

**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                    )**

**REPLY COMMENTS OF WIRES**

WIRES,<sup>1</sup> on behalf of its members, respectfully submits the following Reply Comments on the Advance Notice of Proposed Rulemaking (“ANOPR”) issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) on July 15, 2021 in the above-caption proceeding.<sup>2</sup> The Commission’s ANOPR raises important issues of transmission planning, cost allocation, and generator interconnection at a critical time as the grid is undergoing a transformation to meet state and national clean energy mandates and goals, the needs of an increasingly electrified economy, and reliability and resilience challenges of increasing frequency and ferocity posed by climate change and extreme weather driven events. WIRES filed initial comments on the ANOPR on October 12, 2021 addressing, among other things, the importance of, the need for, and the value of local transmission planning and projects in addition to concerns with certain aspects of the Commission’s proposals for added oversight.<sup>3</sup> WIRES also offered some suggestions for improving regional transmission planning for the expansion of

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<sup>1</sup> WIRES is a non-profit trade association of investor-, publicly-, and cooperatively-owned transmission providers and developers, transmission customers, regional grid managers, and equipment and service companies. WIRES promotes investment in electric transmission and consumer and environmental benefits through development of electric transmission infrastructure. This filing is supported by the full supporting members of WIRES but does not necessarily reflect the views of the Regional Transmission Owner/Independent System Operator (“RTO/ISO”) members of WIRES. For more information about WIRES, please visit [www.wiresgroup.com](http://www.wiresgroup.com).

<sup>2</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Advance Notice of Proposed Rulemaking, 176 FERC ¶ 61,204 (2021) (“ANOPR”).

<sup>3</sup> Comments of WIRES, October 12, 2021 (“WIRES Comments”).

the bulk power system. WIRES submits these reply comments to further address these issues in light of matters raised in certain parties' initial comments.

## **I. REPLY COMMENTS**

### **A. Local Transmission System Planning**

In its initial comments, WIRES urged the Commission to retain the existing framework for local planning established under Order No. 1000.<sup>4</sup> As WIRES explained, efficient local transmission planning processes are vital to ensuring that transmission owners can continue to provide reliable service to their customers, particularly retail customers in their distribution service territories.<sup>5</sup> Moreover, local planning processes are critically important to efforts to accommodate state policies such as promoting the development of distributed generation and increased electrification, as well as providing transmission owners the ability to develop and deploy innovative solutions to local needs, including non-wires alternatives.<sup>6</sup>

WIRES also explained why the ANOPR's suggestion that the expansion of local transmission facilities comes at the expense of regional facilities is mistaken and that additions to both types of facilities will be needed to meet future needs.<sup>7</sup> Nonetheless, several commenters continue to assert that local projects are displacing regional transmission projects.<sup>8</sup> These assertions, however, lack necessary evidentiary support to justify Commission action and

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<sup>4</sup> WIRES Comments at p. 15.

<sup>5</sup> *Id.*

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

<sup>7</sup> *Id.* at 15-16.

<sup>8</sup> *See e.g.*, Initial Comments of the Renewable Energy Buyers Alliance at p. 29, October 12, 2021; Comments of Transmission Access Policy Study Group at pp. 24-25, October 12, 2021; Comments of LS Power Grid, LLC in Response to the Commission's Advanced Notice of Proposed Rulemaking at p. 28, October 12, 2021.

misconstrue basic differences between local transmission projects and regional transmission projects.

As an initial matter, the record lacks any evidentiary support for the commenters' claim that local projects are stymying regional projects. Under FPA section 206, in order for the Commission to act on such a claim, there must be substantial evidence in the record showing a practice affecting rates in an unjust, unreasonable, unduly discriminatory or preferential manner.<sup>9</sup> Speculation or bald assertions as to an adverse cause-and-effect relationship between local projects and regional projects does not rise to the level of substantial evidence.

