UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Industrial Energy Consumers of America *et. al.*	)	
	)	
Complainants	)	
	)	Docket No. EL25-44-000
v.	)	
Avista Corporation *et al.*	)	
Respondents	)	

ANSWER
OF
CONSUMERS FOR INDEPENDENT REGIONAL TRANSMISSION PLANNING FOR ALL FERC-JURISDICTIONAL TRANSMISSION FACILITIES AT 100 KV AND ABOVE
TO MOTIONS TO DISMISS
AND MOTION FOR LEAVE TO ANSWER AND ANSWER
PROTESTS AND COMMENTS

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Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission")[1], the Industrial Energy Consumers of America, American Forest & Paper Association, R Street Institute, Glass Packaging Institute, Public Citizen, PJM Industrial Customer Coalition, Coalition of MISO Transmission Customers, Association of Businesses Advocating for Tariff Equity, Carolina Utility Customers Association, Inc., Resale Power Group of Iowa, Wisconsin Industrial Energy Group, Multiple Intervenors (NY), Arkansas Electric Energy Consumers, Inc., Public Power Association of New Jersey, Oklahoma Industrial Energy Consumers, Large Energy Group of Iowa, Industrial Energy Consumers of Pennsylvania, Maryland Office of People's Counsel, Pennsylvania Office of Consumer Advocate, Consumer Advocate Division of the Public Service Commission of West Virginia, and Missouri Industrial Energy Consumers (collectively, "Complainants") submit this answer ("Answer") in response to various motions to dismiss filed in this proceeding on March 19, 2025 and March 20,

[1] 18 C.F.R. §§ 385.212, 385.213.

2025 and motion for leave to answer certain comments and protests. The Complaint and several supporting comments[2] demonstrate that the Commission needs to address widespread unjust and unreasonable transmission planning practices, within the Commission's jurisdiction, that have allowed for the proliferation of transmission owner "local" or self-planned transmission project planning ("Self-Planning" or "Self-Planned Transmission") that does not result in the selection of the most efficient, cost-effective project for FERC-jurisdictional transmission, *i.e.*, transmission in interstate commerce.

I. EXECUTIVE SUMMARY AND RESPONSE OF COMPLAINANTS

Nearly all of the challenges to the Complaint start with a false premise: that there is such a thing as Commission-jurisdictional "local" transmission or local transmission needs. There is not. There is the transmission of electricity in interstate commerce, which is subject to the Commission's exclusive jurisdiction regarding rates and practices affecting those rates.[3] That

[2] *See, e.g.*, Comments of the Organization of PJM State, Inc. ("OPSI") at p. 1 ("OPSI broadly agrees with the concerns around local transmission planning as expressed in the Complaint"); Comments of Joint Consumer Advocates at 3 ("Excessive local transmission planning directly harms consumers by creating unjust, unreasonable and unduly preferential rates. Despite repeated attempts by the Commission to remedy this problem, transmission owners continue to exploit the local planning process, and PJM continues to allow them to do so. The Complaint thoroughly and appropriately explains this problem, and then suggests some common-sense solutions."); Comments of the New England States Committee on Electricity ("NESCOE") at 1-2 ("NESCOE agrees with the Complainants that transmission rates in New England are not just and reasonable due to the current lack of regional planning for, and oversight of, what are referred to as 'asset condition projects'—projects accounting for billions of dollars in transmission investments in the regional grid that New England's regional transmission planner does not plan or monitor."); Comments of the Public Utility Commission of Ohio's Office of Federal Energy Advocate at 7 ("these local projects circumvent the more robust regional planning process intended to achieve efficiency and cost-effectiveness."); New Hampshire Office of the Consumer Advocate Comments at 10 ("Existing authorities and process have proven to be wholly inadequate for conducting robust and necessary reviews of transmission buildout and for assuring that the costs of that work are prudently incurred and reasonable in amount."); Maine Office of Public Advocate Response to Motions to Dismiss at 3-4 (filed Apr. 23, 2025); NARUC Comments at 3 (urging FERC to implement "effective and robust transmission cost management and oversight processes for 'end of life' or 'asset condition' transmission projects in RTO regions").

[3] *See* Section 201 of the FPA, 16 U.S.C. § 824(a) (the transmission of electric energy in interstate commerce is affected with the public interest and subject to federal regulation).

interstate transmission, by definition, is not "local." To the extent that there is **intra**state transmission (local), the Commission has no jurisdiction, and it is not the focus of the Complaint.[4] The Respondents (and their surrogates) do not challenge the fundamental precept of the Complaint: the transmission grid in the continental United States consists of just three distinct interconnections, two of which are the subject of the Complaint. As the Complaint demonstrated, without challenge in the Answers, the Eastern and Western interconnects each operate as a single machine.

As part of one of the two interconnected continental U.S. grids subject to the Complaint, **all** FERC-jurisdictional transmission is regional in nature, as it is transmission in **inter**state commerce. Indeed, the Federal Power Act arose because the electric transmission grid was not subject to the artificial boundaries of individual utility or even state jurisdictional lines as electrons flowing over and through interconnected transmission facilities do not recognize those artificial boundaries. Yet nearly a century after the United States Supreme Court recognized that the laws of electricity mean that under the laws of our nation the electric grid must be regulated at the federal level[5]—because it is not amenable to local laws and oversight—Respondents nevertheless insist that planning of interstate transmission at the individual level remains appropriate because such transmission is "local" and that existing transmission owners have a "right" to plan the interconnected grid of the future simply because they built the grid of yesterday.[6] Respondents make no electrical distinction between local and regional transmission. Instead, they change the

[4] *See* Complaint at 218 (recognizing that intrastate transmission is not subject to FERC jurisdiction per 16 U.S.C. § 824.

[5] *Public Utility Commission of R. I. vs. Attleboro Steam & Elec. Co.*, 273 U. S. 83, 89 (1927).

[6] Comments of Edison Electric Institute ("EEI Comments") at 8 acknowledging that "Over the next 60 years, the electric industry underwent fundamental changes: the electric grid became increasingly interconnected, long-distance transmission lines became more economical, and independent power plants began to compete with vertically integrated utilities."

definition of transmission at will, based on whether they want to self-plan or allow for regional planning. For example, a 500-mile double circuit 345 kV project is "local" when planned exclusively by Xcel's Colorado affiliate, but "regional" when planned by MISO and assigned to Xcel's Minnesota affiliate, with costs allocated across the entire MISO Midwest region.[7] The electrical nature of the transmission did not change based on the way it was planned. American Transmission Company ("ATC") references a similar 345 kV project.[8] ATC notes that its Rocky Run project, although initially individually planned by ATC, when MISO took over it was to be allocated to all of MISO Midwest because "The project **will provide benefits to the reliability of the entire region**, provide availability for interconnection of potential new generation, and address local planning concerns by upgrading aging assets."[9] ATC argues that "the project directly contradicts the 'piecemeal planning' allegations contained within the complaint"[10] but the project actually proves the point of the Complaint, as MISO recognized that the project impacted the entire region, although it was initially individually planned. The electrical nature of the project did not change through the regional review and the Compliant identified hundreds of similar projects that were individually planned with no substantive regional review.

In making the argument of a "right" to plan transmission in a certain way, many of the Respondents assert that their rights to plan FERC-jurisdictional transmission arises from state retail obligations and that the Commission has no authority to prevent their piecemeal planning of future transmission. In this regard, when a Respondent asserts "Complainants do not allege that

[7] *See* Complaint at 37-38.

[8] Protest And Comments Of American Transmission Company LLC In Response To Complaint ("ATC Protest") at 24-25.

[9] *Id*. at 25 (emphasis added).

[10] *Id*.

local transmission planning needs are not being met by the current division of responsibilities"[11] the Respondent is missing the point. The Complaint is based on the simple electrical premise that there is no FERC-jurisdictional "local" transmission and thus there are no "local" transmission planning needs. There are localized inputs to determining the holistic needs of the interconnected grid, but electrical facilities at 100 kV and above are NOT local, except those excluded by the Complaint. If they were, they would be **intra**state transmission and outside the Commission's jurisdiction; or distribution and likewise outside the Commission's jurisdiction; or, as recognized in the Complaint, a Local Area Network and not part of the Bulk Electric System.[12] The Complaint addresses none of those truly local facilities and does not ask the Commission to exercise jurisdiction over those truly local facilities.

In contrast to some Respondents, the Respondent utilities in the Southeast[13] advance a mythical regional/local distinction in asserting the Order No. 1000 precedent is not relevant. Specifically, the Southeast Utilities assert that:

> the court first noted the Commission's relatively broad authority over transmission under the FPA, and then found Order No. 1000's planning directives to be within the Commission's purview, because the intent was "ensuring the proper functioning of the interconnected grid spanning state lines." However, it is far from clear that the courts would make a similar finding with respect to regulation of local planning, which focuses on transmission development within a transmission owner's service territories where

[11] Motion To Dismiss, Conditional Motion To Intervene, And Answer Of PJM Interconnection, L.L.C., at 2, filed March 20, 2025 in Docket No. EL25-44-000 ("PJM MTD").

[12] *See* Complaint at 218-221.

[13] Motion to Dismiss And Answer Of The Southeast Companies To Complaint ("Southeast Utilities MTD"). The collaborating utilities are Dominion Energy South Carolina, Inc., Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, and Duke Energy Florida, LLC, Louisville Gas and Electric Company and Kentucky Utilities Company, Tampa Electric Company ("TEC"), Florida Power and Light Company ("FPL"), and Alabama Power Company, Georgia Power Company, and Mississippi Power Company.

> the intersection with state regulation and involvement of state regulators is more pronounced.[14]

The Southeast Utilities highlight the underlying premise of the Complaint – the electric grid does not recognize the artificial boundaries of "a transmission owner's service territory" and all transmission under the Commission's jurisdiction is transmission "spanning state lines" as the electrons do not stop at the those line, which is why the United States Supreme Court and Congress have recognized that electric transmission is largely transmission in interstate commerce. In regard to a regional market proposal of some of the Southeast Utilities, the United States Court of Appeals for the D.C. Circuit recently explained that "almost all electricity flows not through 'the local power networks of the past,' but instead through an interconnected 'grid' of near-nationwide scope."[15] Because the interconnected grid is **of near nationwide scope**, there is no true "local" transmission facilities 100 kV and above, and any Self-Planning by individual utilities of those interconnected grid facilities impacts that interconnected grid.[16]

The Complaint demonstrated that the "current division of responsibilities"[17] that existing transmission owners have concocted is unjust and unreasonable, as that division permits individual owners of existing transmission in interstate commerce to plan the interconnected grid of tomorrow based on the electrical *and* legal fallacy that they are planning "local" transmission for local transmission needs. And they plan that regionally impactful transmission based on the individual

[14] Southeast Utilities MTD at 29 (citations omitted).

[15] *Advanced Energy United, Inc. v. FERC*, 82 F.4th 1095, 1102 (D.C. Cir. 2023)("*AEU*") (*quoting FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 267 (2016)).

[16] *See*, EEI Comments at 2-3 (acknowledging that the interconnected transmission grid is needed to "support national security and ensure the United States is positioned to be economically competitive in the global market.")

[17] PJM MTD at 2.

corporate preferences and shareholder pressures, rather than on the public interest need to ensure the grid holistically serves consumers and the American economy.

In a further afront to their customers, many of the Respondents claim that their discriminatory, self-interested planning is "required" as they have an obligation to plan that way for their customers,[18] while rejecting the Complaint of those very customers. None of the arguments for why it is appropriate for current owners of transmission to individually plan tomorrow's transmission overcome the Complaint's demonstration that individual planning is inefficient, fails to account for collective needs of a grid "of near nationwide scope,"[19] and thus leads to unjust and unreasonable transmission rates. Critically, only the Commission can remedy these issues. Indeed, the Federal Power Act's consumer protection underpinning obligates the Commission to act.

The Respondents also argue that the Commission cannot find that "[Transmission Owners] are prohibited from *planning their own transmission facilities* and subjecting those facilities exclusively to regional planning."[20] To be clear, the Complaint does not address planning, maintenance, retirement, or any other aspect of *existing* transmission facilities. The issue addressed by the Complaint is how future transmission facilities above 100 kV – greenfield facilities or replacements for existing facilities that have reached the end of operational life[21] –

[18] *See, e.g.*, Motion to Dismiss And Answer Of The Southeast Companies To Complaint, at 3 (asserting "[t]he Southeast Customers plan their system based on the best interests of customers . . ..").

[19] *AEU*, 82 F.4th at 1102.

[20] *See, e.g.*, Indicated PJM Transmission Owners Motion to Dismiss ("PJM Transmission Owners MTD") at 6 (emphasis added).

[21] From a consumer impact perspective, it does not make a difference whether ratebase additions are greenfield or a replacement of aged out transmission, the rate impact is the same as they are new transmission facilities carrying the rate impact of new facilities. Further, as EEI acknowledges, transmission facilities built 50-60 years ago, or more, reflect transmission build for a different purpose and load mix given the "fundament changes" in the electric industry. EEI Comments at 8.

should be planned within an interconnected grid. Respondents have identified no exclusive statutory right for existing transmission owners to dictate the transmission grid of tomorrow. To the extent that such a right is currently claimed, it is through the individual transmission planning tariff provisions that the Complaint challenges. Section 206 of the Federal Power Act provides the Commission with statutory authority to find that those tariff provisions are unjust, unreasonable, unduly discriminatory, or preferential.

Several Respondents advance the argument that "the named respondents to the Complaint are differently situated and face different planning challenges"[22] as a defense to the Complaint. Individual or even regional "planning challenges" or differences are irrelevant to the fundamental question under the Complaint as to whether it is appropriate to allow individual transmission owners to plan 100 kV and above transmission in interstate commerce based on the ongoing false premise that such transmission planning relates to "local transmission." Planning challenges, to the extent they exist, can be incorporated into the required regional planning, just as regional differences are incorporated today in regional planning. Not a single Respondent identified an actual "planning challenge" or "region-specific issues"[23] that would prohibit the Commission from finding that 100 kV and above transmission within the Bulk Electric System is regional in nature and must be planned as such. The primary issue is simple: whether 100 kV and above transmission is regional as part of an interconnected grid rather than "local." The Commission may grant the Complaint and facilitate the implementation of any necessary planning region-specific reforms through compliance filings.

[22] Answer Of The New York Independent System Operator, Inc. ("NYISO Answer") at 3; PJM Answer at 9; Answer of NV Energy ("NV Energy Answer") at 6; Answer of Northwest Corporation d/b/a/ Northwest Energy ("Northwest Answer") at 2; Protest of American Transmission Company LLC ("ATC Protest") at 15; Answer of Portland General Electric Company ("PGE Answer") at 12-13.

[23] *Id*. at 4.

The Respondents advance various other challenges to the Complaint, arguing that Sections 201, 202, or 217 of the Federal Power Act prohibit the requested relief. These arguments have all been previously rejected as they relate to regional planning and should be rejected here. The Commission has ample authority to find there is no "local" transmission at 100 kV and above and determine that existing practices affecting transmission rates that allow individual transmission owners to unilaterally plan regionally impactful transmission in interstate commerce at or above 100 kV are unjust, unreasonable, unduly discriminatory or preferential. Upon making the finding that planning provisions in tariffs and governing agreements – that allow individual existing transmission owners to dictate the development of the future Bulk Electric System – are unjust, unreasonable, unduly discriminatory or preferential, the Commission has an obligation under Section 206 of the FPA to establish a replacement rate. As discussed herein, the challenges to the replacement rates proposed in the Complaint lack merit and the Commission – at a time of ever-rising transmission rates and planned future investment – should adopt the proposed replacement rate (or its equivalent) to protect the nation's electric consumers.

II. ANSWER TO MOTIONS TO DISMISS

A. The Complaint States a Claim Upon Which Relief Can Be Granted; Complainants Have Met Their Burden Under Section 206 of the FPA.

Complainants have neither failed to state a claim upon which relief can be granted, nor have they failed to set forth facts and allegations with sufficient specificity that would not support their requests for relief under Sections 206, 306 and 309 of the FPA. The Complainants have carried their burden to present a *prima facie* case establishing that tariff provisions which allow for individual transmission owner planning of future transmission fail to ensure that the

most appropriate transmission projects for the interconnected grid are planned, resulting in unjust and unreasonable rates.[24]

The Complainants' claims are supported by a comprehensively compiled evidentiary record. As an initial matter, the Commission's own findings and conclusions,[25] directly undergird the central factual premises of the Complaint. The Commission has recognized all of the following:

a. The connection between regional transmission planning and the identification of more efficient or cost-effective transmission projects and corresponding better returns for consumers[26] as well as the countervailing connection between inadequate or poorly designed transmission planning processes and the identification of less cost-effective solutions and corresponding worse returns for consumers;[27]

b. That substantial transmission investment is occurring outside of regional transmission planning processes and overreliance on local transmission planning processes can result in less efficient or cost-effective transmission development, contributing to unjust and unreasonable rates;[28]

c. That allowing individual transmission owners to plan Commission-jurisdictional transmission facilities at the local level leads to inefficient transmission outcomes that hamper the Commission's ability to ensure just and reasonable rates;[29]

d. That the existing "dynamic results in transmission customers paying more than is necessary or appropriate to meet their transmission needs, customers forgoing benefits that outweigh their costs, or some combination thereof, which results in less efficient or cost-effective transmission investments and, in turn, renders

[24] *Minn. Power & Light Co.*, 23 FERC ¶ 61,393, at P 61,835 (June 21, 1983) ("In complaint proceedings under § 306 of the [FPA], allocation of the burden of proof is governed by § 7(c) of the [APA] (5 U.S.C. § 556(d)). Section 556(d) imposes the burden on the 'proponent of a rule or order,' but burden refers to the burden of coming forward with a *prima facie* case, not the ultimate burden of persuasion.").

[25] Complaint, at pp. 8-10; p. 15, fn.36-39; pp. 29-30, fn.55-61; p. 32, fn.73; pp. 35-36, fn.82-86; p. 55, fn.182; p. 59, fn.204; pp. 64-65, fn.222-224, 230; Sect. V(B).

[26] Complaint, at p. 9 (quoting Order No. 1920), pp. 59-60.

[27] Complaint, at p. 9 (same); Sect. VI(A).

[28] Complaint, at p. 9 (same); *see also* p. 15, fn.36-39; pp. 29-30, fn.55-61; Sect. V(B); Sect. VI(A).

[29] Complaint, at p. 15, fn.36-37; p. 29, fn.55-57.

> Commission-jurisdictional regional transmission planning and cost allocation processes unjust and unreasonable."[30]

In addition, the Complaint cites substantial evidence which reinforces and builds on the foundation of the Commission's findings and conclusions, including evidence that "local" Self-Planning is "inherently inefficient" as "uncoordinated local projects will generally be more costly than larger, well-planned regional projects, and they will also tend to have greater land use and environmental impacts and fewer economic and operational benefits;"[31] evidence concerning the scope of the issue, as measured by the extraordinary increases in the amount of "local" transmission that has been planned and is projected to be planned in terms of costs to consumers;[32] evidence concerning the nature of local planning tariffs and the problematic incentives they produce;[33] evidence that the Commission's prior efforts to encourage regional planning have not succeeded in the face of those incentives;[34] and a reasoned nexus between the practices affecting rates[35] that are the subject of the Complaint and the relief the Complainants seek.[36]

The Complainants will highlight a non-exhaustive series of examples of such evidence cited in the Complaint and in comments filed in support of the Complaint. First, the problem is nationwide. The Brattle Group calculated that in 2023 there was over $25 billion in transmission

[30] Complaint, at pp. 9-10 (same); *see also* p. 15, fn.37.

