

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Joint Federal-State Task Force on)
Electric Transmission) Docket No. AD21-15
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Comment of the Harvard Electricity Law Initiative¹

Regional governance is central to transmission development. Development outcomes — such as which projects are built, who builds them, and who pays for them — depend principally on who decides. We respectfully request that the Task Force consider discussing regional governance at its upcoming meeting on February 28.

The Commission’s April 2022 proposed rule on regional planning and cost allocation suggests that regional governance is ineffective. To remedy deficiencies with existing approaches, the proposed rule envisions roles for state regulators in selecting regional projects and allocating their costs.² Regardless of whether the Commission finalizes that proposal, regional governance is ripe for reevaluation and the Joint Task Force is an ideal forum for identifying opportunities for reform.

In most states, utility regulators or other officials already participate in regional transmission governance. The Commission sanctions diverse approaches to state involvement. In at least two regions, state officials share formal authority over cost allocation.³ In two of the single-state planning regions, states are actively involved in defining planning goals.⁴ Elsewhere, regulators are merely second-class members of various

¹ The Harvard Electricity Law Initiative is an independent organization based at Harvard Law School’s Environmental & Energy Law Program. These comments do not represent the views of Harvard University or Harvard Law School.

² Notice of Proposed Rulemaking, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 at PP 241–252, 302–318 (2022).

³ *Southwest Power Pool*, 106 FERC ¶ 61,110 at P 219 (2004), *order on reh’g*, 109 FERC ¶ 61,010 at PP 90–95; *MISO and MISO Transmission Owners*, 143 FERC ¶ 61,165 at PP 4–6 (2013).

⁴ See [Memorandum of Understanding between the CPUC, CEC, and CAISO](#) (Dec. 2022); New York Public Service Commission, [Order Addressing Public Policy Requirements for Transmission Planning Purposes](#), Cases 20-E-0497, 18-E-0623 (Mar. 18, 2021) (summarizing collaboration between the NY PSC and NYISO).

regional committees or have no formal roles at all in regional transmission development.⁵ Building a record about regional governance can inform compliance with any new planning rule, assist states as they consider expanding involvement in regional planning, and refresh the Commission’s understanding of regional governance.

Current approaches to regional transmission development heighten the need for effective governance that can protect consumers. Commission oversight provides transmission owners with opportunities to favor their own interests, particularly where transmission owners have formal authority over planning. Because the Commission affords transmission providers with compliance “flexibility,”⁶ transmission owners can craft planning frameworks titled in their favor. Once the Commission approves a particular compliance plan, transmission owners implement their own tariffs with little oversight. The Commission does not review transmission plans, even though expansion planning is susceptible to manipulation. Regional planning rests on infrequent and complex modelling exercises that utilities have controlled to prevent regional development.⁷

This result is unsurprising. When left with “significant discretion,” utilities will “exercise [] market power in order to maintain and increase market share.”⁸ “The fundamentally anti-competitive structure of the transmission industry”⁹ demands that the Commission prevent utilities’ rational self-interest from fueling undue discrimination.¹⁰

⁵ For instance, in NorthernGrid, each state may appoint lower-tier members to various committees. *See, e.g.*, Idaho Power, [Open Access Transmission Tariff](#), Attachment K: Exhibits B–D. In some RTOs, Regional State Committees have no formal role in regional transmission planning.

⁶ Order No. 1000, 136 FERC ¶ 61,051 at P 61 (“[T]his Final Rule accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate these regional differences.”); *id.* at PP 149, 157, 208, 227; Order No. 1000-A, 139 FERC ¶ 61,132 at P 283 (affirming that transmission providers may use “flexible criteria or bright-line metrics” to determine which projects are in the regional plan).

⁷ Notice of Proposed Rulemaking, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 at P 39 (2022) (finding utility-administered regional planning processes have not developed any projects).

⁸ Order No. 890, 118 FERC ¶ 61,119 at PP 26, 39–41, 68, 88, 422–24, 524 (2007) (linking utility discretion and undue discrimination, including in transmission planning); Order No. 888 NOPR, 60 Fed. Reg. 17,662, 17,665 (Apr. 7, 1995) (“Utilities owning or controlling transmission facilities possess substantial market power; that, as profit maximizing firms, they have and will continue to exercise that market power in order to maintain and increase market share.”).

⁹ *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 684 (D.C. Cir. 2000).

