <https://www.misoenergy.org/planning/planning/previous-mtep-reports/#t=10&p=0&s=FileName&sd=desc>. Additionally, MISO states that scenario planning “provide[s] bookends for the uncertainty that exists when planning this far out.” *Id.* at 5.

⁶⁶ A Commissioner-led technical conference regarding transmission planning and cost management for transmission facilities developed through local or regional transmission planning processes will be held on October 6, 2022. *Transmission Planning and Cost Management*, Notice of Technical Conference, Docket No. AD22-8 (April 21, 2022).

F. Transmission Planning Should Recognize the Needs of Load Serving Entities.

ACEG generally agrees that the demand served by all load-serving entities must be a central focus in the determination of transmission needs and the future resource mix. For instance, American Public Power Association (“APPA”) and the Large Public Power Council (“LPPC”), whose members are LSEs, argue persuasively that load information should be integral to consideration of transmission projects. The need to integrate and process the voluminous LSE data across all sources demonstrates the value of a more standardized, analytical approach to developing regional transmission plans. Most public and privately owned utilities have made commitments on their future resource mixes. Yet, those public commitments are generally not considered in regional transmission plans. That is a glaring gap in transmission planning across the country.

Many parties expressed support for planning based on the needs of load and load-serving entities.⁶⁷ ACEG agrees it is very important to assemble load needs and their future portfolios. ACEG generally agrees with NRECA’s statement that “Long-Term Scenarios must plan for state-approved integrated resource plans (IRPs) and expected LSE supply obligations to be fully met.”⁶⁸ APPA recommends that, “in accounting for the expected supply obligations of LSEs, any final rule should include a requirement for public utility transmission providers to include in their Long-Term Regional Transmission Planning processes a requirement to coordinate with LSEs.”⁶⁹ This is extremely important because not all LSEs own generation and nor are they overseen by a state regulator. They must rely on the Commission to ensure that transmission planning meets their

⁶⁷ *E.g. APPA Comments at 27-28; NRECA Comments at 7, 9-11, 17-21; LPPC Comments at 18-21.*

⁶⁸ *NRECA Comments at 30.* APPA also stated, “planning for changes in the resource mix and demand should focus first and foremost on the resource plans of LSEs, including state and local integrated resource plans (‘IRPs’). . . .” *APPA Comments at 27.*

⁶⁹ *APPA Comments at 27.*

needs. Most LSEs are under some form of company, state legislative, or state regulatory resource targets or plans (such as IRPs) and these targets must be reflected in regional transmission plans.

With this in mind, ACEG agrees with Public Interest Organizations that “the Commission should require Load-Serving Entities to provide their generation and load forecasts to the planning entities so that planners have reasonable information to use, and do not have to perform their own estimates.”⁷⁰ This requirement will decrease the burden on transmission planning entities and provide them with the information they need to do their job of determining the future resource mix.

ACEG emphasizes that the Commission has broad authority under FPA Section 206 to implement the transmission planning proposals in the NOPR. ACEG recognizes that the Commission has a responsibility to facilitate transmission planning and expansion in a manner that enables LSEs to meet their service obligations, consistent with FPA Section 217(b)(4). However, ACEG disagrees with arguments that the Commission’s authority to adopt the proposed reforms in the NOPR is limited or constrained by FPA Section 217 or that the Commission may only adopt reforms to the extent that they enable LSEs to meet their native supply obligations pursuant to FPA Section 217(b)(4).⁷¹ The Commission rejected similar arguments when it implemented FPA Section 217 pursuant to Order No. 681.⁷² FPA Section 217 was added to the

⁷⁰ *Public Interest Organizations Comments* at 19.

⁷¹ For example, NRECA argues that the Commission’s authority is limited because FPA Section 217 is the only provision of the FPA that directs the Commission to exercise authority over transmission planning and expansion. *NRECA Comments* at 18. The LPPC similarly argues that “the Commission’s primary touchstone for planning within its authority must be the load needs *identified by LSEs*.” *LPPC Comments* at 20.

⁷² In Order No. 681 the Commission held, “the Commission believes it correctly interpreted section 217(b)(4) of the FPA as containing two separate directives: (1) to exercise its authority to facilitate planning and expansion of transmission facilities, and (2) to enable load serving entities with long-term power supply arrangements used to meet their service obligations to obtain firm transmission rights on a long-term basis. . . . [I]f Congress only intended to direct the Commission to facilitate planning and expansion of transmission facilities in a manner that enables load serving entities to obtain long-term firm transmission rights, it would not have included the long-term firm transmission rights language in a

FPA by the Energy Policy Act of 2005.⁷³ The Commission’s authority over regional transmission planning was established long before FPA Section 217 was enacted in 2005.

III. CONCLUSION

The Commission should follow the broad support in the record of this proceeding for the NOPR’s proposed proactive long-term transmission planning. Such planning provides access to clean energy resources, promotes reliability and greater resilience, ensures workable markets for power, and leads to a cost-effective, integrated, and flexible high voltage electricity delivery system at just and reasonable rates for customers.

Respectfully submitted,

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second, separate clause.” *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, 116 FERC ¶ 61,077 at PP 79-80 (2006), *reh’g den.*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), Order No. 681-B, 126 FERC ¶ 61,254 (2009). *See also*, Order No. 1000, 136 FERC ¶ 61,051 at P 108 (The Final Rule “is consistent with section 217 because it supports the development of needed transmission facilities, which ultimately benefits load-serving entities. The fact that [it] serves the interests of other stakeholders as well does not place it in conflict with section 217.”).

⁷³ Order No. 681, 116 FERC ¶ 61,077 at P 1 (2006).