[31] Complaint, at p. 6, fn.6; Sect. VI(A)(3).

[32] Complaint, at p. 10, fn.22; p. 27, fn.49; p. 30, fn.62-63; p. 64, fn.220; Sect. V(A).

[33] Complaint, at p. 11, fn. 23; p. 28, fn.51, p. 31, fn.67; p. 32, fn.71-72; p. 181, fn.843; Sect. III(C); *see also* Attachment C, M. Giberson testimony, pp. 22-26.

[34] Complaint, at Sect. IV(C), Sect. V.

[35] *See* Complaint, at Sect. VI(A)(1) (tariff provisions addressing transmission planning are practices affecting rates within the Commission's jurisdiction under Section 206 of the FPA)

[36] Complaint, at p. 41, Attachment C; *see also* Sect. VI(A)(6); Sect. VI(B)(1) (transmission above 100 kV has regional impacts).

investment, approximately half of which was in individual transmission owner planned transmission projects.[37] R Street Institute's M. Giberson's testimony identifies several, specific instances which illustrate the consequences of unchecked utility discretion in connection with transmission development projects across the country—in California,[38] Florida,[39] Maine and Ohio.[40] In 2018, 99% of the total capital investment in transmission in Ohio was spent on Supplemental Projects.[41] "In New Jersey, booming local transmission build-out is a leading cause of skyrocketing rates, and spending on supplemental projects exceeds regional projects by more than $2 billion."[42] "From 2018 to 2022, spending on supplemental projects in the PJM portion of Illinois accounted for roughly 75 percent of all spending on transmission."[43] The Complaint further develops additional examples in Louisiana,[44] Colorado,[45] and New York.[46]

In PJM, "[t]he average number of supplemental projects in each expected in service year increased by 925%, from 20 for years 1998 through 2007 (pre Order No. 890) to 205 for years 2008 through 2023 (post Order No. 890). The average cost of supplemental projects in each expected in service year increased by 2,531.6%, from $64.6 million for years 1998 through 2007

[37] Complaint, at p. 68-69.

[38] *See also* Complaint, at Sect. V(A)(1).

[39] *See also* Complaint, at Sect. V(A)(8); Sect. VI(A)(7), p. 203.

[40] Complaint, at Attachment C, M. Giberson testimony, pp. 19-20.

[41] *See* Comments of the Public Utilities Commission of Ohio's Office of the Federal Energy Advocate, at p.10.

[42] *See* Comments of the Joint Consumer Advocates, at p. 4.

[43] *See* Comments of the Joint Consumer Advocates, at p. 5.

[44] Complaint, at pp. 89-91.

[45] Complaint, at Sect. V(A)(7)(a); Sect. VI(A)(7), pp. 202-203

[46] Complaint, at Sect. V(A)(9).

… to $1.7 billion for years 2008 through 2023….”[47] According to analysis by the Rocky Mountain Institute, “in PJM, spending on local projects … increased 26-fold from 2009 to 2023, … while spending on regional projects … stayed relatively flat….”[48]

New England has fared no better. Since March 2016, more than $4.6 billion of asset condition projects have been placed in service with another $5.8 billion proposed, planned or under construction. ISO-NE-identified reliability projects currently proposed, planned or under construction, by comparison, are estimated at $699 million. Thus, “approximately 87 percent of all transmission spending in New England will not be included in a regional planning process….”[49]

In MISO, transmission owner investment in Self-Planned Transmission (in years where MISO does not approve a multi-billion dollar long range transmission plan) dwarfs investment in regionally planned facilities. In its 2023 MTEP plan, two thirds of the $9 billion of investment in new facilities will be spent on transmission owner planned projects.[50]

SERTP has built more than 3,000 miles of new transmission between 2015 and 2020, upgraded 7,000 miles more, added $20 billion in new transmission investment between 2012-2021—Self-Planned Transmission all.[51] SERTP has not planned a single regional project since

[47] Complaint, at pp. 10-11, fn.22 (citing Monitoring Analytics, LLC, State of the Market Report for PJM 2023 at 721 (Mar. 14, 2024).

[48] Complaint, at Attachment C, M. Giberson testimony, p. 16; *see also* Sect. V(A)(2); Sect. VI(A)(4) (PJM local projects spending increased 26-fold from 2009 to 2023 while regional baseline project spending remained flat).

[49] *See* Comments of the New England States Committee on Electricity, at pp. 10, 21-22; *see also* Complaint, at Sect. V(A)(4); Sect. VI(A)(4) (ISO-NE local projects increased eightfold from 2016 to 2023).

[50] Complaint, at Sect. V(A)(3); *see also* Sect. VI(A)(4) (local projects increased from 54% of total spend in 2017 to 78% in 2022).

[51] *See also* Complaint, at Sect. V(A)(7)(b) (same for WestConnect), Sect. V(A)(10) (same for Northern Grid).

the requirement to participate in a regional planning process that develops a regional plan.[52] Independent analysts have studied the lack of planning in the Southeast and demonstrated that this regime has resulted in unjust, unreasonable and unduly discriminatory rates.[53]

Respondents argue that the Complainants cannot satisfy their burden except by establishing the unjustness and unreasonableness of rates on both a project by project and respondent by respondent basis.[54] That is incorrect. Section 206 applies equally to practices affecting rates. Planning tariffs are such practices. Critically, acceptance of Respondents' arguments would also mean that FERC, under a rulemaking pursuant to Section 206, wouldn't be able to dictate nationwide standards, like in Orders Nos. 890, 1000, 1920. Further, in *Cal. v. B.C. Power Exchange Corp.*,[55] a Section 206 complaint filed by the attorney general for the State of California alleged, among other things, that quarterly reports filed by power marketers violated section 205(c) of the FPA because they failed to contain transaction-specific information about their sales and purchases at market-based rates. The complaint drew objections from several respondents, including that it was procedurally defective for failure to "present any evidence of specific deficiencies in their particular quarterly reports,"[56] evidence like "what transactions are at issue, what time period the transactions took place, what

[52] Complaint, at Sect. V(A)(5).

[53] Complaint, at pp. 118-119; *see also* "Modernizing Southeast Grid Investments: How Enhanced Regional Transmission Planning Supports a Growing Economy," Brattle Group (Apr. 2, 2025), *available at* https://www.brattle.com/insights-events/publications/brattle-experts-highlight-the-need-to-modernize-southeast-regional-transmission-planning-in-a-new-report/ (last accessed Apr. 24, 2025).

[54] *See* Deseret/Golden Spread at 2, East Kentucky Power Cooperative at 2, PGE at 2, MATL LLP at 3, Idaho Power at 2, Puget Sound Energy at 2, Avista Corp. at 2, PacifiCorp at 4, Louisville Gas & Electric and Kentucky Utilities at 4, Ad Hoc WestConnect Enrolled TOs at n, 1, Northwestern Corporation at 8.

[55] 99 FERC ¶ 61,247 (May 31, 2002).

[56] *Cal. v. B.C. Power Exchange Corp.*, 99 FERC ¶ 61,247, at ¶ 62,058.

purchasers are paying for those transactions, and which sellers the complaint is targeting."[57] The Commission denied their motions on those grounds, finding that the complaint, which included a general description of the alleged noncompliant conduct at issue, supported by specific examples, was procedurally sufficient to put them on notice of the allegations against them:

> [W]e deny the motions to dismiss based on claims that the complaint fails to clearly state what transactions are at issue and does not specify allegations as to the conduct of specific parties. The complaint makes clear that it is challenging whether the Commission's market-based rate program legally satisfies the filing requirements of section 205(c) of the FPA. The complaint is also sufficiently clear that it challenges sellers' quarterly compliance with the Commission's reporting requirements when filing quarterly transaction reports. The Attorney General then identifies specific examples of what he alleges to be such violations of the reporting requirements. This level of detail suffices to put respondent on notice of the allegations against them.[58]

The Complaint, likewise, gives a detailed account of the nature of the problem, the conduct at issue, and the manner in which that conduct violates governing authorities and the Complainants support their claims with scores of illustrative examples.[59]

Respondents also argue that the Complainants have not established the requisite causal nexus between skyrocketing rates and the proliferation of local planning with sufficient facts.[60] In this regard, *Public Citizen, Inc. v. FERC*[61] is instructive. *Public Citizen* concerned a 2015 electrical capacity auction, at which the sale price was more than 40 times the price in neighboring regions and nine times the price for the same region from prior years.[62] Public

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[57] *Cal. v. B.C. Power Exchange Corp.*, 99 FERC ¶ 61,247, at ¶ 62,057.

[58] *Id.* at ¶ 62,061.

[59] Complaint, pp. 37-38, fn.90-92 (Xcel); Sect. V(A)(1) (California transmission owner self-planned transmission projects); Sect. V(A)(2) (PJM transmission owner self-planned transmission projects, including AEP, Exelon, Duke Energy, PSEG, First Energy and Dominion).

[60] *See, e.g.*, MTD and Answer of Northwestern Corporation, Sect. I(A), pp. 8-10; MTD and Answer to Complaint of Louisville Gas and Electric Company and Kentucky Utilities, p. 14; MTD and Answer to Complaint of PacifiCorp, p. 8; *cf.* Complaint at 9, 15, 29, 39, 60-61, 64-65, 177-180, 192, 222.

[61] *Public Citizen, Inc. v. FERC*, 7 F.4th 1177, =1182 (D.C. Cir. Aug. 6, 2021).

[62] *Pub. Citizen, Inc.*, 7 F.4th at 1182.

Citizen alleged the auction price was unjust and unreasonable as a consequence of the exercise of market manipulation. The Commission concluded that the complainants failed to carry their burden under Section 206,[63] noting that simply because a price is more than expected does not necessarily mean it is unjust and unreasonable.[64] On appeal, the United States Court of Appeals for the District of Columbia Circuit found that the record included evidence that the auction results were not just and reasonable and "that market power or manipulation *could have* affected the outcome," citing the extraordinary price differentials between the auction at issue and auctions in other zones, historical price differentials in the same zone, and the chronological link between the price spike and the respondent's acquisition of significant sources of electrical generation in the relevant zone.[65] The D.C. Circuit held that the record was sufficient to warrant the Commission's reasoned assessment of the evidence as a whole and remanded the case to the Commission for further analysis.[66] Like the complaint in *Public Citizen*, the Complainants here have assembled a compelling record which includes unprecedented increases in transmission owner Self-Planned Transmission projects, corresponding increases in the rates consumers pay, and a timeline which connects them.

The Commission has held that complaints which raise "significant questions," "serious doubts" or "material issues of fact" concerning whether a tariff is unjust, unreasonable, unduly discriminatory or preferential should survive a motion to dismiss.[67] This Complaint raises

[63] *Pub. Citizen, Inc.*, 7 F.4th at 1200.

[64] *Pub. Citizen, Inc.*, 7 F.4th at 1199.

[65] *Pub. Citizen, Inc.*, 7 F.4th at 1199 (emphasis added).

[66] *Pub. Citizen, Inc.*, 7 F.4th at 1200; *see also Del. Div. of Pub. Advocacy v. FERC*, 3F.4th 461 (D.C. Cir. Jul. 9, 2021) (Commission acts arbitrarily if it "fail[s] to consider an important aspect of the problem") (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[67] *Mich. Consolidated Gas Co. v. Panhandle Eastern Pipe Line Co.*, 24 FERC ¶ 61,155, at P 61,354 (July 29, 1983) (despite motion to dismiss for failure to state claim, hearing merited in light of significant

significant questions, meriting action by the Commission. Respondents' motions to dismiss should be denied.

The evidence presented in the Complaint, only a portion of which is recounted above, establishes that excess "local," Self-Planning results in transmission rates that are unjust and unreasonable and individual transmission owner local planning of transmission 100 kV and above results in unjust and unreasonable rates. The existing framework frustrates the Commission's ability to determine a just and reasonable rate because there is insufficient review to determine the appropriate project to address all needs of a region, a problem not remedied by an after-the-fact review of a project because that review affords no opportunity to determine whether there was a more efficient or cost-effective project from the outset. Having met their burden to present a prima facie case, Section 206 of the FPA obligates the Commission to act.

B. Because the Complaint Presents New Evidence and Changed Circumstances, the Complaint Is Not a Collateral Attack on Existing Commission Policy and Precedent on Any FERC Orders and Regulations, Including Order Nos. 2000, 890, 1000, and 1920.

As discussed herein, several parties raise concerns that the Complaint constitutes a collateral attack on existing Commission policies and precedent, including Order Nos. 890, 1000, 2000, and 1920. From the outset, Complainants emphasize that the Complaint's presentation of new evidence and cumulative evidence over the past several years, which was

questions concerning whether subject tariff is unjust and unreasonable); *see also N. Dak. v. N. Natural Gas Co.*, 24 FERC ¶ 61,166, at P 61,395 (August 1, 1983) ("Despite motion to dismiss for failure to allege sufficient facts, Commission set complaint for further investigation at hearing because complainant had raised material issues of fact; namely whether the provisions in the pipelines' tariffs were unjust and unreasonable."); *Mass. v. New England Power*, 27 FERC ¶ 61,029, at P 61,051 (April 5, 1984) ("The Commission ordered an investigation and hearing on a public complaint alleging imprudent passthrough of costs incurred during power outages. The question at this stage of the proceeding was not whether complainants stated sufficient facts to warrant rate relief, but whether the Commission should institute proceedings in order to examine matters raised. The complainants demonstrated 'serious doubts' about the issue raised sufficient threshold questions to initiate an investigation.").

not considered in prior Commission rulemaking proceedings, places the Complaint outside of the rule barring collateral attacks on prior orders.[68] The Complaint's new evidence includes, among other things, several project-specific cost details for individual transmission-owner self-planned projects in several planning regions throughout the United States.[69] The data supporting the proliferation of individual transmission owner project planning and associated expenditures, including recent reports on individual transmission owner project planning, was simply not available when the Commission issued Order Nos. 890, 1000, 2000, and much of the data and analyses were not available when the Commission developed the record in Docket No. RM21-17, which led to the issuance of Order No. 1920.[70] The Commission's proposed rulemaking Docket No. RM21-17-000, which resulted in the issuance of Order No. 1920 on May 13, 2024, had established a comment deadline of July 18, 2022 and a reply comment deadline of August 17, 2022.[71] Further, as addressed more fully herein, Order No. 1920 did not address the issues raised in the Complaint. The new evidence and changed circumstances consist of new analytical reports and evidence of both individual projects and cumulative regional transmission plans and portfolios across every planning region over several years.[72]

[68] *See Coal. of MISO Transmission Customers v. FERC*, 45 4.4th 1004, n. 5 (D.C. Cir. 2022) (citing *Blumenthal v. FERC*, 552 F.3d 875, 881, n. 2 (D.C. Cir. 2009).

[69] *See* Complaint at 67-177.

[70] Portland General Electric Company argues that Complainants did not present any new or changed circumstances since FERC's issuance of Order No. 1920. Motion to Dismiss and Answer of Portland General Electric Company ("PGE MTD") at 20. However, the Complaint tallied extensive data on projects from regions across the country.

[71] *See Federal Register*, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, 87 FR 26504, *available at* https://www.federalregister.gov/documents/2022/05/04/2022-08973/building-for-the-future-through-electric-regional-transmission-planning-and-cost-allocation-and (last accessed April 23, 2025).

[72] *See* Complaint at 6, 11 ("the *cumulative* effect of tariff provisions allowing Local Planning of transmission projects 100 kV and above results in unjust and unreasonable transmission rates"), 67-177.

1. Because the Commission Did Not Address Excessive "Local" Planning and Self-Planned Transmission in Order No. 1920, the Complaint is Not a Collateral Attack on Order No. 1920.

Parties seeking dismissal of the Complaint do not demonstrate that the Complaint seeks to "relitigate settled issues."[73] The Complaint demonstrated that Order No. 1920 and Order No. 1920-A did not directly address the Complaint's concerns regarding excess Local Planning that is controlled by the incumbent utility and not subjected to a holistic regional plan that delivers the most cost-effective, efficient solution.[74] Because "the Commission in the [Notice of Proposed Rulemaking ("NOPR") in Docket No. RM21-17] did not propose other changes to local transmission planning processes," the Commission explained that requests for the Commission to address local planning "are beyond the scope of this final rule."[75] Portland General Electric recognizes that Order No. 1920 "declin[ed] to promulgate additional regulations" on Local Planning issues raised by the Complaint.[76] Accordingly, the Commission in Order No. 1920 did not adjudicate or settle the fundamental issues at the root of the Complaint—self-planned transmission planning practices—especially given that Order No. 1920 did not make any substantive determinations on Local Planning practices, let alone conclude that individual transmission owner Self-Planning practices require no further

[73] *See* PGE MTD at 16; *see* Avista Motion to Dismiss and Answer at p. 9; *see* Idaho Power Motion to Dismiss and Answer at p. 39; Answer of Puget Sound Energy at 17; Motion to Dismiss and Answer of PacifiCorp at 13; WIRES Protest at 18; PJM Transmission Owners MTD at 48; NYISO Answer at 5.

[74] *See* Complaint at 63-67.

[75] Order No. 1920 at P 247; *see* Order No. 1920-A at PP 856-858 (determining not to address in other requests around Local Planning in response to rehearing requests of Order No. 1920).

[76] PGE MTD at 20.

reforms.[77] Instead, the Commission in Order No. 1920 determined that further requests to address "local" planning issues may be addressed in another proceeding in the future.[78]

The Commission's mere identification in Order No. 1920 of a lack of transparency in local planning[79] along with a requirement for enhanced transparency in compliance filing does not effectively address the core contention of the Complaint: FERC-jurisdictional tariffs "inappropriately authorize individual transmission owners to plan FERC-jurisdictional transmission facilities at 100 kilovolts ("kV") and above…without regard to whether such Self-Planning results in the more efficient or cost-effective transmission project for the interconnected transmission grid and cost-effective for electric consumers."[80] Importantly, in Order No. 1920-A, the Commission expressly noted that it did not address all facets of "local" planning issues, and explained that "[t]he **Commission will continue to consider potential additional local transmission planning reforms**, such as independent transmission monitors, **along with other transmission reforms in the future**."[81] After all, a federal agency "does not have to make progress on every front before it can make progress on any front."[82] Therefore,

[77] The Commission's decision to not "take a heavier hand in local transmission planning" in Order No. 1920 does not preclude the Commission from initiating stronger Local Planning reforms in response to this Complaint. *See* Motion to Dismiss of Indicated PJM Transmission Owners at 44.

[78] Order No. 1920 at P 247; *see* Order No. 1920-A at PP 856-858.

[79] *See* PGE MTD at 18-19 (citing Order No. 1920 at P 1636); *see* PJM MTDat 46; *see* Protest of MISO Transmission Owners ("MISO Transmission Owners") at 50-51; *see* MISO Answer at 20. MISO incorrectly claims that the Commission in Order No. 1920 "addressed a number of local transmission planning issues." *Id.* FERC did not.

[80] Complaint at 6.

[81] Order No. 1920-A at P 858. Contrary to the assertions of Puget Sound Energy, Complainants are not advancing this Complain using the same arguments and record from Docket No. RM21-17, and moreover, FERC did not render a comprehensive determination on "local" planning issues in Order No. 1920. *See* Puget Sound Energy Answer at 11.