To the contrary, assertions that local transmission projects are somehow displacing or inhibiting regional transmission projects fundamentally misunderstand the differences between the two types of transmission projects. Unlike regional projects, the local transmission planning process is needed to meet local reliability needs. Local transmission is not in lieu of regional transmission; it addresses local customer needs and demands for electricity, equipment condition performance, and risk management. It also helps meet state policy goals, including increased distributed solar penetration, growth of electric vehicle ownership, and potential battery storage advancements, among other grid of the future developments. In addition, upgrades to local, lower voltage-facilities are often needed quickly to meet changing system conditions including customer demand. As such, in order to maintain system reliability, it is important that public utilities retain the ability to exercise control over their local systems. Thus, rather than displace regional projects, local projects help meet local reliability needs and help facilitate regional goals by ensuring that the infrastructure needed to transport energy to end-use customers is

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<sup>9</sup> See *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 64-65 (D.C. Cir. 2014) (“*South Carolina Pub. Serv. Auth.*”).

maintained.<sup>10</sup> In fact, with the buildout of more regional bulk system transmission projects, as the Commission contemplates, it is likely that even more local transmission will be needed to support the local distribution of that electricity to customers, analogous to building new highways and then needing to build the local roads to accommodate the increased traffic from the new exit.

In addition, some commenters claim that there is a lack of transparency and opportunity for input in the local planning process.<sup>11</sup> The fact of the matter is, transmission providers were required to make filings to comply with Order No. 1000 transmission planning and cost allocation requirements which built on the Order No. 890 planning principles. These Commission approved compliance filings provide extensive processes for stakeholders to receive information and participate in the transmission planning process for regional and local projects.<sup>12</sup> Thus, contrary to the generalized complaints, there already are ample opportunities for input into the local planning processes.

## **B. The Independent Transmission Monitor Proposal**

As WIRES noted in its initial comments, there are fundamental legal and evidentiary infirmities with the notion of requiring transmission providers to establish an independent entity to monitor the planning and cost of transmission facilities in the region.<sup>13</sup>

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<sup>10</sup> See Comments of Exelon, October 12, 2021, Attachment 1, Affidavit of David W. Weaver, P.E. (Explaining that a recent study conducted by Exelon subsidiary Commonwealth Edison Company (ComEd) demonstrated that no regional need depended on any Supplemental Projects built by ComEd from 2015 to 2019. In other words, no Supplemental Projects were substituting for other means of satisfying regional needs.).

<sup>11</sup> See e.g. Initial Comments of Environmental and Renewable Energy Advocates at p. 22, October 12, 2021;

<sup>12</sup> See e.g., Order No. 1000 at PP 78-82, 148-58.

<sup>13</sup> WIRES Comments, pp. 21-24.

At the outset, WIRES pointed out that there is a critical threshold legal question the ANOPR does not address as to whether establishing a requirement of a transmission monitor conflicts with the subdelegation doctrine which prohibits an agency from delegating its core statutory functions to private entities.<sup>14</sup> As WIRES explained, the FPA charges the Commission, not any outside party, with responsibility for ensuring the justness and reasonableness of transmission rates, and the proposed creation and authorization of an independent transmission monitor would constitute an illegal subdelegation of the Commission's authority under FPA sections 205 and 206.<sup>15</sup> The ANOPR suggests that potential independent transmission monitor activities might include reviewing transmission provider spending on transmission facilities, identifying instances of potentially excessive transmission facility costs and determining whether selected projects were actually the most cost efficient or cost-effective solutions.<sup>16</sup> As WIRES and other commenters have asserted, these are tasks that must be performed by the Commission itself, not a private entity, and to the extent the Commission were to confer these types of cost-based ratemaking functions on an independent transmission monitor, it would be impermissibly exercising delegated authority.<sup>17</sup> As WIRES and others have explained, in contrast to existing market monitoring functions which involve referrals to the Commission of possible market manipulation, the role contemplated by the independent transmission monitor would necessarily

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<sup>14</sup> See *U.S. Telecom Assoc. v. FCC*, 359 F.3d 554, 555-56 (D.C. Cir. 2004).

<sup>15</sup> WIRES Comments, p. 23.

<sup>16</sup> ANOPR at P 159, 164, 172.

