

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

Industrial Energy Consumers of America, et al.	)	
	)	
vs.	)	Docket No. EL25-44-000
	)	
Avista Corporation; et al.	)	

**COMMENTS OF PUBLIC INTEREST ORGANIZATIONS**

**I. Introduction**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.211, Earthjustice, Natural Resources Defense Council, Southern Environmental Law Center and Sustainable FERC Project (jointly, the “Public Interest Organizations” or “PIOs”) submit these comments on the December 19, 2024 complaint submitted in the above captioned docket concerning the local planning tariffs of all FERC-jurisdictional public utility transmission providers (the “Complaint”).

In our comments, PIOs address the Complaint’s concerns regarding the total cost of local transmission projects. PIOs agree with the Complainant’s concern about the lack of oversight for local transmission and the unjust and unreasonable costs associated with these projects and believe that FERC should find the current local planning practices to be unjust and unreasonable.

## II. Background

On December 19, 2024, the Complainants filed a complaint under section 206 of the Federal Power Act (FPA)<sup>1</sup> against all FERC-jurisdictional public utility transmission providers asserting that their existing tariffs allowing for local planning for 100 kV and above are unjust and unreasonable or unduly discriminatory or preferential and result in unjust and unreasonable transmission rates.<sup>2</sup> The Complaint provides evidence that nearly half of all transmission investments in the last 15 years have been based on local utility criteria and cost allocated exclusively to the customers in the pricing zone of the planning transmission owner, regardless of beneficiaries.<sup>3</sup> The Compliant further notes that:

At the same time, through the adoption of wide-spread formula rates, the Commission has shifted to consumers the burden of proving that those self-serving planning decisions were imprudent. That burden – and overcoming that presumption of prudence – is nearly impossible to meet with planning hindsight, particularly when the only planning analysis available was done by the transmission owner implementing the project in question.<sup>4</sup>

Complainants assert that the local transmission planning provisions of tariffs are not just and reasonable and unduly discriminatory because existing local planning tariffs allow individual transmission owners to plan FERC-jurisdictional transmission facilities

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<sup>1</sup> 16 U.S.C. § 824(e).

<sup>2</sup> See Complaint at 14.

<sup>3</sup> Complaint at 27, citing Brattle Group, *Annual U.S. Transmission Investments, 1996-2023*, (2023), available at <https://www.brattle.com/wp-content/uploads/2023/07/Annual-US-Transmission-Investments-1996%E2%80%932023.pdf> (last accessed Dec. 18, 2024) (“The total was approximately \$25 billion invested, with about half “solely based on ‘local’ utility criteria.””).

<sup>4</sup> Complaint at 34-35, footnotes omitted.

at 100 kV and above without regard to whether it is the right project for the interconnected grid, resulting in unjust and unreasonable rates.<sup>5</sup>

In FERC’s recent Order No. 1920, FERC addressed coordination between the local and regional transmission planning processes, including the evaluation of whether replacement transmission facilities could be modified (*i.e.*, right-sized) to more efficiently or cost-effectively address transmission needs.<sup>6</sup> FERC implemented requirements that (1) enhance the transparency of local transmission planning processes; and (2) require transmission providers to evaluate whether transmission facilities that need replacing can be “right-sized” to more efficiently or cost-effectively address Long-Term Transmission Needs identified in Long-Term Regional Transmission Planning.<sup>7</sup> However, neither of these reforms directly address the justness and reasonableness of the costs associated with local transmission.

### **III. The Need to Reform Local Transmission Planning**

PIOs agree that the current state of local planning is not just and reasonable and must be modified. As we stated in our response to the Commission’s Notice of Proposed Rulemaking that led to Order No. 1920, public utility transmission providers have strong incentives to favor local projects.<sup>8</sup> First, the Commission currently presumes the prudence of local projects. Second, local projects allow transmission providers to avoid

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<sup>5</sup> *Id.* at 8.

<sup>6</sup> Order No. 1920, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation, 187 FERC ¶ 61,068 (2024), 89 Fed. Reg. 49,280 (June 11, 2024) at P 1569.

<sup>7</sup> *Id.* at P 1577.

<sup>8</sup> Comments of Public Interest Organizations, Docket RM 21-17-000 (Aug. 17, 2022) Accession No. 20220817-5270, at 52-53 (hereinafter “PIOs Initial NOPR Comments”).

competition. Third, transmission owners often earn high rates of return on local transmission projects, with minimal to no risk involved.<sup>9</sup> As shown in the Complaint, this increased reliance on local transmission planning with no prudence review by the Commission results in increased spending on local transmission with no oversight.<sup>10</sup> Without any oversight, such transmission spend cannot be just and reasonable.