[82] *Am. Fuel & Petrochemical Manufacturers v. Env't Prot. Agency*, 937 F.3d 559, 586 (D.C. Cir. 2019) (citing *Nat'l Mining Ass'n v. MSHA*, 116 F.3d 520, 549 (D.C. Cir. 1997)).

because the Commission expressly encouraged the regulated community to advance individual transmission owner Self-Planning reforms and did not render a comprehensive determination on all local planning issues,[83] the Complaint does not "wage[] illegal collateral attacks on Order Nos. 1920 and 1920-A"[84] and the Complaint is not "an impermissible Request for Rehearing of Order No. 1920."[85] Notably, because the record pertaining to local planning practices in the Complaint is newer and more extensive than the record in RM21-17-000 on local planning practices, the Complaint does not consist of repackaged arguments and evidence from Docket No. RM21-17-000[86] that attempt to "re-write Order Nos. 1920 and 1920-A."[87] Because the Complaint does not present the exact same issues, arguments, and evidence previously submitted to the Commission, the doctrines of issue preclusion and collateral estoppel do not apply.[88] Notably, because FERC maintains broad discretion to determine the scope of issues adjudicated

[83] *See* Idaho Power Motion to Dismiss and Answer at p. 41 (contending that the Commission remedied all unjust and unreasonable practices in Order No. 1920); *see also* ATC Protest at 2 (erroneously contending that "the entire question of the continued justness and reasonableness of local planning has been asked and answered").

[84] *See* PGE MTD at 15 (citing *ISO New Eng., Inc.*, 138 FERC ¶ 61,238 at P 17 (2012)). PGE argued that collateral attacks are "generally prohibited" but fails to show that the Complaint simply seeks to use prior evidence from a prior case to relitigate any issues. *See also* MATL LLP Motion to Dismiss and Answer at n. 21 (contending, without demonstration, that NV Energy showed the Complaint was a collateral attack); *see also* Motion to Dismiss and Answer of Southeast Companies at 23-24.

[85] *See* Motion to Dismiss and Answer of Louisville Gas & Electric Co. and Kentucky Utilities at 18; CAISO Answer at 23.

[86] *See* Motion to Dismiss and Answer of Louisville Gas & Electric Co. and Kentucky Utilities at 18, n. 66; WIRES Protest at 23-25.

[87] Motion to Dismiss and Protest of New York Transmission Owners ("NY Transmission Owners MTD") at 6.

[88] *See* NorthWestern Energy Motion to Dismiss and Answer at 14 (citing *Oregon v. Guzek*, 546 U.S. 517, 526 (2006); *see* Southwest Power Pool Answer at 10; *see* Motion to Dismiss and Answer of Indicated New England Transmission Owners (NETOs MTD") at 33. In *Guzek*, the Court explained that the parties had previously litigated the evidence as to whether the defendant at committed a particular crime. 546 U.S. at 426. Here, Complainants have not previously litigated before the Commission the precise issue concerning incumbent transmission owner control over local planning using the extensive evidence included in the Complaint.

during a rulemaking proceeding,[89] a party does not necessarily enjoy a clear right to appeal an issue from a rulemaking proceeding that the agency deemed to be out of scope.[90]

NV Energy quotes Order No. 1920 for the generic proposition regarding the importance of local and regional transmission planning processes serving essential and complementary roles to ensure customer needs are met at just and reasonable rates.[91] NV Energy asserts that the Complaint's recommended 100 kV threshold for regional planning would "eviscerate" the complementary relationship between local and regional planning.[92] However, the Complaint demonstrated that individual transmission owner Self-Planning practices are undermining regional planning.[93] The Complaint amply demonstrated that there is no "complementary relationship" between individual transmission owner Self-Planning and regional planning as transmission planning has been one or the other. The Complaint demonstrated that in the non-RTO/ISO regions there has been no regional planning. Meanwhile, the Answers of certain RTOs/ISOs demonstrate that they have almost no ability to review individual transmission

[89] *See Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 717 (D.C. Cir. 2000) ("Given that agencies 'enjoy broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures…and priorities,' we think FERC's refusal to promulgate a generic rule on this issue was entirely reasonable.") (quoting *Mobil Oil v. United Distrib. Cos.*, 498 U.S. 211, 230 (1990)); *see also Interstate Nat. Gas Ass'n of Am. v. FERC*, 285 F.3d 18, 57-58 (D.C. Cir. 2002).

[90] *See* MISO Transmission Owners at n. 151 (arguing that the appellate process for Order Nos. 1920 and 1920-A is the appropriate forum for raising the issues in the Complaint). Contrary to the assertion of the MISO Transmission Owners, an agency maintains authority to "limit the scope of their rulemaking and relegate ancillary issues to separate proceedings." *Children's Health Def. v. Fed. Commc'ns Comm'n*, 25 F.4th 1045, 1051 (D.C. Cir. 2022) (internal quotations omitted).

[91] *See* NV Energy Answer at 55 (citing Order No. 1920 at P 1570); *see* Avista Motion to Dismiss and Answer at p. 16; *see* Idaho Power Motion to Dismiss and Answer at p. 29, 38.

[92] NV Energy Answer at 55.

[93] *See* Complaint at 27-42, 67-180.

owner Self-Planned projects at the regional level.[94] In this regard, just like the fallacy that 100 kV and above transmission is "local" at all, the assertion of "complementary planning" between individual transmission owner Self-Planning and regional planning is a fallacy perpetuated by self-interested transmission owners.[95]

The Complaint's proposed 100 kV threshold can be easily incorporated into the existing regulatory framework, including Order No. 1920's reforms. The Complaint recognizes that merchant transmission projects and certain projects requiring an emergency rebuild and certain projects that would be classified as distribution facilities would not trigger the application of the brightline 100 kV threshold rule.[96]

The Complaint is not a collateral attack on FERC's adoption of the preference for right-sized replacement facilities or an impermissible challenge to a regulation via the Complaint.[97] The Complaint addresses the planning of future projects, not the entity that will build the planned project. The Complaint is focused on remedying the over-emphasis on individual transmission owner planning of transmission in interstate commerce at 100 kV and above. If the Commission agrees with Complainants and finds that existing tariff and jurisdictional agreement provisions allowing individual transmission owner planning of those facilities are unjust and unreasonable by preventing regional planning and selection of the most cost-effective and efficient regional

[94] *See* PJM MTD at 9-11 (asserting that nothing in the Consolidated Transmission Owners Agreement or PJM Operating Agreement grant PJM the authority "to conduct local planning"); *see also* ISO-New England MTD at 6-9.

[95] *See* Maine Office of Public Advocate Response to Motions to Dismiss at 3-4 (filed Apr. 23, 2025) (urging FERC "to find that existing transmission tariffs are unjust and unreasonable because they include **insufficient protections against self-interested decision making by transmission owning utilities with respect to transmission investment**") (emphasis added).

[96] *See* Complaint at 239.

[97] *See* NV Energy Answer at 8 (citing *Nat. Res. Def. Council v. U.S. Nuclear Reg. Comm'n*, 823 F.3d 641, 651 (D.C. Cir. 2016)); PJM Motion to Dismiss and Answer at 46.

projects, then the Commission can proceed to implement the appropriate replacement rate. The Complaint does not require any action by the Commission relating to the so-called "right-sizing" preference for existing transmission owners as the Complaint does not address which entity will build a regionally planned project, or if a regionally planned project will be built at all.[98]

In Order No. 1920, the Commission asserted its belief that "a federal right of first refusal will remove a disincentive for transmission providers to consider right-sizing in Long-Term Transmission Planning."[99] Citing to new evidence from the chief consumer advocate in the PJM region, the Complaint explained that allowing the right-sizing preference concept to persist without addressing the root planning issues of individual transmission owners planning the grid of tomorrow based on individual corporate interests will end up incentivizing incumbent transmission owners to place Self-Planned projects into regional plans in a way that reduces transparency and the cost-effectiveness for significant portions of the grid.[100]

2. The Complaint is Not a Collateral Attack on the Existing Administrative Docket in AD22-8, As the Commission Is Not Under Any Obligation to Take Further Action in That Administrative Docket.

NV Energy contends that the Complaint is "an end-run around the pending rulemaking in Docket No. AD22-8."[101] Similarly, Southwest Power Pool asserts that the Complaint is attempting to circumvent Docket No. AD22-8 and "the normal rulemaking process."[102] First,

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[98] *See* "Petition for Review of the Electricity Transmission Competition Coalition *et al*.," *Appalachian Voices et al. v. FERC*, Docket No. 24-1650 *et al.* (4th Cir.). Industrial Customers also appealed the Commission's determination on the right-sizing ROFR.

[99] Order No. 1920-A at P 811.

[100] *See* Complaint at 265 (citing "Consumer Perspective: FERC Order 1920 and PJM's compliance filing," G. Poulos, Consumer Advocates of the PJM States, *available at* https://www.nasuca.org/wp-content/uploads/2024/01/item-08-greg-poulos-caps-presentation.pdf (*last accessed* Apr. 23, 2025).

[101] *See* NV Energy Answer at 57.

[102] Southwest Power Pool Answer at 14-15; *see also* Protest and Motion to Dismiss of Southwest Power Pool Transmission Owner Group ("SPP Transmission Owners MTD") at 20-21.

Docket No. AD22-8 is an administrative docket used to manage hearings and technical proceedings, not a pending rulemaking. Second, the Commission is under no obligation to act in Docket No. AD22-8. The Commission may or may not issue a notice of proposed rulemaking in response to any determinations made in Docket No. AD22-8.[103] The Commission has not acted in Docket No. AD22-8 (Transmission Planning and Cost Management) since December 23, 2022 when the Commission invited post-technical conference comments to the October 6, 2022 technical conference. Contrary to the contentions of the New York System Operator, Inc. ("NYISO")[104] and Americans for Clean Energy Grid,[105] the fact the subject matter of an independent transmission planner has been raised as a topic of interest by the Commission in AD22-8 does not preclude a complainant from filing a Complaint recommending an independent transmission system planner as part of the replacement rate.

Further, Complainant's recommended replacement rate differs from the independent transmission monitor concept which focuses on managing and containing costs after project planning at the individual transmission owner or regional level. The Complaint proactively seeks to address the root issue around Local Planning and, instead of demanding that an additional entity be incorporated into the planning process, the Complaint envisions that the existing RTO/ISO could serve in the role of the Independent Transmission Planner ("ITP").[106] Even in non-RTO/ISO Order No. 1000 regions there are processes, supposedly in place today,

[103] For example, in Docket No. AD16-18 regarding a transmission development technical conference, the Commission did not take further formal action, such as a proposed rulemaking.

[104] *See* NYISO Answer at 5-7.

[105] *See* Comments of Americans for Clean Energy Grid at 3.

[106] *See* Complaint at 235-236 (anticipating that "certain RTO/ISO regions will be able to establish that the required independence is in place once the Self-Planning opportunities for 100 kV and above transmission facilities are removed from individual transmission owner tariffs").

for regional planning so the addition of an independent regional planner is not starting from scratch. To be clear, Complainants highly encourage that the Commission initiate further reforms on transmission planning and cost management in Docket No. AD22-8. Complainants submit that this Complaint proceeding is the appropriate forum, and a simple resolution, for addressing unjust and unreasonable "local" planning and Self-Planned Transmission that thwarts the selection of the most efficient, cost-effective transmission project in a regional plan for an interconnected grid – particularly an interconnected grid that electrically does not recognize the artificial "local" transmission designation.

3. The Complaint Demonstrates Changed Circumstances and Presents New Evidence After the Issuance of Order Nos. 890, 1000, and 2000 to Justify Redefining the Division of Authority Between Local and Regional Planning.

PJM contends that the Complaint is "a collateral attack on the division between regional and local planning processes in Order Nos. 890, 1000, and 2000."[107] Yet, PJM provides no legal support for the proposition that the division of authority between three different historic orders may be fused together to preclude the filing of a complaint contending that existing individual transmission owner Self-Planning processes are unjust, unreasonable, unduly discriminatory or preferential, especially given the presentation of evidence from the past 15-20 years and the demonstration that in today's interconnected grid there is no "local" transmission at 100 kV and above; instead the Complaint emphasizes that the relevant transmission is part of the Bulk Electric System providing national security and economic service to the country.[108] Order No.

[107] PJM MTD at 48; *see also* NYISO Answer at 4; MISO Transmission Owners at 6; Southwest Power Pool Answer at 4-6; *see* NETOs MTD at 18-20, 24; *see* MISO TO at 53-56; CAISO Answer at 22-23; WIRES Protest at 8, 17-19.

[108] *See* Complaint at 68-69 (citing Brattle 2023 Transmission Investment Analysis, *available at* https://www.brattle.com/wp-content/uploads/2023/07/Annual-US-Transmission-Investments-1996%E2%80%932023.pdf) (*last accessed* April 23, 2025); Complaint at 6, 67, 105, 197, 199 (citing

2000 was issued on December 20, 1999.[109] Order No. 890 was issued on February 16, 2007.[110] Order No. 1000 was issued on July 21, 2011.[111] Complainants recognize the historic importance of Order Nos. 2000, 890, and 1000, but submit that the Complaint has demonstrated changed circumstances and substantial evidence concerning the proliferation of costly individual transmission owner planned projects since the issuance of those FERC orders.

PJM explains that in Order No. 2000, FERC created *regional* transmission organizations, not "all" transmission organizations allowing an RTO to engage in all transmission planning.[112] The Complaint is not asking the Commission to require RTOs to engage in *all* transmission planning, such as intrastate transmission or facilities that are part of a Local Area Network.[113] The Complaint is asking the Commission to find that *regional* planning requires the imposition of a 100 kV threshold because that level of voltage has regional impacts unless demonstrated

RMI Report: Mind the Regulatory Gap, *available at* https://rmi.org/insight/mind-the-regulatory-gap) (*last accessed* April 23, 2025).

[109] *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285, FERC Stats. & Regs. ¶ 31,089 (1999) ("Order No. 2000"); *order on reh'g*, Order No. 2000-A, 90 FERC 61,201 (2000) ("Order No. 2000-A).

[110] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 at P 422, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 73 Fed. Reg. 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 Fed. Reg. 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 Fed. Reg. 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009) ("Order No. 890").

[111] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 at P 268, fn 244, *order on reh'g*, Order No. 1000-A, 77 Fed. Reg. 31134 (May 31, 2012), 139 FERC ¶ 61,132 ("Order No. 1000-A"), *order on reh'g*, Order No. 1000-B, 77 Fed. Reg. 64390 (oct. 24, 2012), 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S. C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) ("Order No. 1000").

[112] PJM MTD at 50. Order No. 2000 required that an RTO have "ultimate responsibility for *both transmission planning and* expansion within its region." Order No. 2000 at ¶ 62 (emphasis added).

[113] *See* Complaint at 216-221.

otherwise.[114] The Complaint does not ask FERC to take action with respect to projects at voltages lower than 100 kV, with respect to any intrastate transmission, or with respect to any higher voltage projects above 100 kV that may be properly classified as distribution under FERC's Seven Factor Test from Order No. 888.[115]

Contrary to PJM's assertion that the Complaint would "dismantle the division between local and regional,"[116] the Complaint would redefine and clarify the division between local and regional transmission, making an electrically relevant distinction rather than basing the distinction on which entity plans the transmission. In fact, as discussed more fully below, PJM's definition of Transmission Facilities demonstrates that the claimed division between local and regional transmission is a false one in the PJM region, as all Transmission Facilities in PJM have been found by PJM itself "to be integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region to serve all of the power and transmission customers within the PJM Region."[117] Thus, there are no "local" Transmission Facilities in PJM. **The Complaint asks that FERC recognize the fallacy of the continued assertion that there are such "local" transmission facilities.**

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[114] *See* Complaint at 207- 216 (evidence supporting 100 kV threshold for regional benefits), 221-222 (explaining FERC's recognition that facilities at 100 kV and above have regional benefits based on NERC's definition of Bulk Electric System); *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities*, 61 Fed. Reg. 21,540, at 21,546 (May 10, 1996)("Order No. 888"), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 62 Fed. Reg. 64688, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (Order No. 888).

[115] *See* Complaint at 216-221.

[116] PJM MTD at 50.

[117] *See* PJM Operating Agreement, Section 1, at https://agreements.pjm.com/oa/4539, (last accessed April 23, 2025).

PJM invokes the Order No. 890 rulemaking process to highlight FERC's prior response to stakeholder arguments contending that RTO processes are insufficient because they merely accept transmission owners' local plans.[118] But PJM and other transmission providers seeking dismissal of the Complaint overlook Order No. 890's fundamental determination that, because "opportunities for undue discrimination continue to exist *in areas where the pro forma OATT leaves transmission providers with substantial discretion,*"[119] – such as "local planning" – the Commission "cannot rely on the self-interest of transmission providers to expand the grid in a non-discriminatory manner."[120] As shown by the hundreds of projects listed in the Complaint, that remains true. Contrary to the PJM Transmission Owner's invocation of Order No. 890-A regarding the Commission's statement that it would "not be appropriate to allow customers and others that do not bear the responsibility for tariff compliance to have co-equal control over the planning process,"[121] the Complainants do not suggest that customers must have co-equal control over the planning process or that entities other than a regional planner, like potentially PJM, would fulfill the role of the independent transmission system planner of all facilities at 100 kV and above.[122] Likewise, contrary to the assertion of the Southeast Companies, the Complaint

[118] PJM MTD at 49; *see also* PJM Transmission Owners MTD at 41-42; *see also* Southeast Utilities MTD at 23-27.

[119] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 26 (emphasis added).

[120] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 422. The PJM Transmission Owners recognize the Commission's objective in Order No. 890 "to ensure that transmission plans are not developed in an unduly discriminatory manner." Motion to Dismiss of Indicated PJM Transmission Owners at 40 (quoting Order No. 890 at P 438).

[121] PJM Transmission Owners MTD at 41-42 (quoting Order No. 890-A at P 188). In Order No. 890-A, the Commission emphasized the importance of ensuring that the planning process provides for timely and meaningful input and participated of all interested customers and other stakeholders in the development of transmission plans. Order No. 890-A at P 188.

[122] *See* Complaint at 235-236.

is not seeking to "dictate what transmission facilities should be developed."[123] The Complaint seeks only to dictate HOW those preferred transmission facilities are chosen, by individual utilities based on investor motivated decisions, or holistically based on the fact that the transmission grid in each interconnection is a single electrical machine. The Complaint has shown, based on new evidence and changed circumstances, that the objectives of Order No. 890 – open, transparent, and **coordinated** planning – have not been fully realized due to unjust, unreasonable, unduly discriminatory, or preferential tariffs allowing individual transmission owner Self-Planning that prevent the development of the most cost-effective, efficient transmission solution for the interconnected grid.[124] Accordingly, arguments made during the Order No. 890 rulemaking process concerning the scope of individual transmission owner planning are not relevant today, given the breadth of new evidence and changed circumstances.

PJM, other transmission providers, and transmission owners/representatives, also contend that the Complaint impermissibly encroaches on the division of authority between local and regional planning that was established in Order No. 1000.[125] PJM also invokes *LSP Transmission v. FERC*, 45 F.4th 979 (D.C. Cir. 2022) ("*MISO Market Efficiency Project Appeal*") as support for maintaining "the industry's distinction" between local and regional projects "because local projects were carved out from the Commission's decision to eliminate right of first refusal for incumbent [Transmission Owners]."[126] PJM's reliance is misplaced as the references case did not involve Order No. 1000 complaince. Order No. 1000's distinction

[123] *See* Southeast Utilities MTD at 24.

[124] *See* Complaint at 53-54 (citing Order No. 890 at P 3).

[125] *See* PJM MTD at 49-50; WIRES Protest at 4, 17; SPP Answer at 6; Southeast Companies Answer at 35.

