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October 12, 2021

Ms. Kimberly Bose
Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

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

Dear Secretary Bose:

The U.S. Chamber of Commerce and its Global Energy Institute (collectively, “the Chamber”) appreciate the opportunity to respond to the Advance Notice of Proposed Rulemaking (“ANOPR”)¹ issued by the Federal Energy Regulatory Commission (“FERC” or “Commission”) on July 15, 2021. The ANOPR presents and seeks comments on potential reforms to the electric regional transmission planning, cost allocation, and generator interconnection processes overseen by the Commission. This ANOPR sets forth a significant undertaking, broadly proposing to reassess and potentially restructure many of the most significant policies and procedures within FERC’s jurisdiction. Many of these policies and procedures have been crafted through various rulemakings and numerous case law developments over nearly two decades. As such, the Commission should seriously consider the gravity of this undertaking and its potential significant impacts on both the reliability and the cost of electricity for businesses and consumers across the country. Many of the policies and procedures subject to revaluation in this docket have served their intended purposes. They should not be abruptly jettisoned without a thorough evaluation of the costs and benefits resulting from any significant transmission planning and interconnection policy changes.

The mission of the Chamber’s Global Energy Institute is to unify policymakers, regulators, business leaders, and the American public behind a common-sense energy strategy to help keep America secure, prosperous, and clean. These comments intend to provide the overall business community’s input to the Commission as it considers modifications to the policies and procedures governing the planning and expansion of America’s interstate electric grid.

¹ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (2021) (published in the Federal Register at 86 Fed. Reg. 40,266 (July 27, 2021)) (“ANOPR”).

I. Background

Along with our members from across the economy, the Chamber is a leading national advocate for the development of the modern infrastructure necessary to maintain America's global competitiveness while supporting the reduction of greenhouse gas emissions as quickly as is supported by technology. Along these lines, infrastructure planning and permitting must also be designed to facilitate – rather than unduly delay – the siting and construction of the necessary energy infrastructure critical to meet these objectives. Electric transmission lines and lower carbon generation resources are two of the most important types of new infrastructure that will be essential to the United States meeting its carbon reduction goals. The Commission must ensure that its potential future actions serve to enhance collaboration and cooperation among the Commission and the many other state and federal agencies necessary to bring needed energy infrastructure improvements into existence. Any approach that fails to recognize the value of enhanced state/federal partnership on transmission and generation development is unlikely to succeed in the ultimate goal of putting more steel in the ground.

Along these lines, the Chamber supports the recent establishment of the Joint Federal-State Task Force on Electric Transmission (the “Task Force”). The Task Force's formation, comprised of FERC's commissioners and a broad cross-section of state public utility commissioners, is long overdue. The obstacles that arise to large-scale transmission and energy resource development often stem from a disconnect between Federal and State oversight of the power grid and its need for expansion. Given current realities and the likely continuation of shared siting authorities, any enlargement of the transmission grid to integrate significant levels of new zero- and low-emission generation resources will require state utility commissioners to work together, along with grid planners and owners, to identify and effectuate shared goals for infrastructure development. The Chamber believes that the Task Force will pay dividends through the alignment of mutually held State and Federal interests.

II. Regional Transmission Planning Largely Functions as Designed

Open-access transmission and the planning associated therewith are the result of decades of policy development, with meticulously developed adjustments and variances to incorporate the geographies and constituencies for whom these processes are designed to serve. Landmark orders such as Order No. 890² set forth national expectations with respect to the establishment of coordinated, open, and transparent regional transmission planning processes. Order No. 1000³ followed-up on these baseline expectations by enhancing regional transmission planning, integrating the consideration of transmission needs driven by Public Policy Requirements, enhancing planning access to nonincumbent transmission developers *via* project development

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, order on reh'g, Order No. 890-A, 121 FERC ¶ 61,297 (2007), order on reh'g, Order No. 890-B, 123 FERC ¶ 61,299 (2008), order on reh'g, Order No. 890-C, 126 FERC ¶ 61,228, order on clarification, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

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).

alternatives, and by improving interregional coordination and cost allocation. These Order No. 1000 reforms are largely operating as designed and as modified by market participant stakeholders to reflect agreed-upon regional variations. Thus, it is a disservice for the Commission or for other stakeholders to assert that Regional Transmission Organizations (RTOs) and other transmission providers are failing to implement and adopt the transmission planning expectations or additional planning enhancements set forth in Order Nos. 890 and 1000. These representations do not reflect reality.

In contrast, transmission planning across the United States appropriately focuses on reliability and economic considerations, consistent with the Commission-approved Order No. 890 and Order No. 1000 designs of these processes. Without a reliability or economic driver, transmission proposals are unlikely to be deemed needed and justified under current planning criteria. Thereby, they would not be suitable for broad cost allocation on a regional or multi-regional basis. These two key foci are also consistent with the Commission's broad authority over transmission grid reliability and the assessment of just and reasonable rates for interstate transmission service.