The current local transmission planning tariff raises significant concerns about the prudence of the resulting projects.<sup>11</sup> The presumption of reasonableness for local projects, particularly those addressing needs not included in the regional planning process, has resulted in insufficient evaluation. This approach potentially results in the approval of projects that are not the most cost-efficient or necessary. Furthermore, the high rate of return on local projects does not reflect the virtually risk-free nature of these investments, contributing to excessive costs for consumers.<sup>12</sup> The absence of a rigorous evaluation process for local transmission investments also raises concerns about misaligned costs, overbuilding, and the inefficient use of ratepayer funds.

If FERC does not find that Complainants have met their burden, it must still address the underlying issue: allowing such large spending to pass through to consumers without any review is inherently unjust and unreasonable. This concern has been raised repeatedly before the Commission. In an October 2022 Technical Conference on Transmission Planning and Cost Management, several panelists raised concerns about

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<sup>9</sup> *Id.* at 49-52.

<sup>10</sup> Complaint at 33-43.

<sup>11</sup> See PIOs Initial NOPR Comments at 61-62.

<sup>12</sup> See *id.* at 62-65.

local transmission costs being passed through to consumers with no review.<sup>13</sup> The issue has also been raised by several Commissioners in cases concerning transmission incentives and changes to tariffs concerning local transmission.<sup>14</sup> It is long overdue for FERC to address the lack of review of these costs.

If FERC decides to deny the Complaint, it should nonetheless issue its own Order to Show Cause pursuant to Section 206 of the FPA and consolidate this new proceeding with the Technical Conference on Transmission Planning and Cost Management proceeding in AD22-8. FERC has established precedent for taking similar action in its recent handling of co-located load in PJM, demonstrating the Commission's authority and commitment to addressing cost review issues.<sup>15</sup>

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<sup>13</sup> See, e.g. *Transmission Planning and Cost Management*, Technical Conference, Docket No. AD22-8-000, Tr. 16:4-20:11 (Comm'r Mark Christie) (Oct. 6, 2022), <https://www.ferc.gov/media/transcript-docket-no-ad22-8-000>. See also Post-Technical Conference Comments of the National Association of State Utility Consumer Advocates, filed March 23, 2023 in AD22-8-000 (noting "it is important to not lose sight of the need for reforms to address policies that are contributing to ongoing and escalating levels of local transmission investment and the regulatory gap that enables such unchecked investment and contributes to ongoing transmission rate pressure for electric consumers."); Initial Comments of the New England States Committee on Electricity, Docket No. RM21-17-000 (filed Aug. 17, 2022) at 79-80; Pre-Conference Comments Of Maine Public Utilities Commission Chair Philip L. Bartlett II, filed in Docket No. AD22-8-000, October 4, 2022 by New England States Committee on Electricity (noting that "the use of formula rates has effectively shifted the burden from transmission owners to demonstrate just and reasonable rates, as would happen in a state rate case, to states and consumer advocates to rebut the proposed rate through challenges."

<sup>14</sup> See, e.g., *Potomac-Appalachian Transmission Highline, LLC*, 185 FERC ¶ 61,198 (2024) (Christie, Comm'r, concurring); See, e.g., *Sw. Power Pool, Inc.*, 183 FERC ¶ 61,151 (2023) (Clements, Comm'r, and Christie, Comm'r, concurring at P 4) ("Indeed, the Commission grants formula rate treatment, including a presumption of prudence, to filings from transmission owners seeking cost recovery for transmission projects without regard to whether such projects have been subject to a serious vetting in any proceeding in which both need and prudence of cost must be demonstrated by the transmission developer. We have expressed concerns about this lack of oversight previously, and this filing by SPP illustrates exactly why that is a major problem pertinent to the issue of rising consumer costs for transmission."),

<sup>15</sup> See, e.g. *PJM Interconnection LLC*, 190 FERC ¶ 61,115 (2025).

**A. Local Project Expenditures are Deemed Prudent Without Any Scrutiny by FERC**

There is currently a regulatory gap that allows substantial local transmission spending without scrutiny by FERC. The Brattle Group has found that, from 1996 to 2023, 50% of all transmission spending was directed toward local projects.<sup>16</sup> Under current FERC rules, such spending is presumed prudent unless a party can successfully rebut this presumption. This regulatory framework places the burden on parties to prove imprudence, rather than requiring an active and consistent review of these projects, potentially leading to unnecessary costs being passed on to consumers.