[126] PJM Motion to Dismiss and Answer at 50 (citing *LSP Transmission*, 45 F.4th at 993).

between "local" and "regional" was based exclusively on how costs were to be allocated for a particular project, not on the electrical nature of the project. As discussed elsewhere herein, this leads to double circuit 345 kV projects in PJM being regional such that 50% is allocated across all of PJM if planned by PJM, but if the same project is individually planned it would be allocated solely to a single transmission owner zone.[127] Again, the electric nature of the transmission is the same.

In addition to not being related to Order No, 1000 designations of local or regional, the MISO Market Efficiency Project Appeal was an appeal the Commission acceptance of a Section 205 filing, and thus has limited relationship to a Section 206 complaint. In the MISO Market Efficiency Project Appeal the Court affirmed the Commission's acceptance of MISO's Section 205 proposal to lower the threshold for Market Efficiency Projects from 345 kV to 230 kV.[128] The D.C. Circuit's affirmation of FERC's order was based on the Commission's passive role under Section 205, with the Court accepting the Commission's reliance on MISO's testimony supporting the Section 205 filing.[129] The D.C. Circuit's determination must be viewed in the context of the Court's limited review and affirmation of FERC's appealed orders. The D.C. Circuit did not review a comprehensive record concerning the appropriate industry standard voltage level for drawing the line between local and regional planning generally. In contrast, this Complaint advances substantial evidence for drawing the line between regional and local for planning purposes like for reliability, at 100 kV.[130] The Complaint would change nothing

[127] Complaint at 76 (referencing AEP's self-planned Sorenson-Desoto – Rebuild an approximately 51.1-mile transmission line using double circuit 345 kV and other work).

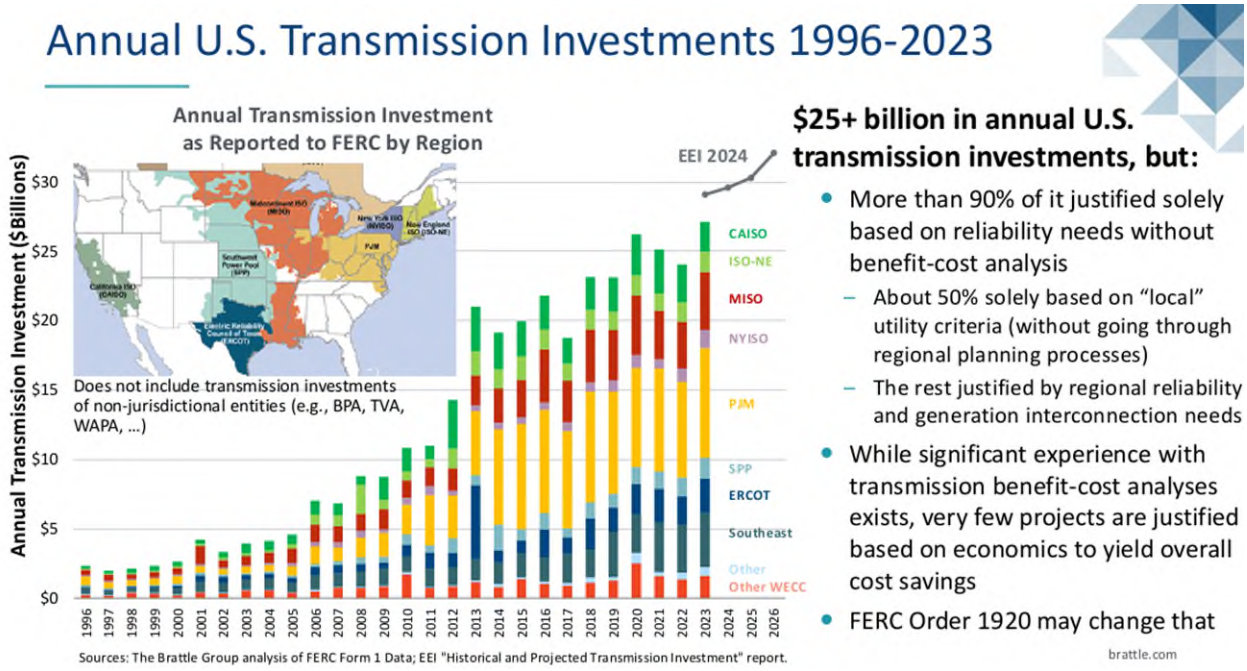
[128] *LSP Transmission*, 45 F.4th at 993.

[129] *LSP Transmission*, 45 F.4th at 993 (citing testimony of MISO Witness Moser).

[130] *See* Complaint at 207-216 (advancing evidence and argumentation that Congress and NERC have recognized that transmission facilities at or above 100 kV produce regional benefits).

regarding the project category or cost allocation methodology for MISO Market Efficiency Projects.

In contending that the Complaint failed to demonstrate changed circumstances and increases in "local planning," the MISO Transmission Owners argue the Complaint failed to provide any data prior to Order No. 1000.[131] The MISO Transmission Owners overlook the chart included in the Complaint regarding the U.S. transmission investment since 1996 and Brattle's conclusion that 90% of the investment was justified solely based on reliability needs and 50% was solely based on "local" utility criteria without going through the regional planning processes.[132]



It is telling that the MISO Transmission Owners and other transmission utilities and transmission providers do not directly respond to Brattle's data and analysis. Dismissal of the Complaint is

[131] *See* MISO Transmission Owners at 57-59.

[132] *See* https://www.brattle.com/wp-content/uploads/2023/07/Annual-US-Transmission-Investments-1996%E2%80%932023.pdf (*l*ast accessed Apr. 23, 2025).

not warranted. The Complaint has presented a concrete problem that the Commission needs to address.[133]

C. The Complainants Adhered to the Section 206 Complaint Regulatory Requirements in 18 CFR § 385.206.

The Complainants have met each required element under Rule 206.[134] The rule does not require perfect precision; substantial, good faith, compliance with Rule 206's requirements is the applicable standard.[135] The Complainants take up specific alleged deficiencies identified by Respondents in turn, below.

Rule 206(b)(1)

The Complaint identifies "the action or inaction … alleged to violate applicable statutory standards or regulatory requirements."[136] The action or inaction is the retention of individual transmission owners' ability to plan FERC-jurisdictional transmission facilities at 100 kV and above based on criteria they determine and with minimal oversight. As the Complaint demonstrates, the exercise of this largely unfettered discretion fails to select for the most efficient and cost-effective projects, resulting in consumers paying unjust and unreasonable rates. The applicable statutory standard or regulatory requirement is Section 206 of the FPA,[137] which obligates the Commission to ensure just and reasonable transmission rates. The Complaint, thus,

[133] *See* "Comments of RMI at 3 (urging timely Commission action to "rectify the uneven landscape that currently exists with respect to transmission project oversight").

[134] *See generally*, Complaint, at Sect. VII.

[135] *Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, Cal. v. Trans Bay Cable L.L.C.*, 146 FERC ¶ 61,100, at P 22 (Feb. 20, 2014).

[136] 18 C.F.R. § 206(b)(1).

[137] 16 U.S.C. § 824e.

identifies the applicable statutory standard or regulatory requirement as well as the specific tariff provisions which sanction the conduct alleged to violate those standards and requirements.[138]

Rule 206(b)(2)

The Complaint also explains the alleged violation.[139] The Commission has recognized regional transmission planning is essential to the Commission's ability to ensure just and reasonable rates.[140] When transmission owners individually plan transmission facilities at 100 kV and above—a threshold above which the Commission has recognized has regional impact—the Commission's ability to ensure just and reasonable transmission rates is undermined. The violation, then, is the failure of local planning to ensure (and, in fact, stand in the way of) just and reasonable rates.

Rule 206(b)(4)

The Complaint "make[s] a good faith effort to quantify the financial impact or burden (if any) created for the complainant[s] as a result of the alleged action or inaction."[141] The Complainants have shown staggering increases in transmission rates over the past decade, resulting in billions of dollars of individual transmission owner self-planned transmission, supported by myriad detailed and illustrative examples. The Commission has accepted complaints that have contained broad estimates of financial impact resulting from respondents'

[138] Complaint, at Attachment B (enumerating relevant local tariff provisions of FERC-jurisdictional RTOs/ISOs and individual FERC-jurisdictional public utility transmission owners that allow individual transmission owners to plan transmission facilities at 100 kV or above that they alone declare necessary, on criteria they alone set, notwithstanding the regional impacts of the planned transmission).

[139] 18 C.F.R. § 206(b)(2).

[140] Complaint, at p. 246, fn.1048.

[141] 18 C.F.R. § 206(b)(4).

violations of statutory standards or regulations,[142] particularly when the circumstances make more precise quantification difficult or impossible, as is the case here, where access to cost data for many transmission-owner planned projects is limited and such costs are often bundled into rates.

In the event the Commission finds the Complainants have failed to satisfy any of Rule 206's requirements, the Commission can waive such procedural deficiencies and should do so here, given the importance of, and the Commission's regulatory interest in, the substantive issues raised in the Complaint.[143]

D. None of the Respondents Should be Dismissed as Parties to the Complaint.

Many of the Motions to Dismiss present a variation on PJM's assertion that "the Complaint fundamentally misunderstands regional planning versus local planning."[144] Complainants, whose constituents pay billions of dollars in transmission charges a year (whether through specific transmission charges or bundled rates) and spend millions of dollars in employee and consultant time participating in the various regional and overlapping individual transmission owner planning processes, understand the separate planning processes and the motivation behind the engineered local-regional distinction. Indeed, it was thorough understanding of the hundreds of distinct planning processes and planning entities that are planning what is, in fact, a single transmission

[142] *See*, e.g., *Ass'n of Businesses Advocating Tariff Equity v. MISO*, 149 FERC ¶ 61,049, at P 182 (Oct. 16, 2014) (acknowledging that bundled rates render precise quantification more difficult and rejecting respondents' contention that specific harms to members must be more precisely quantified).

[143] *Indicated Shippers v. Trunkline Gas Co. LLC and ANR Pipeline Co.*, 105 FERC ¶ 61,394, at P 13 (Dec. 30, 2003) ("The respondents cite procedural deficiencies in the complaints consisting of a failure to quantify the economic impact of the issues raised…. The Commission has discretion whether to waive the requirements for complaints stated in its regulations. The Commission finds that, in this case, the Commission's regulatory interests in the issues raised in the complaints outweigh the procedural deficiencies cited by the pipelines. Therefore, it will waive the two cited requirements and will not dismiss the complaints.").

[144] PJM MTD at 6.

grid in each FERC-jurisdictional interconnection that facilitated concerns around ever-increasing transmission rates and spawned the filing of the Complaint. Simply put, the Complaint does not seek to change truly "local transmission," only Bulk Electric System that is regional in nature and part of interstate commerce. Thus, the "regional planning versus local planning" narrative is an artificial construction concocted to maintain the *status quo* around Self-Planned Transmission.

Because there is only Commission jurisdictional transmission in interstate commerce (*i.e.*, regional transmission) being planned and addressed by the Complaint, there should only be regional planning for that regional transmission. As demonstrated by the Complaint, basing the "division of responsibilities . . . on the driver (need) for the transmission facility and not the voltage at which the facility may operate"[145] is *prima facie* unjust and unreasonable in an integrated grid operating as a single machine. This is particularly true where the individual planning entities determine the supposed drivers. The "driver (need)" for future transmission grid changes is irrelevant to the jurisdictional nature of the transmission and how it should be planned from a just and reasonable rate perspective. The Complaint could have, and the Commission may ultimately decide to, extend the requirement for a single regional planner in each region to **all** Commission-jurisdictional transmission regardless of voltage. Nevertheless, the Complaint focused on the transmission voltage that the Commission has approved, at Congress' insistence and through a NERC-submitted set of rules, as representing the United States Bulk Electric System.

Stated differently, the 100 kV and above grid is an integrated single grid regardless of whether the transmission facilities making up that grid are owned by a single entity or 500 entities. To result in just and reasonable transmission rates, the future configuration of the Bulk Electric System must be planned as such regardless of how the claimed transmission "needs" impacting

[145] PJM MTD at 5.

that future arises. The two interconnections operate in a synchronous manner regardless of why the need for changes to the grid arise. When a utility in Northern Virginia changes the grid to accommodate a data center load pocket, the entire Eastern interconnection is impacted. When Xcel Energy adds a $2 billion, 500+ mile double circuit 345 kV transmission loop, the impact is not local but instead changes the entire Western interconnection. The Complaint identified hundreds of these regional-impacting projects planned and implemented by individual utilities. Each of these individually planned projects impact the entire interconnection, yet take no account of those impacts, other than possibly a "do no harm analysis." Even the "do no harm" analysis is a misnomer when the impact is billions of dollars in new transmission rate base foisted upon the Complainants (and their constituents) without a determination of the more efficient or cost-effective projects for the region as a whole, and if the individually planned project is even needed when the grid is reviewed holistically.

Individual transmission owner planning is a vestige of a century old grid that was minimally interconnected and does not reflect the integrated grid of today. The PJM Transmission Owners MTD presents this history as a badge of honor asserting "State utility laws and the FPA were enacted when utilities did almost 100 percent of transmission planning and the utilities did that planning for almost 100 years under the state and federal rubric."[146] As the United States Court of Appeals for the D.C. Circuit recognized in *South Carolina Public Service Authority* "the authority that Section 201(b) affords to the Commission has expanded over time because transmissions on the interconnected grids that have now developed 'constitute transmissions in interstate commerce.'"[147] The integrated grid of 2025 is not the grid of 1920. As outlined fully in

[146] PJM Transmission Owners MTD at 7.

[147] 762 F.3d at 63, *citing New York v FERC*, 535 U.S. at 7.

the Complaint, today's integrated grid carries with it the National security and economic security prospects of the nation. Although Commission Orders, such as Order No. 888 and the NERC related Bulk Electric System Orders, have recognized that the current transmission grid is a single interconnected machine that must be addressed as such, the Commission has allowed the Respondent transmission owners to maintain the false premise of "local" FERC-jurisdictional transmission and allowed individual transmission planning of regionally impactful transmission. The time has come for the Commission to exercise its reliability and consumer protection obligations to remove that fallacy of "local" FERC-jurisdictional transmission and with it the "local planning" of such transmission. Commission action is necessary to ensure that tomorrow's grid appropriately reflects the national security and economic interests of all regional energy users and the economic impact of the interconnected grid of today, not the piecemeal grid planning of last century.

1. Neither PJM Nor ISO-NE Should Be Dismissed Based On Transmission Owner Agreements.

Both PJM and ISO-NE ("Regional Planning Entities") sought dismissal, ostensibly on the same point: that they do not handle "local" planning under their Tariff so they should be dismissed.[148] This is precisely the point of the Complaint. Tariffs or jurisdictional agreements that allow regionally beneficial transmission at 100 kV or above to be planned by a single transmission owner for its own economic interests are unjust and unreasonable because they relegate the interests of the interconnected regional grid behind individual company interests. Likewise, the regional planning tariffs cannot be just and reasonable if they do not take into account **all** the transmission needs on the regional transmission grid and then determine the more

[148] ISO-NE MTD at 11; PJM MTD at 6.

efficient or cost-effective transmission to address those needs because **nearly all transmission above 100 kV is regional**.[149] The agreements PJM and ISO-NE rely on to seek dismissal are unjust, unreasonable, unduly discriminatory, or preferential as they restrict planning regional transmission facilities at the regional level while relegating that planning to individual transmission owners.

i. PJM Should Not Be Dismissed

Transmission Facilities are defined in PJM as:

> 'Transmission Facilities' shall mean facilities that: (i) are within the PJM Region; (ii) meet the definition of transmission facilities pursuant to FERC's Uniform System of Accounts or have been classified as transmission facilities in a ruling by FERC addressing such facilities; and (iii) have been *demonstrated to the satisfaction of the Office of the Interconnection to be integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region to serve all of the power and transmission customers within the PJM Region*.[150]

By this definition, PJM itself has determined that all Transmission Facilities under its operational control are regional as they are not only integrated with the PJM system but also "integrated into the planning and operation of the PJM Region **to serve all of the power and transmission customers within the PJM Region**." Notwithstanding this Tariff definition which does not distinguish Transmission Facilities as "local" or "regional," PJM and the PJM transmission owners seek to perpetuate the local transmission myth in PJM. PJM argues for its dismissal from the Complaint on the assertion that the existing PJM transmission owners "have reserved to

[149] The Complaint identified exceptions for facilities that are above 100 kV but not part of the bulk electric system or represent distribution facilities.

[150] *See* PJM Operating Agreement, Section 1, https://agreements.pjm.com/oa/4539 (emphasis added) (last accessed April 23, 2025).

themselves the right to plan to address local needs and have transferred the right to plan to address regional needs to PJM."[151]

PJM argues that it is not a proper party because "the [Consolidated Transmission Owner Agreement] CTOA governs the allocation of the regional and local planning rights and obligations as between PJM and the PJM Transmission Owners."[152] But **PJM is a party to the CTOA** and the justness and reasonableness of the CTOA provisions allowing individual PJM transmission owners to grant to themselves "**the right** to plan" future regional transmission that has been "integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region *to serve all of the power and transmission customers within the PJM Region*" is directly challenged by the Complaint. As a signatory to the CTOA, PJM is a proper party to the Complaint.

Far from offering a defense to the appropriateness of the two-tier planning system for what are all regional Transmission Facilities, PJM's Answer repeats what is wrong with the *status quo*. PJM acknowledges that notwithstanding a definition of Transmission Facilities that recognizes that such facilities "**serve all of the power and transmission customers within the PJM Region,**" PJM has a limited role in planning transmission for those future "power and transmission customer"[153] needs **if** an individual transmission owner choses to Self-Plan Transmission Facilities. Interesting, proving the premise of the Complaint, PJM does not argue that certain Transmission Facilities are exclusively local and others Transmission Facilities exclusively

[151] PJM MTD at 6.

[152] PJM MTD at 9.

[153] Definition of Transmission Facilities, *available at* https://agreements.pjm.com/oa/4539.

regional. Instead, the local/regional reference changes, not because the electric nature changes, but solely based on who plans the Transmission Facilities.

PJM argues that its role with respect to individual transmission owner planning of those regional Transmission Facilities is:

> limited to: (i) performing a "*do no harm study*" to determine if a PJM TO's proposed local project would have adverse reliability impacts on the PJM transmission system; (ii) analyzing whether a PJM-identified regional need would overlap with a PJM TO-identified local need, such that PJM *could recommend* a baseline (regional) project that may address both needs, avoiding duplication of transmission facilities; and (iii) conducting tasks necessary to *incorporate the PJM TOs' local projects into the RTEP*.[154]

It is an understanding of this process and PJM's relative impotence as it relates to individual transmission owner planning of regionally impactful Transmission Facilities that lead to the Complaint against the individual PJM transmission owners and PJM as well as every other jurisdictional transmission owner. While PJM may conduct a "do no harm" analysis, that analysis does not include doing no harm to consumers in PJM. In essence, PJM acknowledges what the Complainants allege but uses that as a justification for dismissal: "PJM's limited role in local planning does not justify its status as a formal respondent."[155] Because there are no "local" Transmission Facilities, PJM's "limited role" in planning future regional Transmission Facilities, and the justness, reasonableness, discriminatory or preferential provisions of PJM's Tariff, Operating Agreement, and the CTOA mandating that PJM limited role, warrant PJM's continued status as a Respondent to the Complaint. Because PJM's role is too limited and constrained, the Complaint proposes a replacement rate that would allow PJM to undertake more robust,

[154] PJM MTD at 12 (emphasis added).