The ANOPR, on the other hand, asks the question as to whether the transmission planning and generator interconnection processes should be reformed so that such planning incorporates the needs of “anticipated future generation.”⁴ This concept reflects a new expectation of the interstate transmission planning process – essentially a “build it and they will come” paradigm. While a more holistic approach to transmission planning and generator interconnection is not objectionable on its face, it does represent a departure from the longtime “used and useful” justification for the recovery of transmission infrastructure in utility rates.⁵ Thus, the Commission's critique and evaluation of existing transmission planning processes should acknowledge that the *predictive* development of *potentially* necessary transmission is a new objective not previously sought by FERC from regional planning processes. The Chamber steadfastly acknowledges that significant new transmission infrastructure will be critical to integrate the growing amounts of low- and no-carbon generation resources that will be necessary to reach electric sector greenhouse gas reduction goals. However, consideration must be given to minimize the development of transmission facilities that, for whatever reason, fail the “used and useful” test. Otherwise, customer costs are likely to face upward pressures without any offsetting economic, climate, or resource access benefits. Simply put, while the underlying objectives considered in transmission planning must be expanded to ensure that all expected needs are met, care must be taken so no more transmission infrastructure than is necessary is actually built.

At the same time, a broadening of the beneficiaries of new transmission facilities may be warranted in specific situations, especially in light of state and potential national clean energy goals. Added transmission infrastructure can serve multiple constructive goals concurrently: increasing reliability and resilience, diversifying the resource mix, facilitating new generation or industrial development, or a combination of all of these attributes. However, the identification of “beneficiaries” should continue to be determined based on direct and quantifiable criteria. Customer cost impact must not become disconnected from rational transmission planning and should remain central to the Commission's ratemaking oversight obligation.

⁴ ANOPR at PP 31-36.

⁵ See, e.g., *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308-09 (1989).

III. More Holistic Planning Must Rest on Shared Obligations

Without prejudging whether the current planning paradigm requires revision, the Commission's suggestion that transmission planning should be more forward looking and inclusive of the objective to design the transmission system to accommodate "multiple anticipated future generators,"⁶ should not also retain the one-sided interconnection obligations of the *status quo*. To this point, and as recognized by the Commission in the ANOPR, generator interconnection customers have often submitted multiple speculative interconnection requests in an effort to favorably position their project in a transmission provider's interconnection queue and strategically reduce their project's associated network upgrade costs.⁷ It is understandable why competitive generation developers would seek to exploit any incentive to best-position their project(s) for success. However, transmission providers and their customers cannot also be expected to expand and pay for such transmission expansions when multiple interconnection requests result from a single, potentially viable, generation resource. Thus, the current composition of generator interconnection queues should not be relied on exclusively to guide transmission build-out, as such reliance could result in imprudent grid expansion and unjust and unreasonable transmission rates.

The Texas Competitive Renewable Energy Zone (CREZ) model could be a potential guide, where areas favorable to renewable generation development were identified and linked with the existing transmission grid in return for obligations on generation developers to site projects in the areas aligned with the CREZ transmission expansion. Cluster studies of interconnection requests can also assist in this goal, yet those studies do not currently obligate project developers to follow-through on the construction of their proposed generation resource.⁸ Extensive stakeholder input on this point is necessary, and a one-size-fits-all solution is unlikely to serve every region of the country equally. Customer cost impact – and specifically the potential for increased costs of the delivered price of electricity – cannot be overlooked. Along these lines, it is imperative that if the Commission elects to pursue a "build it and they will come" approach to transmission planning and development, policies must be designed to ensure that proposed generation resources will ultimately render associated transmission expenditures prudently incurred. In essence, the Commission should ensure that any uptick in transmission development be focused on the development of "least regrets" transmission projects, while allowing project development to commence after selection rather than following reconsideration *via* restudies.

IV. One-Size Fits All Solutions Are Unlikely to Produce Durable Results

It is important for FERC to recognize, especially with respect to its aim to expand transmission facilities to facilitate *potential* yet currently *unplanned* generation resources, that such an objective treads into the generation resource planning authority traditionally overseen by state regulatory authorities. With forty-nine such regulators within the continental United States,

⁶ ANOPR at P 35.

⁷ ANOPR at P 41.

⁸ Within the ANOPR, FERC also identified other potential safeguards, such as providing preferential treatment to interconnection requests for which the developer has already executed a power purchase agreement or been selected as part of a state or utility request for proposals. ANPOR at P 157.

regional differences will be essential to ensuring that FERC and state-level regulators can productively partner in the development of the lower-carbon energy grid of the future.

The interstate power grid subject to FERC's jurisdiction includes a conglomeration of different business models and market structures. This mix includes investor-owned utilities, municipal, public power, and cooperative electric providers, which can be members of RTOs, independent system operators (ISOs), power pooling arrangements, joint-ownership agreements, and traditional vertically integrated structures. Moreover, these different industry stakeholders operate in different states, with diverse geographies, and subject to a variety of state regulatory structures and cost allocation frameworks. Further, even the larger RTO and ISO markets differ significantly as a result of decades of stakeholder input and continuing engagement aimed at ensuring that those markets operate efficiently and effectively within those market structures' shared federal and state oversight.