In its comments to the July 15, 2021 Advanced Notice of Proposed Rulemaking (“ANOPR”),<sup>17</sup> the Harvard Electricity Law Initiative made a detailed argument for why FERC must enhance its review of transmission filings.<sup>18</sup> These comments explain that the Commission has not fulfilled its commitment in Order No. 890 to “remain actively involved in the review *and implementation* of the transmission planning processes required in Order No. 890, during and beyond the initial compliance phase, to ensure that the potential for undue discrimination in planning activities is adequately addressed.”<sup>19</sup> The Commission has adopted its current formula rate policy, which unreasonably presumes the prudence of local transmission investments for administrative convenience.<sup>20</sup> However, given the significant rise in local transmission costs,

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<sup>16</sup> Annual U.S. Transmission Investments, 1996-2023, Brattle Group, 2023, <https://www.brattle.com/insights-events/publications/annual-us-transmission-investments-1996-2023/>.

<sup>17</sup> Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, 176 FERC ¶ 61,024 (2021), 86 Fed. Reg. 40266 (July 27, 2021) (hereinafter “ANOPR”).

<sup>18</sup> See Comment of the Harvard Electricity Law Initiative, Docket No. RM21-17 at Section II (Oct. 12, 2021).

<sup>19</sup> Order No. 890-A at P 180 (emphasis added by Harvard Electricity Law Initiative).

<sup>20</sup> See Comment of the Harvard Electricity Law Initiative, Docket No. RM21-17 at 47-48.

administrative convenience can no longer take precedence over the need to thoroughly review these expenditures to ensure they are just, reasonable, and not unduly discriminatory. Consumers are bearing excessive costs that remain unexamined due to a lack of proper oversight.

Section 205(e) of the FPA places the burden of proof on a public utility to demonstrate that a rate or charge is just and reasonable.<sup>21</sup> While the Commission has justified its current policy of presuming that all transmission expenditures are prudent based on administrative convenience,<sup>22</sup> nothing in the FPA allows this convenience to override the statutory burden of proof. In its ANOPR comments, the Harvard Electricity Law Initiative outlines the history behind the decision to shift this burden to other parties.<sup>23</sup> Since FERC implemented this policy nearly 45 years ago, there have been significant changes in the energy industry, particularly the dramatic rise in local transmission costs, which are ultimately passed on to consumers. These changes compel FERC to reconsider its presumption that such costs are just and reasonable.

To ensure that transmission rates are just and reasonable, FERC must rescind its presumption that local projects are prudent and return the burden of proving that the costs of proposed transmission projects are just and reasonable back to public utility transmission providers as statutorily required. Section 205 places few restrictions on how

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<sup>21</sup> 16 U.S.C. 824d(e).

<sup>22</sup> *Iroquois Gas Transmission System*, 87 FERC ¶ 61,295, at p. 62,168 (1999) (quoting *Minnesota Power & Light Co.*, 11 FERC ¶ 61,312, at pp. 61,644–45 (1980) (stating that FERC adopted this policy as “a matter of procedural practice to ensure that rate cases are manageable”).

<sup>23</sup> *See* Comment of the Harvard Electricity Law Initiative, Docket No. RM21-17 at 47-48 (Oct. 12, 2021).

utilities may demonstrate that rates are just and reasonable, allowing them the flexibility to present their case in whatever manner they deem appropriate.

In addition to shifting the burden of demonstrating prudence back onto public utility transmission providers, the Commission should also consider modifying the return on equity (ROE) for local projects. These projects inherently carry much less risk compared to merchant transmission projects and regional projects, especially when they are subject to little or no competition. Local transmission projects often benefit from guaranteed revenue, backed by public funding or ratepayer support, and typically do not face the market risks that merchant transmission projects encounter. As such, these projects carry a significantly lower level of financial risk. This reduced risk warrants a lower return on ROE compared to more competitive or risk-prone transmission projects.

The Commission should consider implementing a form of “ROE subtractor” as an equivalent to the ROE adders that currently exist for projects deemed to meet specific, high-risk criteria. An ROE subtractor would automatically reduce the guaranteed returns for local projects that meet certain criteria, such as the following:

1. *Lack of Review by Regional Planners*: Local projects that have not been included in or reviewed by regional transmission planning processes should face a reduced ROE. The regional planning process is designed to ensure that transmission projects are aligned with broader grid needs and to avoid redundant or inefficient investments.
2. *Lack of Competitive Bidding*: Transmission projects that are not subject to competitive bidding should also face a lower ROE. Competitive bidding has been



shown to drive down costs and promote efficiency in transmission development, and local projects that bypass this process should not be rewarded with high returns.