[155] PJM MTD at 12.

independent, holistic regional transmission planning, assuming that it meets the proposed independence requirements.[156]

Based on its arguments addressed below, PJM may be arguing that it is not a proper party as it had no choice in entering into an agreement with transmission owners that removed its ability to plan all transmission projects that are "integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region to serve all of the power and transmission customers within the PJM Region." Regardless of the reason that the planning process allows individual transmission owner so-called "local" planning of Transmission Facilities to dictate the grid available to address the transmission needed tomorrow to "to serve all of the power and transmission customers within the PJM Region," the existing agreements and tariffs permitting that outcome are unjust, unreasonable, unduly discriminatory or preferential and PJM must stand to answer for its participation in such agreements or tariffs.

ii. ISO-NE Should Not Be Dismissed

Like PJM, ISO-NE seeks dismissal on the grounds that it does not handle individual transmission owner planning, the individual transmission owning members of ISO-NE plan such transmission additions. On this basis ISO-NE asserts that it should be dismissed "because it does not undertake local planning as it is defined in the Complaint in the New England footprint."[157] ISO-NE goes on to assert that it "has no material role in in planning a PTO's Local System Plans or asset condition projects, and it does not hold any ownership or pecuniary interest in the transmission assets in New England which are the subject of the Complaint."[158] Yet ISO-NE concedes that the ability for individual ISO-NE transmission owners to plan outside of the ISO-

[156] *See* Complaint at 234-237.

[157] ISO-NE MTD at 11.

[158] *Id.*

NE regional planning process is a function of provisions within the ISO-NE related Transmission Operating Agreement and reiterated in ISO-NE's OATT. The justness and reasonableness of the TOA's allocation of planning between individual transmission owners and regional planning is the focus of the Complaint. Because ISO-NE is a party to the TOA, ISO-NE is a proper party to the Complaint. Likewise, under the second step of the Section 206 analysis, implementing the appropriate replacement rate, ISO-NE is a necessary party as the appropriate replacement rate implicates both the ISO-NE TOA and its OATT.

In this regard, the instant proceeding is vastly different than the cases cited by ISO-NE. In *Mun. Elec. Utils. Ass'n of N.Y. v. Niagara Mohawk Power Corp.*,[159] NYISO was dismissed as a party because NYISO simply administered the section of the Tariff in which in which a disputed charge was described. Here ISO-NE is a signatory to the TOA that establishes its passive role with regard to individual transmission owner planning and Administrator of the Tariff that implements that passive role through limitations on regional planning, thus is an integral Respondent to the Complaint. Further, as distinguished from the *Niagara Mohawk* case, dismissal of ISO-NE will prejudice Complainants ability to obtain relief as ISO-NE has made no commitment to change its OATT based on the outcome of the case. Likewise, ISO-NE's relationship to a return on equity challenge related to the ISO-NE transmission owners is vastly different than a challenge to the justness and reasonableness of contractual and tariff provisions regarding individual transmission owner planning when ISO-NE is directly a party to the TOA. As such, ISO-NE reliance on *Coakley v. Bangor Hydro-Elec. Co.* is misplaced.[160]

[159] 148 FERC ¶ 61,175, at P 27 (2014)("*Niagara Mohawk*").

[160] 139 FERC ¶ 61,090, at P 23 (2012).

ISO-NE also asserts that the Complaint must be dismissed because the TOA's provision of the claimed "right" for individual transmission owners to plan billions in regionally impactful transmission ratebase additions outside the regional process is protected by *Mobile-Sierra* protection for contract provisions.[161] Specifically, ISO-NE asserts that Section 3.01 relating to transfer of physical control of transmission facilities is subject to *Mobile-Sierra* protection and thus cannot be amended without a public interest finding.[162] In making this argument, ISO-NE reiterates the entire point of the Complaint and the need for ISO-NE to remain a party in stating that granting the Complaint would mean "undoing these carefully crafted, regional arrangements for planning of the New England Transmission System . . .."[163] The Complaint lays out, and ISO-NE confirms, that for the largest portion of these regionally impactful projects, individual transmission owners make the decisions, with limited or no "regional" input.

If the Commission grants the Complaint, the findings that it is unjust and unreasonable for any individual transmission owners to retain planning rights for transmission facilities above 100 kV given the regional impact of that transmission, will easily meet the public interest standard. This is particularly true given that the TOA was not entitled to *Mobile-Sierra* Protection as a matter of law and was granted as a matter of Commission discretion.[164] While the Commission used its discretionary authority to grant *Mobile-Sierra* protection to Section 301, it did so on the premise that the provision "primarily affect the rights and interests of the Filing Parties."[165] The Complaint,

[161] ISO-NE MTD 13—15 *citing United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *see also Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash. v. Am. Elec. Power Serv. Corp.,* 100 FERC ¶ 61,296, at P 30 (2002).

[162] ISO-NE MTD at 14.

[163] ISO-NE MTD at 14.

[164] ISO New England Inc., 143 FERC ¶ 61,150 (2013) at PP 171-172.

[165] *ISO New England, Inc. et al.,* 109 FERC ¶ 61,147 (2004) at P 76.

and the supporting Comments of ISO-NE regulators and consumer interests, demonstrate that the provision does not "primarily affect" just the transmission owners and ISO-NE but harms consumers by allowing individual transmission owners, in ISO-NE and the rest of the country, to plan any regionally impactful transmission that they want, when they want, on the criteria they want, with what ISO-NE admits is no regional oversight.[166]

Finally, ISO-NE seeks dismissal arguing that the Complaint does not make a *prima facie* case against ISO-NE's Tariff. As just discussed, ISO-NE is a party to the TOA and acknowledges the impact of the TOA on ISO-NE's ability to oversee or override individual transmission owner planning of regionally impactful transmission. That alone warrants ISO-NE's continued participation in the Complaint proceeding. Beyond that, however, **the *prima facie* case against ISO-NE and every other Respondent is simple: transmission in interstate commerce at 100 kV and above is regional in nature.** There is no "local" transmission above 100 kV that is part of the Bulk Electric System and thus no 100 kV or above transmission in interstate commerce for which "local planning" is appropriate. Once that fundamental premise of electrical engineering and U.S. grid reality is accepted as true, the *prima facie* case is made. Then, the only question is the just and reasonable replacement rates to implement that electrical reality.

ISO-NE ignores the real focus of the Complaint to argue that "the sum of Complainants' allegations with respect to the ISO-NE Tariff are that stakeholders have one week to review transmission-owner prepared local planning presentations" and that Complainants receive limited information regarding the billions of dollars in interstate transmission planned at the individual

[166] In reviewing whether to maintain granted *Mobile-Sierra* protection for Section 3.09 related to a transmission owner self-granted preference, the Commission explained there also that it had initially granted *Mobile-Sierra* protection to the Section on the assumption that the provision "will have no adverse impact on third parties or the New England market." ISO New England, Inc., 143 FERC ¶ 61,150 (2013) at P 172. Finding that the provision did impact "third parties or the New England market" the Commission found that continuation of the preference was not in the public interest.

transmission owner level.[167] The Complaint is not about "transparency." All the transparency in the would does not address that the status quo allows multiple transmission owners to plan the regionally interconnected grid of tomorrow on an individual level. Lack of information is a symptom of the problem, like the fever that comes with the infection. The problem itself is that individual transmission owners are planning regionally impactful transmission at an individual corporate level. Just like masking the fever does not cure the infection, it does not matter the amount of information available for individual transmission owner planned transmission, the problem is not cured because Self-Planned Transmission continues.

iii. The Complaint does not concede that all practices in SPP are just, reasonable, and not unduly discriminatory or preferential.

The transmission owners within the Southwest Power Pool region argue that the "Complaint cites SPP's planning processes as a model to be followed, conceding that SPP's process already comports with their request for relief."[168] The SPP Transmission Owners misrepresent the Complaint. While the Complaint notes the regional planning in SPP, the Complaint is focused on individual transmission owner Self-Planning which still occurs in the SPP region. The Complaint challenges whether it is unjust, unreasonable, unduly discriminatory, or preferential for individual transmission owners in SPP, through Commission jurisdictional tariff provisions, to circumvent that regional planning process regarding regionally relevant transmission. As the Complaint specifically addressed, "some transmission owners maintain a local planning tariff."[169] The Complaint identified individual transmission planned projects planned by an affiliate of Xcel Energy at 115 kV that are the type of regionally relevant

[167] ISO-NE MTD at 16.

[168] SPP TO MTD at 15.

[169] Complaint at 122.

transmission facilities targeted by the Complaint. As is clear, the Complaint did not absolve the SPP Transmission Owners from the focus of the Complaint. Further, SPP remains a relevant party to the Complaint as the SPP regional planning process is implicated by retained transmission owner Self-Planning and by the requested relief.

2. Reliance By Multiple Parties On *Atlantic City Electric* Is Misplaced.

Numerous Motions to Dismiss, Answers, or Comments rely on *Atlantic City Electric Co. v. FERC*[170] as standing for the proposition that the Commission cannot grant the Complaint as it would interfere with a transmission owners' filing rights under Section 205 of the FPA.[171] For example, while PJM's incapacity related to individual transmission owner planning was contractual and planned, PJM argues that the Commission is equally incapable of addressing the practices affecting rates challenged in the Complaint.[172] The PJM Transmission Owners take it a step further and assert "the Commission has **no authority** to transfer the Transmission Owners' planning authority to a third party or prohibit Transmission Owners from planning transmission operating above 100 kV."[173] The Respondents misrepresent precedent and the Commission's authority as it relates to developing the grid of tomorrow.

i. *Atlantic City* Is Irrelevant To The Complaint.

PJM commences its argumentation by overreading *Atlantic City Electric Co. v. FERC*[174] and its relevance to the issues at hand. *Atlantic City* has no relevance to the instant proceeding.

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[170] 295 F.3d 1, 10 (D.C. Cir. 2002)("*Atlantic City*").

[171] *See* PJM MTD at 13; PJM TO MTD at 10; Motion to Dismiss And Protest of the New York Transmission Owners; EEI Comments at 32; NETO MTD at 64-66; Southeast Utilities MTD at 7, 51-55; CAISO Answer at 86.

[172] PJM MTD at 13-14.

[173] PJM Transmission Owners MTD at 9.

[174] 295 F.3d 1, 10 (D.C. Cir. 2002) ("*Atlantic City*").

This matter does not involve Section 205, it involves Section 206. As the Commission recently noted in *Emera Maine*,[175] "where FPA section 205 is intended for the benefit of the utility, [] FPA section 206 has a 'quite different' purpose of empowering the Commission to modify rates upon complaint or its own initiative, with 'entirely different' and 'stricter' procedures, such as the burden of proof and required two-step findings under FPA section 206."[176] It also does not involve existing assets, but rather what transmission is needed in the future. The question in *Atlantic City* was whether the Commission could mandate that parties to *a voluntary agreement* to form a regional transmission organization *with their existing transmission assets* give up the right to make filings under Section 205 that they had not agreed to give up related to rate filings on those existing assets. In evaluating a filing under FPA Section 205, the D.C. Circuit held that the Commission could not mandate the outcome that a utility cede filing authority related to the rates for existing facilities.[177] Regardless, none of that is relevant to the Commission's ruling on the Complaint under Section 206 of the FPA.

The issue here is not about a voluntary agreement to create a regional planning entity, like PJM in 1996, or any other RTO/ISO. In Order No. 1000, under Section 206, the Commission required the creation of planning regions. The only issue under the first prong of Section 206 is whether it is just and reasonable to allow individual transmission owner planning of ***future*** transmission 100 kV and above as that transmission is inherently regional. The Complaint challenges, under Section 206 of the FPA, existing rates or practice affecting rates that purport to allow existing transmission owners to plan that regionally impactful future transmission at the

[175] 854 F.3d at 24.

[176] Order No. 1920-B at P 53 FN 180.

[177] *Atlantic City*, 295 F.3d at 10.

individual transmission owner level and to the exclusion of regional planning. The Complaint does not involve Section 205 as the practices affecting rates and individual transmission owner planning tariffs and agreements are already in place.

PJM asserts that "Complainants have not adequately explained how local planning rights could simply be taken away from the PJM Transmission Owners and transferred to PJM without their consent, based solely on sweeping allegations."[178] Section 206 allows precisely that as the claimed "rights" were incorporated into FERC-jurisdictional tariff provisions and constitute a practice affecting rates subject to Section 206. The Complaint establishes that: (1) there is no "local" Commission jurisdictional transmission subject to the Complaint, and thus (2) no "right" for individual owners of existing transmission to dictate what the regional grid of tomorrow looks like based on their corporate interests of protecting their existing ratebase or existence.[179]

To fully understand the holding of *Atlantic City Electric* and why it has no application, one must first understand the setting of the case. *Atlantic City Electric* addressed a narrow issue, an effort by utility members of the Pennsylvania-New Jersey-Maryland Interconnection for Commission approval to create an Independent System Operator ("ISO") and the Commission's response thereto. In 1996, the utilities filed under Section 205 an open access tariff and several negotiated agreements that proposed to revise the prior power pool governance structure to put in place an ISO. In adjudicating their application, the Commission issued orders that, among other things, required that the joining owners "give up their rights to file changes in tariff rates, terms,

[178] PJM MTD at 14-15.

[179] PJM's MTD also assumes that the Complaint seeks to transfer the required regional planning to PJM. If PJM meets the requirements as an Independent Transmission Planner, then PJM could be the required regional planner, but that independence is not presumed by the Complainants and, as such, the Complaint does not seek to transfer anything to PJM.

and conditions under Section 205 of the Federal Power Act . . .."[180] Specifically, FERC required that the utilities delete a provision allowing them to "unilaterally file to make changes in rate design, terms or conditions of jurisdictional services," and instead required any such changes to be developed "in accordance with the governance process" approved by the Commission.[181]

The Court concluded that the Commission had exceeded its statutory authority in requiring the utilities to give up Section 205 rights regarding rates **when turning over operational control of existing assets** to PJM. Specifically, the Court held "[s]ection 205 of the Federal Power Act gives a utility the right to file rates and terms for services rendered with its assets."[182] The Court noted that "Section 205(d) provides that a public utility may file changes to rates, charges, classification, or service at any time upon 60 days' notice" and although "FERC can then review those changes under Section 205 and suspend them for a period of five months, . . . it can reject them only if it finds that the changes proposed by the public utility are not 'just and reasonable.'"[183]

This case does not involve a filing under Section 205, but instead a Complaint against existing practices directly affecting transmission rates. The *Atlantic City* Court confirmed that under FPA Section 206 "FERC must first prove that the existing rates or practices are 'unjust, unreasonable, unduly discriminatory or preferential' . . . [and] FERC has no power to force public utilities to file particular rates unless it first finds the existing filed rates unlawful."[184] Far from restricting the Complaint, *Atlantic City* reinforces that, if the Commission makes the first required finding under Section 206, it can demand that a just and reasonable replacement rate be filed.

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[180] *Atlantic City*, 295 F.3d at 3.

[181] *Id*. at 7.

[182] *Id*. at 9 (emphasis added).

[183] *Id.*

[184] *Id*. at 10.

Nothing about the precedent on how PJM was formed addresses the issues in the Complaint – whether the tariffs and agreements remain just and reasonable. The *Atlantic City* Court properly recognized that the Commission is held to a different standard when analyzing Section 205 submission than when it is evaluating whether an existing tariff or agreement is unjust, unreasonable, unduly discriminatory or preferential under Section 206. The Commission recently made this very finding in response to numerous rehearing requests related to Order No. 1920-B which invoked *Atlantic City* as prohibiting the Commission actions. In rejecting the argument that Section 205 hamstrung the Commission, the Commission noted that "as to existing, Commission-approved rates, the FPA separately assigns to the Commission under FPA section 206 the authority to review those rates of its own initiative or in response to a complaint."[185] Upon appropriate findings, the Commission—not the public utility—has the authority itself to determine and fix the replacement rate, including determining such rate through the use of compliance filings.[186] The Commission noted that "[a]rguments on rehearing attempting to conflate compliance filings under FPA section 206 with public utilities' filings under FPA section 205 because both are evaluated based on a just and reasonable standard, see, e.g., WIRES Rehearing Request at 14-15, incorrectly blur the lines between these two distinct statutory provisions."[187]

ii. Impact Of *Atlantic City* On Expanded Regional Planning

When read in context, *Atlantic City* establishes no judicially recognized restriction on the Commission's ability to dictate how **future** regionally impactful transmission facilities are planned for an integrated transmission grid, nor does the holding limit the Commission's ability under Section 206 to require exclusive regional planning, through an independent transmission planner,

[185] Order No. 1920-B at 56.
[186] *Id*. at 53.
[187] *Id*. FN 178.

for future transmission facilities 100 kV or greater. A key component of the *Atlantic City* holding is that the Court was evaluating Section 205 in the context of a utility turning over operational control of "its assets" to PJM. The Court reiterated that "Section 205 of the Federal Power Act gives a utility the right to file rates and terms for services rendered **with its assets**."[188] While Section 205 thus may protect a utility with respect to making rate filings, or even filings related to practices affecting those rates, for assets that it currently owns, *Atlantic City* makes no judicial declaration regarding the planning of yet to exist regionally impactful transmission facilities or limitations on the Commission's ability to restrict the manner in which those future facilities are planned by owners of existing transmission within an interconnected grid. There is simply nothing in the *Atlantic City* judicial analysis of Section 205 that suggests that Section 205 provides an existing utility a perpetual statutory right to dictate the planning for future regionally impactful transmission facilities and that the Commission is prohibited from addressing the manner in which such transmission is planned. There is not a federal transmission franchise under the Federal Power Act, and Section 205 does not empower the creation of a federal monopoly franchise.

PJM nevertheless asserts that *Atlantic City* "held that the PJM Transmission Owners cannot be stripped of the rights *granted to them by Congress*—here, their rights to local planning decisions."[189] Congress granted no "local planning" rights, as the entire concept of "local transmission" is an artificial construct. Congress created merely a right to file for rates for transmission in interstate commerce. The fact that the transmission was not "local" was the reason Congress had to get involved at all, and it certain did not grant local planning rights. Congress recognized the regional nature of the grid and its impact on America's security and economy in

[188] *Atlantic City*, 295 F.3d at 8.

[189] PJM MTD at 18 (emphasis added).

requiring that FERC establish applicable reliability standards, developed by an electric reliability organization and approved by the Commission.[190] The Complaint is built upon those actual Congressional declarations, not claimed declarations built on a fallacy.

Because there is no statutorily recognized federal franchise for transmission in interstate commerce[191] there is also no Congressionally granted Federal Power Act **right**, under Section 205 or any other provision, of an existing public utility to dictate the terms of its continued ownership of future transmission through forced Commission acceptance of individual owner investment decisions to perpetuate last century's transmission grid. As it relates to future transmission facilities, *Atlantic City* stands only for a utility's limited Section 205 right to determine when "its assets" are no longer used and useful. The Complaint does not challenge that right or interfere with such declarations. *Atlantic City* does not address whether Section 205 grants a perpetual right to have assets. The tariff provisions challenged effectively operate as such an unauthorized federal franchise by allowing individual owners of existing transmission assets to dictate what future transmission in interstate commerce can be built. Thus, from the perspective of judicial precedent limiting Commission jurisdiction to mandate independent regional planning above a voltage threshold, *Atlantic City* does not evidence a prohibition on the Commission determining under Section 206 the terms of planning for future transmission facilities related to the transmission of electricity in interstate commerce, even if that future transmission includes addressing needs arising from the retirement of existing transmission assets.

The Commission has in fact addressed, under Section 206, planning for regional transmission through multiple orders but has never addressed directly the issue raised in the

[190] Complaint at 41, 207, 208.