As such, it is important for the Commission to avoid any one-size-fits-all dictate to modify the transmission planning requirements of Order No. 890 and Order No. 1000. Instead, FERC must accommodate, from its inception, needed regional differences. The stakeholder processes in place to manage change within different market structures may not always operate as swiftly as some market participants would prefer. Nonetheless, the enhanced analysis and discussion inherent in these efforts ensures – for the most part – that unintended consequences are avoided, rather than first discovered, during policy implementation.

V. A Duplicative Transmission Monitor Would Impede Transmission Development

One of the more concerning proposals within the ANOPR is the inquiry as to whether the Commission should require that RTOs and ISOs, as well as the transmission planning regions outside of such markets, establish an independent entity to oversee the planning and cost allocation for transmission facilities within their respective regions.⁹ The Commission posits whether this new entity should have the authority to review transmission planning and cost allocation decisions in advance of the commencement of facility construction. Additionally, the Commission questions whether this new monitoring entity should have the ability to examine whether a different portfolio of facilities – aside from those presented to it through the region's planning process – could potentially lead to higher net benefits.¹⁰ The Chamber believes that the imposition of an additional layer of “independence” into the area of transmission planning and cost allocation would be counterproductive. It should therefore not be adopted as part of any reforms the Commission ultimately advances as a result of this proceeding.

If the Commission's intent is to facilitate the timely construction of needed new transmission infrastructure, the insertion of a duplicative layer of oversight, which would be charged with the role of reassessing all planning and cost allocation decisions, would seriously undermine that goal. Independent monitors can be very costly and time consuming, and they already exist across many transmission planning regions. The whole point of RTO and ISO

⁹ ANOPR at P 163.

¹⁰ ANOPR at PP 165-166.

markets is to impose a level of independence over transmission service. The insertion of a secondary level of “independence” would be an inefficient and poor use of resources. In addition, as applied to the transmission planning process, such an entity would feel the need to show its worth by second-guessing every decision resulting from the planning process. This would thereby lead to delays in transmission expansion and generator interconnection decisions and the associated build-out. These delays would have adverse impacts on customer cost, result in increased litigation, and could even compromise the continuity of system reliability. Moreover, state regulators and RTOs and ISOs already evaluate the prudence of new transmission investments. What impact would the independent transmission monitor have on these reviews, especially in an environment where such an entity may be focused on arriving at something different rather than identifying objectively superior transmission alternatives?

The Commission should ask itself whether an independent monitor would accomplish the goals it seeks through any potential reforms to its transmission planning and cost allocation process. Assuming that the Commission’s goal is to promote needed transmission investment while controlling customer cost, as repeated throughout the ANOPR, the imposition of an additional level of bureaucracy into the process would not appear to be a step in the right direction. Therefore, the Chamber recommends that this portion of the ANOPR not matriculate to further consideration in any subsequent rulemaking stemming from the instant proceeding.

IV. Conclusion

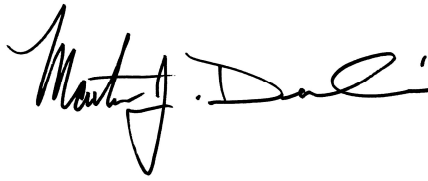
The Chamber applauds the Commission for recognizing the importance of transmission infrastructure to the ongoing energy transition. Additionally, the Chamber appreciates many of the concerns expressed within the ANOPR that identify potential shortcomings in the efficiency and efficacy of the regional transmission planning and generator interconnection processes. However, the ANOPR treads in the direction of a complete rewrite of the transmission planning and generator interconnection processes that result from thousands of stakeholder hours over multiple decades. Instead of assuming that these processes are broken, it would be most productive if the Commission identifies the specific improvements that are needed and then targets any reforms at effectuating such discrete goals. A more targeted, surgical approach will offer a much greater chance of implementing process enhancements without risking the numerous unintended consequences from more comprehensive revisions.

Enhancing the applicable planning processes to consider a more holistic approach, with obligations upon both the transmission provider and generator (or transmission) interconnection customer to work together in support of the most cost-effective and forward-looking infrastructure solutions, could be the solution to accelerating needed transmission expansion in a cost-effective manner. The imposition of additional levels of bureaucracy into this process, however, through additive layers of review and inquiry will delay, rather than accelerate, America’s energy transition. Coordination with state regulators, and potential nationwide permit streamlining reforms, may be all that is needed to bring massive new amounts of generation to market while upholding high levels of reliability and minimizing customer cost impacts. Throughout its analysis, the Commission should keep its core obligations of just and reasonable rates and bulk

electric system reliability front and center. Other policy objectives must remain secondary to those core Commission responsibilities.

The Chamber appreciates the opportunity to comment on the ANOPR. If you have any questions or need additional information regarding these comments, please contact Heath Knakmuhs, Vice President and Policy Counsel, Global Energy Institute, at (202) 463-5874 or hknakmuhs@uschamber.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty J. Durbin". The signature is fluid and cursive, with a large, stylized initial "M" and a distinct "J" and "D".

Marty J. Durbin
President
Global Energy Institute