<sup>17</sup> See Comments of the New York Independent System Operator, Inc., p. 54.

involve assessing the justness and reasonableness of particular transmission costs—functions that are vested with the Commission by statute.<sup>18</sup>

While some commenters support the notion of creating an independent transmission monitor, in order for FERC to satisfy its burden under FPA section 206 and impose such a remedy, there must be substantial evidence both that (1) there is a “practice” affecting rates that is unjust, unreasonable, unduly discriminatory or preferential, and (2) the remedy imposed is just and reasonable.<sup>19</sup> However, none of the commenters nor the Commission has provided the necessary substantial evidence on either count. Instead, as WIRES noted in its initial comments, other than generalized concerns that customers will need to pay the potential costs of new transmission built to meet the needs of a changing resource mix, there is no evidence that the existing processes are failing to implement tariffs appropriately or produce unjust and unreasonable outcomes.<sup>20</sup>

On the other hand, several parties, including WIRES, have pointed out the potential problems with creating an independent transmission monitor. These include concerns that such an entity would add cost and a level of bureaucracy when there is no record of dysfunction;<sup>21</sup> confusion as to how an independent transmission monitor’s review role would be preferable to the Commission conducting the contemplated review itself;<sup>22</sup> duplicate oversight already provided by RTOs/ISOs, the North American Electric Reliability Corporation, state

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<sup>18</sup> See also Motion to Intervene and Comments of the National Association of Regulatory Utility Commissioners at p. 21, October 12, 2021 (questioning the Commission’s legal authority to impose an independent transmission monitor in areas that are not in an RTO/ISO).

<sup>19</sup> See *South Carolina Pub. Serv. Auth.*, 762 F.3d at 64-65.

<sup>20</sup> WIRES Comments at p. 22.

<sup>21</sup> Comments of the Large Public Power Council at p. 35, October 12, 2021.

<sup>22</sup> Comments of the National Association of State Utility Consumer Advocates at p. 7, October 12, 2021.

commissions, and even the Commission itself, resulting in increased costs and delays;<sup>23</sup> increase administrative and legal costs of transmission planning with no commensurate benefits to customers;<sup>24</sup> could lead to “[a]dditional costs and burdens [as a result of] the unavoidable inefficiencies of adding another layer of review;”<sup>25</sup> in the case of RTOs/ISOs, would simply create “another independent entity to review an independent entity;”<sup>26</sup> “would significantly harm, not facilitate transmission planning” and “would create an entirely new set of friction points within the process, resulting in unnecessary delays, costs, and litigation;”<sup>27</sup> “would duplicate work already performed by the CAISO, disrupt and add uncertainty to the transmission planning process, and create potential delays;”<sup>28</sup> and “could weaken the process and potentially introduce further delays and risks into transmission development where there are already substantial challenges, at the expense of getting infrastructure built to meet identified needs reliably and timely.”<sup>29</sup>

Not only is there no demonstration in the record of this proceeding sufficient to satisfy the burden under FPA section 206 that existing oversight has or will lead to unjust and unreasonable rates or preferential or discriminatory treatment, the fact of the matter is that current oversight is substantial and adequate, and additional regulatory processes in this area will

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<sup>23</sup> Comments of the National Rural Electric Cooperative Association at p.31, October 12, 2021.

<sup>24</sup> Comments of New York Independent System Operator, Inc. at pp. 52-53, October 12, 2021.

<sup>25</sup> Comments of the Midcontinent Independent System Operator, Inc. at p. 4, October 12, 2021.

<sup>26</sup> Initial Comments of PJM Interconnection L.L.C. at p. 78, October 12, 2021.

<sup>27</sup> Comments of the Sponsors of the Southeastern Regional Transmission Planning Process at p. 24, October 12, 2021.

<sup>28</sup> Comments of the California Independent System Operator, Inc. at p. 115, October 12, 2021.

<sup>29</sup> Comments of ISO New England Inc, at p. 34, October 12, 2021.

only create additional burdens and frustrate the ability to get needed transmission infrastructure planned, developed, and in service in an efficient and timely manner.

## **II. CONCLUSION**

WIRES respectfully submits these reply comments for consideration by the Commission as it considers these important issues.

Respectfully submitted,

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