[191] *Is the Utility Transmission Syndicate Forever?*, Ari Peskoe, Energy Law Journal, Vol. 42:1 at 1.

Complaint. The Complaint addresses what have become unjust, unreasonable, unduly discriminatory or preferential tariff provisions that are in place under those past orders, but have never specifically been addressed in a Section 206 proceeding: given the interconnected nature of the current transmission grid, whether it is just, reasonable, non-discriminatory or non-preferential for an individual transmission owner tariff to allow that individual transmission owner to plan future transmission in interstate commerce. Those individual tariff provisions are built on the fallacy that the "need" for future transmission determines the nature of the transmission, when the transmission's nature is dictated by the interconnected nature of the grid. The "need" for future transmission is irrelevant to the nature of that transmission. Because, transmission in interstate commerce that is part of the Bulk Electric System cannot be both "local" and regional, the logic behind the various motions to dismiss falls apart.

In rejecting FERC's directives, the *Atlantic City* Court held, "FERC cannot point to any statute giving it authority for its unprecedented decision to require the utility petitioners to cede rights expressly given them in [S]ection 205 of the Federal Power Act."[192] With respect to planning for future transmission, no such claim can be made as it is the existing utilities and regional planning entities that can point to no "rights expressly given them in . . . the Federal Power Act" related to individually planning future transmission facilities that impact the interconnected "near nationwide in scope"[193] grid.

From a pure statutory perspective, there is no question regarding FERC jurisdiction to regulate planning for transmission in interstate commerce as 16 U.S. Code § 824 clearly dictates that there shall be federal regulation of transmission in interstate commerce:

[192] *Id.* at 9.

[193] *AEU*, 82 F.4th at 1102.

> It is declared that the business of transmitting and selling electric energy for ultimate distribution to the public *is affected with a public interest*, and that Federal regulation of matters relating to . . . that part of such business which consists of the transmission of electric energy in interstate commerce . . . *is necessary in the public interest*, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States. [emphasis added]

The distinction between electricity transmission in interstate commerce (Commission jurisdictional) and electric retail distribution (state jurisdictional) is why the Complaint focuses on 100 kV as the primary fixed point of demarcation for mandated regional planning, because FERC, through NERC, has declared that transmission facilities 100 kV and above (with limited exceptions) are part of the integrated Bulk Electric System critical to America's economy and national security.

In *South Carolina Public Service Authority v. FERC*,[194] the D.C. Circuit Court addressed arguments that the Commission had violated *Atlantic City* by requiring regional planning for future projects, with the incumbent transmission owners arguing that the Commission was restricted under Section 206 to existing relationships and that transmission planning addressed future relationships. The Court rejected those arguments noting that Section 206 applies to rates "and practices" affecting rates.[195] The Court went on to address regional planning as a practice affecting rates that the Commission could address under Section 206. This focus on Section 206 is relevant because the Court in *Atlantic City Electric* specifically identified that whatever limitations the Commission may be under with respect to limiting a utility's use of Section 205, the Commission faces no such hurdles with respect to Section 206 if it is established that the existing rate is unjust

[194] 762 F.3d 41, 56 (D.C. Cir. 2014).

[195] *Id.*

and unreasonable.[196] Therefore, the Commission need only establish that existing planning tariffs or agreements allowing individual transmission owner planning for transmission above 100 kV are unjust, unreasonable, unduly discriminatory, or preferential to require revised rules.

3. PJM's Reliance On Additional Precedent On PJM's Limited Role Over Regionally Impactful Individually Planned Transmission Is Misplaced As That Precedent Has No Impact On The Relief Requested In The Complaint.

Like its reliance on *Atlantic City*, PJM's reliance on more recent Commission rulings on PJM planning disputes as grounds for dismissal is misplaced. As PJM notes, the cited decisions were based on the provisions of the CTOA and retained Tariff authority as between PJM and the PJM Transmission Owners. The precedent was not in the context of a direct challenge under Section 206 as to whether the individual transmission owner asserted authority to individually plan regionally impactful transmission was just and reasonable. When PJM states that "PJM has no planning or approval role beyond including [individually planned] projects in the RTEP" PJM is merely stating the reason for the Complaint, not a defense to it.

Both the Attachment M-3 Order[197] and the cases related to planning beyond the end of life for existing assets[198] related to what the existing transmission owners and PJM (or PJM at the direction of its members) could respectively file under Section 205. The Complaint does not dispute that the transmission owners, in creating PJM, relegated "regional needs" subject to PJM planning to a small subset of issues that impact the Transmission Facilities "integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region

[196] 295 F.3d at 9-10.

[197] *PJM Interconnection L.L.C.*, 172 FERC ¶ 61,136 (2020).

[198] *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,242 (2020).

to serve all of the power and transmission customers within the PJM Region."[199] The Complaint demonstrates that no transmission owner, whether in PJM or anywhere else in the country, should be permitted tariff provisions or contractual provisions that allow it to individually and monopolistically plan regionally impactful transmission that is part of the Bulk Electric System at 100 kV and above. Simply regurgitating what PJM agreed to in 1996, and subsequent Section 205 filings consistent with that agreement, fails to respond to the Complaint's assertion that it is unjust, unreasonable, unduly discriminatory or preferential for individual transmission owners to be permitted by tariffs or agreements to plan regionally impactful transmission "integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region to serve all of the power and transmission customers within the PJM Region."[200] PJM's own definition of Transmission Facilities supports the Complaint's point that "local transmission" is a transmission-owner-created fallacy that has no engineering or statutory support.

4. Sections 201, 202, or 217 Of The Federal Power Act Do Not Warrant Dismissal.

The *South Carolina Public Service Authority* Court also rejected the assertion that Section 201 prohibited the Commission from requiring regional planning because the requirement for regional planning "infringes on the States' traditional regulation of transmission planning, siting, and construction, violating the federalism principle recognized in Section 201(a)."[201] The Court found that there was no infringement on areas reserved to the states as the "orders neither require facility construction nor allow a party to build without securing necessary state approvals."[202] The

[199] *See* PJM Glossary, Definition of *Transmission Facilities*, *available at* https://www.pjm.com/Glossary.aspx (last accessed Apr. 23, 2025).

[200] *Id.*

[201] 762 F.3d at 62.

[202] *Id.*

South Carolina Public Service Authority Court cited as important to addressing regional planning the holding of the United States Supreme Court in *New York v. FERC*.[203] In that case, addressing challenges to Order No. 888, the Court held that "the Commission possesses greater authority over electricity transmission than it does over sales."[204]

The *South Carolina Public Service Authority* Court also noted that "the authority that Section 201(b) affords to the Commission **has expanded over time** because transmissions on the interconnected grids that have now developed 'constitute transmissions in interstate commerce.'"[205] The Supreme Court made it clear in *New York v. FERC* that the Commission had broad transmission authority and that its authority regarding transmission was so broad it included retail transmission because:

> [t]here is no language in the statute limiting FERC's transmission jurisdiction to the wholesale market, although the statute does limit FERC's sale jurisdiction to that at wholesale. . . . Because the FPA authorizes FERC's jurisdiction over interstate transmissions, without regard to whether the transmissions are sold to a reseller or directly to a consumer, FERC's exercise of this power is valid.[206]

Again, "almost all electricity flows not through 'the local power networks of the past,' but instead through an interconnected 'grid' of near-nationwide scope."[207]

In *South Carolina Public Service Authority,* the Court rejected the argument of existing transmission owners and others that the Commission had no authority to order regional planning under Section 202 of the Federal Power Act, 16 U.S. § 824a. The petitioners had challenged the

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[203] *New York v.* FERC, 535 U.S. 1, 122 S. Ct. 1012 (2002).

[204] 762 F.3d at 63, *citing New York v FERC*, 535 U.S. at 17.

[205] 762 F.3d at 63, *citing New York v FERC*, 535 U.S. at 7 (emphasis added); see also EEI at 8 (noting the fundamental changes in the electric industry, including the interconnected nature of the grid).

[206] *New York v FERC*, 535 U.S. at 17-20.

[207] *Advanced Energy United, Inc. v. FERC*, 82 F.4th 1095 (D.C. Cir. 2023) citing Elec. Power Supply Ass'n, 577 U.S. at 267.

Commission's conclusion that "'[t]he planning of new transmission facilities occurs before they can be interconnected,' and thus 'any transmission planning relevant to [new transmission] facilities occurs prior to those matters that [Section 202(a)] mandates be voluntary.'"[208] The Court concluded that "Section 202(a) is silent regarding the Commission's authority with respect to preoperational planning designed as a remedy to practices affecting rates that are unjust, unreasonable, or unduly discriminatory or preferential; that authority is addressed in Section 206."[209] Accordingly, Section 202 was not a prohibition on revised preoperational planning requirements.

Finally, notwithstanding the assertions of certain Respondents,[210] Section 217 of the Federal Power Act does not bar the Complaint as the Complaint addresses FERC-jurisdictional agreements or tariffs. The PJM Transmission Owners MTD argues that section (e) of Section 217 essentially allows utilities to do whatever they want with regard to transmission planning in the name of fulfilling state-imposed load serving obligations.[211] As is typical, the transmission owners overstate the restrictions on the Commission's statutory authority.

Section 217(b) "Meeting Service Obligations" makes in clear in subsection (4) that

> **The Commission shall exercise the authority of the Commission under this chapter** in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.[212]

[208] Order No. 1000-A at P 125.

[209] 762 F.3d at 60.

[210] *See, e.g.*, PJM Transmission Owners MTD at 20.

[211] PJM Transmission Owners MTD at 21.

[212] 16 U.S. Code § 824q (Native Load Service Obligations) (emphasis added).

The consumer-focused Complaint asks for exactly that – **the Commission** to "exercise the authority of the Commission under this chapter in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities" on a regional basis, consistent with the regional nature of the interconnected grid.[213] The Respondents offer no demonstration that all the Respondents, are "load-serving entities" or that they have an "obligation under State or local law to **build** transmission"[214] such that granting the Complaint would constitute the Commission "reliv[ing]" that state or locally imposed obligation. Critically, substantial amounts of transmission owner-initiated transmission has been built by stand-alone transmission companies ("transcos") with no retail service or load-serving obligation. Finding tariff provisions or Commission jurisdiction agreement provisions to be unjust, unreasonable, unduly discriminatory or preferential when they allow individual transmission owners to determine, on a transmission owner by transmission owner basis, the grid of tomorrow, does not on its face violate Section 217(e). If the Commission grants the Complaint in the compliance phase with the filing under Section 206 of the replacement rate, individual load-serving entities are free to address their particular claims with the Commission. Simply prohibiting individual transmission owner planning of regionally impactful transmission in interstate commerce at 100 kV and above has not been shown to interfere with native load service obligations under state or local law.

5. The Southeast Utilities Should Not Be Dismissed.

Many of the Southeast Utilities arguments have been addressed above, or as it related to the "takings" argument, below. The Southeast Utilities complain that the Complaint is deficient

[213] *Id.*
[214] *Id.*

because it "seeks to treat the Southeast the same as other regions in the country."[215] As it relates to the primary question in the Complaint, the Southeast Utilities are exactly the same as other regions of the country in that transmission 100 kV and above, unless a local area network, is part of the interconnected grid. As the DC Circuit recently held in relation to many of the Southeast Utilities own SEEM proposal, "almost all electricity flows, not through the 'local power networks of the past,' but instead through an interconnected 'grid' of near-nationwide scope."[216] Despite this, the Southeast Utilities seek to represent that they are different.

As to the critical question of the Complaint, the Southeast Utilities have identified no relevant difference that makes the grid in the Southeast not part of an interconnected grid but instead a series of individual utility grids. The Complaint demonstrated that when Winter Storm Uri roared though the Southeast, the impacts on the interconnected grid were felt all the way to New England.[217] The grid of the Southeast Utilities, like the rest of the Eastern interconnection and separately the Western interconnection, is part of a single electric machine and is not different in a manner that warrants different treatment.

The above is true notwithstanding that many of the Southeast Utilities are required to file integrated resource plans. As the Southeast Utilities MTD acknowledges, "IRPs focus on generation needs" and only "discuss" transmission.[218] And while the Southeast Utilities assert that the justness of transmission rates resulting from the individual utility planning are "regulated by

[215] Southeast Utilities MTD at 2.

[216] *Advanced Energy United, Inc. v. FERC*, 82 F.4th 1095, 1102 (D.C. Cir. 2023) *citing Elec. Power Supply Ass'n*, 577 U.S. at 267.

[217] Complaint at 51.

[218] Southeast Utilities MTD at 8.

state commissions through review and approval of bundled retail rates"[219] the Commission has the exclusive jurisdiction over those rates and cannot delegate that obligation.

6. Requests to hold the Complaint in Abeyance should be denied.

ISO-NE and others argue that the Complaint should be held in abeyance pending appellate review of Order 1920. As noted in the Complaint, the Commission specifically held that issues related to individual transmission owner planning of facilities at 100 kV and above were outside the scope of RM21-17-000. Indeed, ISO-NE acknowledges that "the Commission did not incorporate these proposed changes into Order No. 1920 or Order No. 1920-A." As such, there are no issues being addressed in the petitions for review related to the claims in the Complaint and no reason for delay in addressing the issues raised. ISO-NE is simply wrong in asserting that "[t]he issues identified in the Complaint *are before the Fourth Circuit*, and the Court's decision could affect the need for the present proceeding."[220] NYISO is equally misplaced in asserting that "the Commission has already taken actions that respond to some of Complainants' stated concerns."[221] The Complaint was brought because the Commission specifically refused, as outside the scope of the proceeding, to address the concerns raised.

ISO-NE also asserts that the issues raised in the Complaint remain part of an active Docket, AD22-8-000. Without disputing whether that Docket is "active," as an Administrative Docket, AD22-8-000 the Commission is not poised to take any action on the issued raised in the Complaint. All AD22-8-000 did was solidify the very real difference between consumers who want an end to unchecked individual planning, and the transmission owners and their surrogates

[219] *Id*. at 3.

[220] ISO-NE MTD at 20-21.

[221] NYISO Answer at 5. Nothing in the Complaint "relitigates" issues that the Commission determined were outside the scope of the proceeding and thus which the Commission did not "litigate" in the first instance.

(including RTOs and ISOs) who want the *status quo* to remain in place. In fact, many of the Respondents in this case filed comments in AD22-8-000 arguing that the Commission should do nothing in that Docket as everything was just fine. While AD22-8-000 addressed a multitude of issues, the Complaint, although nation-wide, is discrete: is 100 kV and above transmission in interstate commerce regional and not local, and thus improper for individual transmission owner planning?

E. The Complaint Should Not Be Dismissed Due to Failure to Serve or Name Certain Parties of Interest.

The Complainants have satisfied or substantially complied[222] with their Rule 206(c)[223] obligations. The Complainants described the respondents whose interests may be affected by the relief requested by category as follows: (1) all FERC-jurisdictional public utility transmission providers with local planning tariffs and the regional transmission organizations and independent system operators (RTOs/ISOs) to which they may be members, and (2) all FERC-jurisdictional public utility transmission owners not members of a FERC-jurisdictional RTO/ISO. The Complainants also endeavored to identify all individual respondents who fit the description of either category as well as any others they "reasonably [knew] may be expected to be affected by the Complaint" by name.[224] Complainants reviewed FERC-jurisdictional transmission providers as well as transmission planning regions and tariffs, and endeavored to include all of the FERC-jurisdictional transmission providers as respondents and Complainants also served the Complaint "on FERC-jurisdictional transmission owners within RTOs and ISOs,

[222] Substantial, good faith compliance with Rule 206's requirements is the applicable standard. *Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, Cal. v. Trans Bay Cable L.L.C.*, 146 FERC ¶ 61,100, at P 22 (Feb. 20, 2014).

[223] *See* 18 CFR § 385.206(c) (2006).

[224] *See* Rule 206(c) (respondents, affected regulatory agencies and "others the complainant *reasonably knows* may be expected to be affected by the complaint" entitled to service) (emphasis added).

given that existing RTO/ISO tariffs empower self-interested Local Planning by those transmission owners."[225] Attachment D to the Complaint includes a comprehensive list of persons served by the Complaint based on information available on the Commission's List of Corporate Officials[226] and other publicly available information. Complainants expressly noted that any omission of an interested, FERC-jurisdictional transmission-owning entity is inadvertent.[227]

In addition, the Commission issued a notice[228] of the Complaint pursuant to Rule 206(d) and posted a link[229] to the Complaint on its website.[230] "This procedure provides all interested parties notice that a complaint has been filed and provides them an opportunity to respond."[231]

[225] Complaint at 6, FN. 4.

[226] *See* https://www.ferc.gov/electric-matters (*last accessed* Apr. 23, 2025). Complainants note that the list of corporate officials on FERC's website for certain utilities may not be current. For example, Complainants had observed differences between ATC's corporate leadership listed on ATC's website and the ATC Corporate Officials listed on FERC's website. *See* https://www.atcllc.com/leadership/ (last accessed Apr. 23, 2025).

[227] Complaint at 25-27, FN. 48.

[228] *See* Combined Notice of Filings #1, Accession No. 20241220-3078, issued Dec. 20, 2024.

[229] *See* https://www.ferc.gov/enforcement-legal/legal/complaints/pending-complaints (last accessed April 23, 2025).

[230] *Seminole Elec. Coop., Inc. and Fla. Mun. Power Agency v. Fla. Power Corp.*, 147 FERC ¶ 61,236, at P 15 (Jun. 19, 2014) (noting that "the Commission issued a notice of the complaint, and such notice was published in the Federal Register" in connection with denying motion to dismiss on service defect grounds); *Borough of Chambersburg, Pa. v. PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,219, at P 58 (Nov. 22, 2006) (same).

[231] *La. Power & Light Co.*, 50 FERC ¶ 61,040 (Jan. 22, 1990); *see also* Complaint Procedures, Order on Rehearing and Clarification, 88 FERC ¶ 61,114, Order No. 602-A, at pp. 12-14 (Jul. 28, 1999) (establishing procedures for posting complaint information on the Commission's homepage to provide complaint information to "potentially affected parties").

No party alleging failures to serve or name certain parties or respondents of interest as grounds to dismiss the Complaint[232] has alleged it has suffered any prejudice.[233] To the contrary, they filed responsive pleadings to the Complaint, taking advantage of the Commission's extension of the deadline[234] to make those filings.

"[U]nder Rule 206(c), failure to serve does not necessarily require dismissal of a complaint,"[235] and the Commission has declined to dismiss complaints on this basis.[236] In *Seminole Elec. Coop., Inc. and Fla. Mun. Power Agency v. Fla. Power Corp.*,[237] the Commission refused to dismiss the complaint, noting that the party raising the defective service issue did not demonstrate any prejudice as a result of Complainants' failure to serve the state commission, and, in any event, that FERC issued a notice of the complaint which was published in the Federal Register.[238]

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[232] See, e.g., Motion To Dismiss And Answer Of The Ad Hoc Westconnect Enrolled Transmission Owners ("WestConnect Transmission Owners MTD") at 25-26.

[233] *Seminole Elec. Coop., Inc. and Fla. Mun. Power Agency v. Fla. Power Corp.*, 147 FERC ¶ 61,236, at P 15 (Jun. 19, 2014) (noting "Florida Power has not demonstrated that it has suffered any prejudice as a result of Complainants' failure to serve the Florida Commission" in connection with denying a motion to dismiss).

[234] *See* Notice of Extension of Time, Docket No. EL25-44-000, issued Jan. 7, 2025 (extending the deadline to answer, intervene, comment and protest from Feb. 3, 2025 to Mar. 20, 2025).