¹⁰ *National Ass’n of Regulatory Utility Comm’rs. v. FERC*, 475 F.3d 1277, 1280 (D.C. Cir. 2007) (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1003 (D.C. Cir. 1987)) (stating that Commission “authority

Current governance of transmission-owner administered planning does not assure that regional transmission planning processes are “transparent and not unduly discriminatory” or that outcomes of planning processes benefits consumers.¹¹

In RTOs, while the governing board approves regional transmission plans, utilities hold formal authority that they can wield to harm competition and consumers. In some RTOs, utilities control cost allocation and can impose formulae that are hardwired against their competitors.¹² RTO-run planning procedures may provide transmission owners with unilateral authority over key inputs and assumptions into planning models.¹³ Even where there is an open and transparent process for establishing model inputs and planning goals, translating those inputs and goals into specific transmission solutions (i.e. lines on a map) is an opaque process that is vulnerable to manipulation and can be biased in favor of incumbent interests. Regional decisionmaking processes and structures ought to disentangle transmission development from transmission owners’ financial interests.

Setting aside these transmission development challenges, the Joint Task Force could revisit decades-old assumptions about regional governance. When it sanctioned the creation of RTOs, the Commission and NARUC encouraged state regulators to “play a key role” in RTO “formation and development.”¹⁴ But once an RTO was operational, the Commission saw “considerable merit in the arguments that state officials should not be voting members

generally rests on the public interest in constraining exercises of market power”); Order No. 888, 61 Fed. Reg. 21,540, 21,567 (May 10, 1996) (“The inherent characteristics of monopolists make it inevitable that they will act in their own self-interest to the detriment of others . . . and it is our duty to eradicate unduly discriminatory practices.”).

¹¹ *Louisville Gas & Electric, et al.*, 144 FERC ¶ 61,054 at P 196 (2013).

¹² *See, e.g., Consolidated Edison Co. of New York v. FERC*, 45 4th 265, 282 (D.C. Cir. 2022) (explaining how a cost allocation formula created by PJM transmission owners “border[s] on absurd” because it “operates as a too-big-to-pay rule” that insulated an incumbent transmission owner from paying for upgrades and pushed costs to merchant developers).

¹³ *See, e.g. PJM, Business Practice Manual 14B: PJM Regional Transmission Planning Process*, at Attachment B: Regional Transmission Expansion Plan: Scope and Procedure, B.3 (Dec. 20, 2023) (“PJM will exchange information and data with each Transmission Owner (TO) for the purpose of developing RTEP assumptions in preparation for the Subregional RTEP Committee assumptions meeting . . .”); *id.* at 1.3.1 (“Generation and transmission planning assumptions are embodied in the base case power flow models developed annually by PJM and derived from the Eastern Reliability Assessment Group processes and procedures pursuant to NERC standard MOD-032, as well as Transmission Owners’ assumptions . . . Each type of [regional planning] analysis . . . encompasses its own methodological assumptions as further described throughout the rest of this Manual.”).

¹⁴ Order No. 2000, *Regional Transmission Organizations*, 89 FERC ¶ 61,285 at pg. 95 (1999).

of an RTO governing board.”¹⁵ A few years later, the Commission concluded that Regional State Committees would “benefit [the RTO] and market participants by instituting a partnership between the FERC and State commissions through which regional issues can be addressed.”¹⁶ Outside of RTOs, the Commission has not imposed governance standards despite a long history of regulating utility alliances.¹⁷ The Commission might benefit from hearing states regulators’ perspectives on these and other issues.

Respectfully submitted,

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¹⁵ *Id.*

¹⁶ *Southwest Power Pool*, 106 FERC ¶ 61,110 at P 218 (2004); *order on reh’g*, 109 FERC ¶ 61,010 at PP 90–95.

¹⁷ *See, e.g., Mid-Continent Area Power Pool Agreement*, 58 FPC 2622, 2631–36 (1977) (finding that proposed membership criteria in a power pool were not “sufficiently quantitative to assure objective and nondiscriminatory interpretation”), *aff’d*, *Central Iowa Power Co-operative v. FERC*, 606 F.2d 1156 (D.C. Cir. 1979); *Policy Statement Regarding Regional Transmission Groups*, 58 Fed. Reg. 41,626 (Aug. 5, 1993) (sanctioning the development of regional utility alliances and requiring that they “include fair and non-discriminatory governance and decisionmaking procedures, including voting procedures”). When the Commission required utilities to formalize regional planning in Order No. 1000, it did not impose particular governance or voting processes.