3. *Untimely Identification of Project Need*: Projects that result from the failure to identify the need for expansion or upgrades in a timely manner should also be subject to reduced returns. Delays in identifying and proactively addressing foreseeable project needs (such as end-of-life replacements) can result in inefficiencies and higher costs, both for developers and consumers. Early identification and planning help prevent unnecessary overbuilding and ensure that transmission development aligns with actual demand.

By applying such a mechanism, the Commission would not only incentivize more efficient, well-planned local transmission projects but also ensure that consumers are not overpaying for investments that carry little to no risk. The introduction of an ROE subtractor would help align the financial returns of transmission owners with the true risk and value of the projects, ensuring that local projects are built in a cost-effective manner and serve the long-term needs of the grid.

**B. Public Utility Transmission Providers Must Identify and Present Projects Affecting the Same Area Together to Provide an Apples-to-Apples Comparison to Regional Alternatives and Ensure Prudent Expenditures**

In addition to the short, seemingly arbitrary lead times often associated with local projects, too often these projects are proposed in a piecemeal fashion rather than presented holistically as a set of solutions to related problems. The Union of Concerned

Scientists (“UCS”) highlighted a critical example of this issue in its initial ANOPR Comments, detailing a case study of thirteen projects proposed over four years in the Columbus, Ohio area.<sup>24</sup> PJM presented each project individually, preventing any meaningful cost comparison to regional alternatives. Had these projects been evaluated together, a more cost-effective and beneficial solution likely could have been developed to meet many or all of the identified reliability needs. This failure in transparency and holistic planning exemplifies the problems regional planners currently face when public utility transmission providers take a fragmented approach to addressing local reliability concerns.

Order No. 1920 requires enhanced transparency in local transmission planning by requiring utilities to revise their Open Access Transmission Tariffs (OATTs) to disclose the criteria, models, and assumptions used to determine local transmission needs.<sup>25</sup> Utilities must also conduct an iterative stakeholder engagement process, including at least three public meetings to review and address transmission needs. Additionally, all materials must be posted at least five days in advance, stakeholders must have opportunities to provide feedback before and after meetings, and transmission providers must respond meaningfully to comments.<sup>26</sup>

While these enhanced transparency requirements are a step in the right direction, they do not resolve the core issue identified by UCS in Ohio. Stakeholders and regional planners need to evaluate related local project needs collectively to identify more

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<sup>24</sup> See UCS Initial ANOPR Comments at App. A.

<sup>25</sup> Order No. 1920 P 1626.

<sup>26</sup> *Id.* P 1626-27.

efficient and cost-effective solutions. Without such grouping, stakeholders will rarely be able to propose alternatives that could save ratepayers money and reduce unnecessary transmission investments. To remedy this, the Commission should require public utility transmission providers to present local projects affecting the same geographic area together through revised project transparency requirements.

Further, this piecemeal approach raises prudence concerns, as utilities are often making fragmented investment decisions without adequately considering regional alternatives that could achieve the same reliability benefits at a lower cost. In-kind replacement projects also often fail to consider alternative technologies or whether upgrades may be warranted or even necessary to accommodate expected changes in load or demand—such as those related to increasing electrification of local transportation and building sectors. Consequently, the Commission should require utilities to justify why a series of local projects is the most cost-effective approach, rather than a coordinated solution developed through the regional planning process, and how proposed local projects contribute to meeting future transmission needs. This requirement would ensure that utilities are prudently evaluating alternatives before committing ratepayer dollars to inefficient projects that could otherwise be consolidated or coordinated as part of a more efficient regional investment.

By requiring utilities to present related projects together and undergo a prudence review to assess the necessity and cost-effectiveness of their proposed solutions, the Commission can enhance transparency, improve planning outcomes, and ensure just and reasonable rates for consumers.

#### IV. Conclusion

PIOs agree with the Complainant's concerns regarding the lack of oversight and the unjust and unreasonable costs associated with local transmission projects.

Accordingly, FERC should find the current local planning practices to be unjust and unreasonable. Alternatively, if FERC denies the Complaint, it should issue its own Order to Show Cause under Section 206 of the FPA and consolidate this proceeding with the Technical Conference on Transmission Planning and Cost Management in AD22-8.

Respectfully submitted this 20<sup>th</sup> day of March 2025.

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. § 385.2010 upon each party designated in the official service list compiled by the Secretary in this proceeding, by email.

/s/ Cullen Howe

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