[235] *Seminole Elec. Coop., Inc. and Fla. Mun. Power Agency v. Fla. Power Corp.*, 147 FERC ¶ 61,236, at P 15 (Jun. 19, 2014); *see also Borough of Chambersburg, Pa. v. PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,219, at P 58 (Nov. 22, 2006); *Cal. v. B.C. Power Exch. Corp., et al.***,** 99 FERC ¶ 61,247, at p. 14, sect. IV(B) (May 31, 2002).

[236] *Seminole Elec. Coop., Inc. and Fla. Mun. Power Agency v. Fla. Power Corp.*, 147 FERC ¶ 61,236, at P 15 (Jun. 19, 2014); *see also Borough of Chambersburg, Pa. v. PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,219, at P 58 (Nov. 22, 2006); *Cal. v. B.C. Power Exch. Corp., et al.***,** 99 FERC ¶ 61,247, at p. 14, sect. IV(B) (May 31, 2002).

[237] 147 FERC ¶ 61,236, at P 15 (Jun. 19, 2014).

[238] *See also, Borough of Chambersburg, Pa. v. PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,219, at P 58 (Nov. 22, 2006); *Cal. v. B.C. Power Exch. Corp., et al.*, 99 FERC ¶ 61,247, at p. 14, sect. IV(B) (May 31, 2002).

In the event the Commission is persuaded that the Complainants' service of the Complaint was in any respect deficient, the Complainants request, in the alternative, that the Commission waive the requirements of Rule 206(c). The Commission has the authority to do so and has done so before in connection with denying a motion to dismiss.[239]

F. The Complaint is Not an Impermissible Collateral Attack on NERC Reliability Standards, WECC Obligations, and TPL Standards.

The Complaint is also not an impermissible collateral attack on NERC[240] Transmission Planning ("TPL") reliability standards. Two respondents[241] highlight TPL-001,[242] in particular. The Commission approved the first iteration of these standards (TPL-001-0) in 2007[243] and the last update to them (TPL-001-5.1) in 2020.[244] Nearly five years have passed since the record closed in that docket[245] and the Complaint details extensive new evidence and changed circumstances since then. *See* Sect. II(B) above.

PGE alleges a collateral attack on TPL-001, but only "to the extent Complainants purport to challenge any specific PGE local transmission project."[246] PGE acknowledges, however, that

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[239] *Cal. v. B.C. Power Exch. Corp., et al.*, 99 FERC ¶ 61,247, at p. 14, sect. IV(B) (May 31, 2002) (granting waiver of requirements of Rule 206(c) and denying motion to dismiss).

[240] N. Am. Elec. Reliability Corp.

[241] *See*, e.g., Motion to Dismiss and Answer to Complaint of PacifiCorp, Docket No. EL25-44-000, sect. III(B) (Mar. 20, 2025); Motion to Dismiss and Answer of Portland General Electric Company, Docket No. EL25-44-000, sect. IV(A)(2) (Mar. 19, 2025).

[242] *See* NERC, *Standard TPL-001-5, Transmission System Planning Performance Requirements*, https://www.nerc.com/pa/Stand/Reliability%20Standards/TPL-001-5.pdf#search=TPL%2D001%2D5%20%2D%20Transmission%20System%20Planning%20Performance%20Requirements (last accessed April 23, 2025).

[243][243] *See Mandatory Reliability Standards for the Bulk-Power Sys.*, Order No. 693, 118 FERC ¶ 61,218, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007), *order on reh'g*, 131 FERC ¶ 61,136 (2013).

[244] *N. Am. Elec. Reliability Corp.*, Docket No. RD20-8-000 (Jun. 10, 2020).

[245] The comment deadline was May 26, 2020. *See* Combined Notice of Filings #1, issued Apr. 23, 2020.

[246] Motion to Dismiss and Answer of Portland General Electric Company, Docket No. EL25-44-000, at p. 22.

the Complaint explicitly avers that "[it] does not challenge the rates for any *specific* Locally Planned project as unjust and unreasonable."[247] PacifiCorp alleges that the TPL standards "require utilities to expand their transmission systems to maintain reliability."[248] PacifiCorp goes on to explain, "[i]n that sense, the Complaint should reasonably be considered a prohibited collateral attack on those very standards—Standard TPL-001 chief among them."[249] That is not a reasonable interpretation of the relief sought in the Complaint. The Complaint does not directly or indirectly challenge any of NERC's TPL-001 standards (none of which address the role of local planning tariffs in disincentivizing the most cost effective and efficient projects, thus producing unjust and unreasonable rates, in any case) or otherwise intrude on the reliability and performance issues that were the subject of the TPL standards rulemaking proceedings.

G. Approving the 100 kV Complaint Would Not Be a "Taking" in Violation of the Fifth Amendment to the U.S. Constitution.

Throughout the restructuring of electric and natural gas markets, in exercising its authority over interstate transmission service, the Commission has ordered transmission providers to undertake various actions: from providing non-discriminatory open access electric transmission service or prohibiting natural gas pipelines from using their monopoly control over natural gas transportation to make bundled sales of natural gas or transportation. Invariably, electric transmission and natural gas transportation owners – incentivized to monopolistically use their assets to enhance their bottom line at the expense of ratepayers – cried foul, claiming such orders violated the Due Process Clause in the Fifth Amendment to the U.S. Constitution as they constituted a taking without due process.

[247] Motion to Dismiss and Answer of Portland General Electric Company, Docket No. EL25-44-000, at p. 2 (emphasis in original); *see also* Complaint, at p. 11.

[248] Motion to Dismiss and Answer to Complaint of PacifiCorp, Docket No. EL25-44-000, at p. 21.

[249] Motion to Dismiss and Answer to Complaint of PacifiCorp, Docket No. EL25-44-000, at pp. 21-22.

Existing transmission providers take the same approach here. Protestors argue that granting the Complaint to ensure that future transmission grid is planned more efficiently, thereby ensuring the least reasonable rates for interstate transmission service, would constitute such a taking. While they couch their arguments in high-minded rhetoric – comparing efficient planning by an independent transmission planner of new greenfield transmission and transmission to replace facilities that have reached the end of their useful life, to President Truman taking over the steel industry so America could fight the Korean War,[250] their arguments are misplaced. The PJM Transmission Owners assert that "[a] fundamental principle of ownership is the right to make decisions about one's own property."[251] But the Complaint does not deal with a transmission owner's "own property" but instead **future** transmission assets. Thus, at bottom, the transmission owner's argument is: because transmission owners have existing transmission assets, they have a property right to plan **all future transmission assets impacting the near nationwide in scope transmission grid**, and the Commission has no authority to take such planning right away from them. Of course, they have no such "right," as evidenced by the fact that their argument relies on a present tense reference to "assets" rather than describing the future transmission facilities that are the subject to the Complaint. The Complaint asks for no action related to existing assets, simply requiring that when those assets have reached the end of operational life, as determined by the owner consistent with applicable, that the replacement, if any, be planned at the regional level in light of the regional impact of transmission in interstate commerce at 100 kV and above. The Complaint makes no effort or request to address the entity that will build needed transmission.

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250 PJM Transmission Owners MTD at p. 19, *see also*, https://www.trumanlibrary.gov/education/presidential-inquiries/steel-strike-1952 (last accessed April 23, 2025).

251 PJM TO MTD at 18.

The Commission easily swatted away transmission owners' self-serving taking arguments during restructuring of electric[252] and natural gas markets and should do so here. The Fifth Amendment to the U.S. Constitution states in part that no person shall be "deprived of life, liberty, **or property**, without due process of law; nor shall private property be taken for public use, without just compensation."[253] Granting the Complaint would do neither. The Complaint addresses only Commission jurisdictional tariffs and agreements regarding transmission in interstate commerce. Apparently, recognizing that the Commission has ample authority under Section 206 of the FPA to reform those Commission jurisdictional tariffs or agreements challenged by the Complaint upon a finding that they are unjust, unreasonable, unduly discriminatory or preferential, the parties claiming an unlawful taking shift their argument of a taking to assert "under various state laws and regulations, utility Transmission Owners' authority to plan, own and modify transmission facilities are a property right."[254] Incredibly, the PJM transmission owners equate their claim to welfare

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252 *Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888-A, 78 F.E.R.C. ¶61,220 (1997) (In the context of Order No. 888, rejecting Union Electric's arguments that the dramatic changes in the regulatory scheme set forth in the final rules constitute a taking by (i) imposing extensive constraints on Union Electric's use of its own property, (ii) forcing Union Electric to throw open its transmission system to use by third parties, (iii) dictating the terms and conditions of that usage and, in the process, (iv) providing for the physical occupation of Union Electric's transmission system by third parties' facilities and power because the Commission has statutory obligation under the FPA to remedy undue discrimination in the transmission or sale of electric energy subject to its jurisdiction and Union Electric will be adequately compensated for whatever services it may provide on its system following the effectiveness of Order Nos. 888 and 889.); *see also Order No. 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulations of Pipelines After Partial Wellhead Decontrol*, Regs. Preamble, [Jan. 1991-June 1996] FERC Stats & Regs. ¶ 30,939 (1992) (concluding because Order No. 636 does not deprive pipelines of the ability to do business, but, in fact, enhances their opportunities, there is no factual foundation to reach the "takings" argument).

253 U.S. Const. Amd. V.

254 PJM Transmission Owners MTD at 17-20; ISO-NE Transmission Owners MTD at fn. 278; Southeast Companies MTD at 53-54.

benefits that a court found in the nature of a statutory entitlement.[255] It is this corporate welfare entitlement fallacy that led to the Complaint. There is NO federal transmission franchise or statutory entitlement for transmission owners, including PJM related transmission owners, to "own and modify new greenfield transmission facilities, transmission expansions, and transmission replacements"[256] in perpetuity. Any state-granted franchise rights are rights and privileges to serve **retail** customers. While states have authority related to distribution facilities, FERC has exclusive authority over transmission in interstate commerce. A state-granted retail franchise does not automatically grant rights or entitlements to future transmission in interstate commerce, or the rates or practices affecting those rates.

Approving the 100 kV Complaint would not result in a taking in violation of the Fifth Amendment under FERC or court precedent. As for FERC, Congress gave the Commission the authority to establish just and reasonable rates, terms and conditions for transmission planning by giving the Commission authority over practices affecting or pertaining to transmission rates. Rules regarding transmission planning are practices subject to the Commission's jurisdiction because such rules affect or pertain to transmission rates and charges. Even on appeal of Order No. 1000, no petitioner challenged the "Commission's conclusion that the current transmission planning processes [the practices from Order No. 890] are "practices" under Section 206," nor that "transmission planning practices directly affect rates" and "that the Commission is obligated by the plain text of Section 206 to ensure that such practices [transmission planning rules] are just and reasonable and not unduly discriminatory or preferential."[257] More recently in *El Paso*

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[255] PJM Transmission Owners MTD at 17.

[256] *Id.*

[257] *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 93 (D.C. Cir. 2014).

Electric Company v. FERC,[258] the United States Court of Appeals for the 5th Circuit confirmed again that "FERC has retained the authority to review transmission planning and cost allocations pursuant to FPA Section 206, through which FERC may review challenges on its own motion or through complaints about rates and practices."[259]

When the Commission "sets rates, terms, and conditions for jurisdictional service under the authority granted to it by Congress – in this case finding under Section 206 that existing tariffs or agreements related to transmission planning of 100 kV and above regionally impactful transmission are unjust, unreasonable, unduly discriminatory or preferential – what the Commission finds to be just and reasonable, is not a taking."[260] As Judge Starr explained in *Jersey Cent. Power & Light Co. v. FERC*,[261] "[u]nlike garden-variety takings, the requirements of the Takings Clause are satisfied in the rate regulatory setting when justice is done, that is to say the striking of a reasonable balance between competing interests". The Commission has applied that rule in a variety of circumstances. Relevant to the Complaint, the Commission has applied that rule when, as here, the transmission provider will continue to be compensated for the facilities it

[258] 832 F.3d 495, 510 (5th Cir. 2016).

[259] *Id.* at 510.

[260] *New York Indep. Sys. Operator, Inc.*, 151 F.E.R.C. ¶ 61,075, 2015 FERC LEXIS 678 ("there can be no taking" when Commission finds tariff provisions just and reasonable; citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 109 FERC ¶ 61,157 at P 143 (2004), *Order on Clarification*, 111 FERC ¶61,367 (2005) (rejecting concern about regulatory takings and investment based expectations starting "[w]e have approved the FTR [Firm Transmission Rights] provisions of the tariff as just and reasonable, and what is just and reasonable is not a taking") ("*NYISO Takings Order*"), *La Paloma Generating Company, LLC v. California Independent System Operator Corporation*, 157 F.E.R.C. ¶ 61,002 (2016)(refusing to even address takings argument when La Paloma had not demonstrated that it is entitled to any additional compensation under the facts presented here, or that it has exhausted other possibilities outlined in CAISO's tariff and business practice manuals to address its concerns but noting that in the context of setting rates, terms, and conditions for jurisdictional service, what is found to be just and reasonable is not a taking citing *NYISO Takings Order* because "[i**]**n undertaking whether to accept a provision as just and reasonable, the Commission balances the respective rights and obligations of the parties--including whether compensation is due.").

[261] 810 F.2d 1168 (D.C. Cir. 1987).

owns that are efficiency-planned and used in jurisdictional service[262] but provides no guarantee of that ownership. Likewise, there is no taking when the Commission approves a reasonable proposal that does not directly deprive a public utility of existing assets.[263] It is also not a taking when the transmission provider, in planning individual regionally-impactful transmission instead of regional planning, uses its control over transmission facilities to improve its bottom line at the expense of ratepayers.[264]

In *Penn Central*[265], a case the Commission extensively discussed in the *NYISO Takings Order*, the Supreme Court laid out two factors in considering whether a particular action by a regulatory order would constitute a taking: (1) the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations are, of course, relevant considerations, and (2) the character of the governmental action. As the Commission stated in Order No. 888-A, transmission providers have a reasonable expectation of recovering their prudently incurred costs, plus a reasonable return, in

[262] *Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888-A, 78 F.E.R.C. ¶61,220 (1997)(rejecting takings argument in part because "in exercising its remedial authority, we [the Commission] did not alter the traditional principle that a utility is entitled to a reasonable opportunity to recover its prudently incurred costs" and "[t]here simply cannot be an unconstitutional taking of property when public utilities continue to have the right to file for and receive rates that provide them a reasonable opportunity to recover their prudently incurred costs. Indeed, as the Supreme Court has explained, "all that is protected against, in a constitutional sense, is that the rates fixed by the Commission be higher than a confiscatory level" and "Union Electric has made no showing that Order Nos. 888 and 889 will result in its rates being set at a confiscatory level.").

[263] *California Independent System Operator Corporation***,** 128 F.E.R.C. ¶ 61,103 at P 120 (2009)(finding "not convincing" Modesto's argument that CAISO's proposed Integrated Balancing Authority Area amounted to a taking under the Fifth Amendment by removing the value of an investment without compensation when the Commission accepting a reasonable proposal concerning modeling and pricing on the CAISO-controlled grid and not effecting any sort of taking).

[264] *Southern Company Services, Inc***,** 57 F.E.R.C. ¶61,093 (1991) (Commission action ensuring – that ratepayers are not charged an excessive, unjust and unreasonable rate – is not an unconstitutional taking even though it may produce a rate less than the rate Southern Companies would like to charge).

[265] *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978) ("*Penn Central*").

providing jurisdictional transmission service – no more, no less. Nothing in the Complaint takes that right away. The Complaint is focused on those future assets needed for the regionally interconnected grid and deprives no existing transmission owner of any expectant right to future transmission development. As to the character of the governmental action, the Supreme Court said, "[a] "taking" may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good."[266]

Ensuring that the most efficient transmission is planned at the regional level promotes the public good by ensuring that the more efficient or cost-effective regionally planned projects lead to just and reasonable transmission rates paid by ratepayers, it is not an unconstitutional taking, it is FERC's statutory obligation. Therefore, granting the Complaint would not result in a taking under applicable court precedent.

Finally, like the argument around *Atlantic City*, the Respondents assert that "Section 205 also represents a property right held by the TOs [that] . . . cannot be stripped away or transferred to another entity, like an ITP."[267] The Complaint does not seek to "transfer" any section 205 rights to an ITP or anyone else. Under the second prong of Section 206, the Complaint offers a just and reasonable replacement rate for the existing unjust, unreasonable, unduly discriminatory or preferential individual transmission planning provisions of existing tariffs and/or agreements. One is that all regionally-relevant Commission jurisdictional transmission[268] 100 kV and above will be planned regionally. Just like the regional planning requirements of Order No. 1000, that makes no shift in Section 205 rights; it merely finds those existing provisions unjust, unreasonable,

[266] *Id*.
[267] PJM Transmission Owners at 18.
[268] As defined in the Complaint to exclude Local Area Networks.

unduly discriminatory or preferential under FPA Section 206. The second requirement, that the required regional planning be conducted by an Independent Transmission Planner, does not require that the Independent Transmission Planner have any Section 205 filing rights, although suggests that such rights could be appropriate, and has not requirement for the ITP to have operational control over existing or future transmission. Supposed regional planning entities like WestConnect, FRCC, and SERTP have no Section 205 rights today. The ITP would be no different, merely adding an independence requirement that is not in place today.[269]

H. The Complaint Does Not Seek to Improperly Remove Local Planning from Incumbent Transmission Owners in Violation of Section 217 of the FPA.

The PJM Transmission Owners contend that granting the Complaint would be inconsistent with FPA Section 217(e)'s requirement regarding the authority of load-serving entities to build adequate transmission or distribution facilities under state or local law to meet their load-serving obligations.[270] The ITP oversight of regional planning outlined in the Complaint does not encroach on Section 217(b)(4) of the FPA, which directs the Commission to facilitate "the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities." The relief the Complainants requested is entirely consistent with Section 217, calling for ITPs to implement "Transmission Owner-determined local criteria," excluding ITPs from planning for facilities that do not meet the elements of the Commission's seven factor test outlined in Order

[269] The PJM Transmission Owners MTD also makes an assertion regarding eminent domain under state law, but the Complaint makes no assertions regarding eminent domain or any other state jurisdictional issues like siting. But even in making the argument, the PJM Transmission Owners cited a case for the proposition that eminent domain remains under state authority but failed to note that the Court rejected their takings argument in that case despite the FERC order requiring the transmission owners to use their eminent domain rights in a non-discriminatory manner because "FERC has done nothing more than impose a non-discrimination provision on public utilities." PJM Transmission Owners MTD at 17, (citing Natl. Ass'n of Reg. Util. Com'rs v. FERC, 475 F.3d 1277, 1283 (D.C. Cir. 2007).

[270] PJM Transmission Owners MTD at 20.

No. 888,[271] and leaving regional planning criteria to "FERC's determination and approval, as reflected in the governing tariffs" and applicable law.[272] In this way, the relief sought seeks to empower the ITP to provide independent oversight of regional planning without undermining transmission needed to meet utilities' load-serving obligations under Section 217. Neither would ITP oversight of regional planning encroach on Section 217(e), which recognizes load-serving entities' obligations under state and local law "to build transmission or distribution facilities adequate to meet the service obligations of the load-serving entity," as none of the relief the Complainants have sought obviates these obligations, and truly "local" planning, that is, planning that does not implicate the bulk power system, would be excluded from the ITP's ambit.

I. The Complaint Does Not Encroach on State Authority and Violate Cooperative Federalism or the Major Questions Doctrine.

1. Arguments that the Complaint Would Destroy Cooperative Fderalism are Exaggerated.

Seeking to avoid the Commission's exclusive jurisdiction, the transmission owners assert that the requested action would encroach on state authority and violate cooperative federalism. For example, EEI asserts:

> the remedies suggested would undermine cooperative federalism, which is particularly important in this load growth environment. The Complaint asks the Commission to reallocate transmission planning responsibility, shifting the planning for local projects into regional processes overseen by FERC, and strip them away from current processes in which State utility regulators have traditionally had a more active role.[273]

[271] Complaint, at p. 237.

[272] Complaint, at p. 234.

[273] EEI Comments at 3.

EEI misapplies cooperative federalism because it is well-established that FERC has exclusive jurisdiction over rates and practices affecting rates for transmission in interstate commerce.[274] Contrary to EEI's assertion that the Complaint seeks to strip away processes in which state utility regulators have had a more active role, the Complaint merely seeks to ensure that FERC undertakes its consumer protection role in an area where Congress has already preempted state action – transmission rates and practices affecting those rates.[275] The United States Court of Appeals for the Fifth Circuit recently addressed the scope of state-retained jurisdiction versus FERC jurisdiction as it related to transmission in interstate commerce, finding "the Federal Power Act gives general authority over interstate transmission markets to federal regulators. 16 U.S.C. § 824(a) . . . the state authority that remains [is] over matters like siting and certification . . .."[276] In this context, "cooperative federalism" is the states and FERC each regulating within their sphere, not FERC ceding to state regulation beyond its sphere.

To be clear, the Complaint does not seek to shut states out of the planning process. EEI dramatically asserts "Cutting the states out of the process for local transmission planning would lead to planning inefficiencies as it would not specifically address local transmission needs."[277] In making this argument EEI relies on the fallacy that there is "local transmission" 100 kV and above, but more importantly misstates that the Complaint's requested relief, as the Complaint recognizes that truly local needs with respect to the interconnected interstate transmission grid

[274] *New York v. FERC*, 535 U.S. 1 (2002).

[275] See, *FERC v. Mississippi*, 456 U.S. 742 (1982) explaining that the interstate commerce impacts of electric operations, even cogeneration, mean that "Congress may preempt the States completely in the regulation of retail sales by electric and gas utilities and of transactions between such utilities and cogenerators." 456 U.S. 759. The Federal Power Act does that with respect to transmission planning tariff provisions.

[276] *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 319 (5th Cir. 2022).

[277] EEI Comments at 36.

will not be addressed by the Commission in response to the Complaint. Just as Order No. 1920 brought states into the cost allocation determination for future regional transmission project additions, the Complaint makes it clear that all transmission needs, whether developed by a state through an integrated resource plan ("IRP") or individual transmission owner planning criteria filed under FERC Form No. 715 related to localized criteria, would be incorporated into the regional planner's planning.[278] Further, as the United States Supreme Court explained in *FERC v. Elec. Power Supply Ass'n*,[279] the fact that states retain siting authority for planned transmission projects planned at the regional level provides the "finishing blow . . . [that] removes any conceivable doubt as to [the order's] compliance with [FPA section 201(b)]'s allocation of federal and state authority."[280]

Interestingly, although arguing that the Commission cannot delegate its responsibility to an independent system planner,[281] Respondents and their surrogates simultaneously argue that the Commission cannot exercise its exclusive jurisdiction for 100 kV and above because states have filled that role. The Commission cannot allow states to fill the role Congress delegated to the Commission. "[W]hile federal agency officials may subdelegate their decision-making authority to subordinates absent evidence of contrary congressional intent, they may not subdelegate to outside entities—private **or sovereign**—absent affirmative evidence of authority to do so."[282] The Commission reached this very conclusion in Order No. 1000 compliance, refusing to allow regional planning entities to delegate to state entities the selection of

[278] Complaint at 231-32.

[279] 577 U.S. 260 (2016) ("*EPSA*").

[280] *EPSA*, 577 U.S. at 287-88.

[281] *See, e.g.*, SPP Transmission Owners MTD at 28. As addressed, the ITP requirement does not result in a delegation of Commission authority.

[282] *U.S. Telecom Assoc. v. FCC*, 359 F.3d 554, 566 (D.C. Cir. 2004) (emphasis added).

transmission projects or developers in Order No. 1000 planning processes.[283] Deferring to state processes whenever a transmission owner claims it is undertaking "local planning" is inconsistent with Commission precedent on the scope of its own transmission planning authority. This is particularly true when many states have no such processes[284] and those with processes have no obligation (or authority) to protect impacted consumers on the interconnected grid outside of their state.

2. The Complaint Does Not Implicate The Major Questions Doctrine

Various Respondents[285] raise the latest trending argument among regulated entities seeking to avoid regulatory oversight[286] - the relief requested would violate the major questions doctrine.[287] The Supreme Court has defined major question cases as those "in which the 'history and the breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority."[288] The Commission rejected the assertion in Order No. 1920-B and can similarly easily reject such arguments here. In Order No. 1920-B the Commission rejected the assertion that it had exceeded the authority granted by Congress on a major question impacting the national economy, finding "Order No. 1920-A is a clear and unequivocal application of the

[283] *ISO New England, Inc.*, 143 FERC ¶ 61,150 (2013) at P 67; Midwest Independent System Operator, Inc., 142 FERC ¶ 61,215 (2013) at P 354.

[284] See, e.g., Complaint at p 261 addressing *The Office of the Ohio Consumers' Counsel v. PJM Interconnection, L.L.C.*, et al., filed September 28, 2023 in Docket No. EL23-105.

[285] Southeast Companies MTD at 31; PJM Transmission Owners MTD at 20; NYISO Answer at 21; NETO MTD at 41; SPP Transmission Owners MTD at 27.

[286] *See, e.g.*, Order No. 1920-A at P 37 referencing SPP Transmission Owners assertion that allowing states a say in cost allocation for future transmission "wrongly attempts to resolve a 'major question' under the statute in ways that Congress did not authorize and could not have foreseen."

[287] *West Virginia v. EPA*, 597 U.S. 697, 714 (2022).

[288] *Id.*

Commission's authority under FPA section 206."[289] The United States Supreme Court has repeatedly upheld the breadth of the Commission's authority over transmission planning, recognizing that Congress granted the Commission broad authority or transmission rates and practices affecting those rate **because** of the national economic impact of electricity transmission.[290]

The fundamental flaw in arguing that extending regional planning to all Commission-jurisdiction at 100 kV transmission (that is not otherwise excluded) would invoke the major questions doctrine, is that 100 kV transmission at issue **is already being planned regionally**. The issue that the Complaint addresses is that the very same transmission is being planned both regionally and "locally" without recognition that the electrical impact to the interconnected grid is identical. "[A]lmost all electricity flows not through 'the local power networks of the past,' but instead through an interconnected 'grid' of near-nationwide scope."[291] The Supreme Court recognized the Commission's right to regulate transmission, whether retail or wholesale, finding that the "'clear[] and unambiguous []' language of Section 201, as well as this Court's decisions in *Jersey Central* and *Florida Power*, compel the conclusion 'that the FPA gives [the Commission] the authority to regulate transmissions at issue here, whether retail or wholesale.'"[292] If the Federal Power Act gives the Commission the authority to regulate transmission, whether retail or wholesale, such that it can order nationwide open access, it is not a "major question" as to whether the Federal Power Act gives the Commission the authority to

[289] Order No. 1920-B at

[290] *New York. v. FERC*, 535 U.S. 1 (2002).

[291] *AEU*, 82 F.4th at 1102 *quoting FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 267 (2016).

[292] *New York. v. FERC*, 535 U.S. 1, 40 (2002).

declare that 100 kV and above transmission facilities cannot be planned simultaneously at both the local and regional level.

J. The Complaint Does Not Violate the Administrative Procedure Act.

Certain parties assert that the Complaint cannot be acted upon because it seeks a change to a rule of general applicability that can only be changed through the Commission's use of the same procedure that the Commission used to establish the rule in the first instance.[293] These arguments are misplaced for a number of reasons.

Missing from the assertions is any demonstration that there is in fact "rule of general applicability" defining what is local versus regional from an electrical perspective. The Complaint does not seek to change the Seven Factor Test from Order No. 888 distinguishing transmission in interstate commerce or distribution facilities. Neither Order No. 890 nor Order No. 1000 address voltage level as a means for determining whether transmission in interstate commerce is local transmission or regional transmission. Order No. 890 merely addressed those terms by the entity planning the transmission, not its character. Indeed, the record demonstrates that the same transmission is treated as both local and regional under both of those Orders depending only on whether the transmission is planned by an individual transmission owner or regionally. As such, neither of those orders establish a rule of general applicability on what is "local" versus "regional" transmission from the perspective addressed in the Complaint. As the Complaint demonstrates, while the Complaint relies on the Commission's Order adopting the NERC Bulk Electric System criteria, the Complaint does not seek to change those rules.

In addition, even if the Respondents could point to an applicable rule of general applicability that is sought to be changed through the Complaint, the Commission's rulemakings

[293] *See, e.g.*, WestConnect Transmission Owners MTD at 15.

seeking to require general changes to tariff provisions are all pursued under Section 206, 306 or 309 of the Federal Power Act, the same statutory provisions relied on by the Complaint. The Commission noticed the Complaint herein in a manner that provides an opportunity for all interested parties to participate, a fact supported by the breadth of non-Respondents submitting comments. The Administrative Procedure Act provides that notice of a rulemaking is to be provided in the federal register "unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law."[294] The Complaint more than meets the "same procedure" requirement relied on by Respondents for dismissal. The Commission noticed the Complaint broadly and received numerous comments beyond simply the Respondents. It is not surprising to Complainants that the vast majority of those submitting comments, who are not surrogates for the transmission owners, support the Complaint and the requested relief. Even NARUC, which takes no position on the Complaint itself, recognizes the problem of runaway individual transmission owner Self-Planned transmission, and adopted a "Resolution on Electricity Consumers' Need for Effective Oversight of Costs for Replacing Aging or Obsolete Transmission Infrastructure."[295] While the NARUC Resolution addressed only RTO Regions, the Complaint addresses the issue more broadly but with the same goal.

Because the Commission is unable to change any tariff provision through a "rulemaking" without acting through Section 206, for Administrative Procedure Act purposes the Complaint uses the same procedure that the Commission uses when it adopts the rules of general applicability. Accordingly, the Administrative Procedure Act does not require dismissal of the Complaint

[294] 5 U.S. Code § 553.

[295] NARUC Motion to Intervene and Comments at 3.

K. The Requested Relief Will Not Harm Generation Interconnection Requests and Large Load Customer Requests.

Certain respondents have alleged that the relief the Complainants have requested will harm interconnection and large load customers, largely in the form of regional planning process and ITP oversight delays.[296] For example, Ad Hoc WestConnect Enrolled Transmission Owners have suggested that the Complainants' proposed reforms conflict with certain provisions of Order No. 2023 intended to accelerate transmission planning. These arguments fail to reckon with the core proposition on which the Complaint is based—that is, the overwhelming evidence that transmission owner local project planning does not lead to the selection of the most efficient, cost-effective project, resulting in unjust and unreasonable rates. Nothing in Order No. 2023 can be read to countervail the Commission's duty to ensure just and reasonable rates, nor subordinate that statutory objective to expediency. To the contrary, the duty to ensure just and reasonable rates remains the focus of the reforms adopted in Order No. 2023.[297] There is no legitimate interest served by expediting transmission planning of inefficient or cost-ineffective projects.

In response to alleged harm to new large load requests, the Complaint emphasized the following:

> …large load interconnections currently are processed by the local incumbent utility and are not subject to Regional Planning. Directly assigned costs to those new large loads would not be subject to Regional Planning. However, any 'rolled-in' network upgrades would be subject to Regional Planning. The ITP would be involved in the evaluation and review of those 'rolled-in' network upgrades that would be subject to Regional Planning. Accordingly, the ITP should be involved in the review of the costs and proposed

[296] *See*, e.g., Motion to Dismiss and Answer of the Ad Hoc WestConnect Enrolled Transmission Owners, sect. IV(B)(3)-(4), Docket No. EL25-44-000 (March 20, 2025).

[297] *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 61,054, at P 3 ("Therefore, we believe that it is necessary to reform the Commission's standard interconnection procedures and agreements to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, *thereby ensuring that rates, terms, and conditions for Commission-jurisdictional services are just, reasonable, and not unduly discriminatory or preferential*.") (emphasis added).

solutions attributed to large load interconnections that cause a need for network upgrades at 100 kV and above."[298]

Accordingly, the relief requested in the Complaint can be harmonized with timing concerns in connection with handling interconnection requests and bringing new generation capacity into the grid and with processing new large loads.[299]

L. Because the Complaint Seeks An Order Directing a Replacement Rate Pertaining to Unjust, Unreasonable, Unduly Discriminatory, or Preferential Individual Transmission Owner Planning Tariff Provision, the Complaint is Not an Improper Attempt to Modify a Rule of General Applicability.

MISO contends that, by filing a complaint against all jurisdictional transmission providers, Complainants improperly seek to modify a rule of general applicability.[300] The Complaint already anticipated MISO's argument, which MISO has made before.[301] MISO failed to address Complainants' use of *Atlantic City Electric v. FERC*,[302] which explained that Section 206 of the Federal Power Act "authorizes FERC to investigate, on its own motion or upon complaint, rates and terms of service" and to thus "initiate changes to *existing* utility rates and practices."[303] Prohibiting an interested party from filing a complaint and requiring that party to file a petition for a rulemaking, which requires no Commission action, would violate Section 206 of the Federal Power Act. Moreover, to the extent that the Commission would prefer to

[298] Complaint, at p. 238.

[299] Notably, the Commission as an open docket (AD24-11) where it is exploring new large loads co-located at generating facilities. The Commission may look to resolve any attendant issues with new large load requests and co-location arrangements in another proceeding, as this Complaint is not the forum for resolving the issues and questions raised in Docket No. AD24-11 and the Docket No. EL25-49-000 regarding the Commission's Show Cause Order in the PJM region.

[300] MISO Answer at 22; *see also* Answer of NYISO at 3-4.

[301] *See* Complaint at 187, n. 850 (citing Motion to Dismiss And Answer of Midcontinent Independent System Operator, Inc. filed in Docket No. EL22-78-000).

[302] 295 F.3d 1 (D.C. Cir. 2002).

[303] Complaint at 188 (quoting *Atlantic City*, 295 F.3d at 21).

address concerns raised by the Complaint in another rulemaking, the Complainants expressly recognized that the Commission could proceed to initiate another rulemaking, related to step one or step two of Section 206, to address further transmission planning reforms.[304]

In addition, the tariff provisions and agreements allowing individual transmission owners to plan transmission in interstate commerce at 100 kV and above impacting the regional grid is not a "rule" of general applicability in that FERC did not adopt the "rule" dictating that planning paradigm. In Order No. 890 and subsequent rules, the Commission *pro forma* OATT merely maintained the *status quo* regarding the planning that the then existing transmission owners were engaged in—which was a vestige of the development of the transmission grid over the prior century—while tacking on other Commission mandated rules. The Commission has never articulated a "rule of general applicability" that transmission 100 kV and above is "local" transmission warranting individual transmission owner Self-Planning of all future transmission. As referenced above, the very same transmission facilities 100 kV and above are currently considered local and regional depending solely on what entity is doing the planning, not by their electrical nature. As discussed in the Complaint, to the extent that the Commission has articulated a "rule" at all with respect to such transmission, it is that such transmission is regional in nature as part of the Bulk Electric System and essential to the American economy. The Complaint seeks to implement that determination while challenging *individual tariff provisions and agreements* that prevent efficient regional planning of those transmission facilities in interstate commerce.

III. MOTION FOR LEAVE TO ANSWER

[304] *See* Complaint at n. 871.

The Commission has discretion to accept responses to answers and has routinely done so for good cause where accepting the response would lead to a more complete or accurate record, improve the Commission's understanding of the issues, clarify disputed or erroneous matters, or help the Commission in its decision-making.[305] Good cause exists for the Commission to accept the portions of this Answer that respond to substantive concerns raised in protests to the Complaint because this Answer provides helpful, clarifying information and will assist the Commission in reviewing the issues presented.

IV. ANSWER TO CERTAIN COMMENTS AND PROTESTS

Several respondents and utilities responded substantively to the Complaint on procedural grounds in their motions to dismiss, and the Complainants have endeavored to respond to those arguments in the prior section. Below, Complainants respond to substantive arguments raised in protests.

A. The Complaint Shows that Individual Transmission Owner Self-Planning Issues are Widespread and Have Been Displaced by Select Increases in Regional Planning in CAISO, MISO, SPP, and PJM.

WIRES contends that the Commission need not investigate the tens of billions of dollars in transmission owner Self-Planning in light of the recent substantial spending in regional plans, namely $6.7 billion approved by PJM in February 2025, $21.8 billion long range portfolio approved by MISO in December 2024, and a $7.7 billion portfolio approved by SPP in October

[305] 18 C.F.R. § 385.213(a)(2); *see, e.g.*, *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133, at P 12 (2017) (accepting answers to protests because they provided information that assisted in the Commission's decision-making process); *KO Transmission Co.*, 156 FERC ¶ 61,147, at n. 5 (2016) (accepting an answer to a protest because it provided a better understanding of the issues and ensured a complete record); *TransColorado Gas Transmission Co.*, 111 FERC ¶ 61,208, at P 4 (2005) (accepting an answer to a protest because it clarified the issues).

2024.[306] First, the existence of increased transmission spending in regional plans does not demonstrate that the dollars invested are being shifted from individual transmission owner Self-Planned project spending to regional spending with enhanced planning. In fact, more overall dollars are simply being invested to meet the nation's growing transmission needs rather than regional planning displacing individual transmission owner planning. The existence of more long-range regional planning approvals does not confirm the justness and reasonableness of tariff or agreement provisions allowing the current levels of Self-Planned project spending. For example, the Complaint pointed out that MISO's MTEP24 included $6.7 billion characterized as local reliability projects, including $4 billion in individual transmission owner Self-Planned "Other Projects."[307] The MISO Transmission Owners argue that MISO's LRTP Tranche 2.1 initiative resulted in substantial "avoided local transmission investments" in the 2024 MTEP.[308] However, the issue at hand is the Other Project category, and the MISO Transmission Owners do not demonstrate that the process around the development and approval of various projects in the Other Project category helps avoid local transmission investments or that the collective batch of Other Projects would be reasonable under a cost-benefit analysis. Moreover, the MISO Transmission Owners highlight just one year – the 2024 MTEP Report where MISO approved $21.8 billion in long-range transmission. The Complaint highlighted substantial Other Project category spending from all recent years, not just associated with the 2024 MTEP.[309]

[306] *See* WIRES Protest at 4-5.

[307] Complaint at 100-101 (citing MTEP24 Full Report at p. 180, *available at* https://cdn.misoenergy.org/MTEP24 Full Report658025.pdf).

[308] *See* Protest of MISO Transmission Owners, Affidavit of Jeffrey V. Hackman, at 13.

[309] *See* Complaint at 88-101.

Second, the fact that such a substantial transmission investment is occurring helps highlight the importance of the Complaint. Complainants recognize the need for transmission investment; however, the unprecedented amount of new individual transmission owner transmission investment being self-approved concurrently in a short timeframe necessitates the highest potential levels cost-effective planning in addition to cost discipline and oversight.

B. Existing Prudence Remedies and Formula Rates are Not Sufficient to Protect Consumers; the Planning Should be Conducted Proactively, Holistically, and Appropriately from the Outset.

Several protesting transmission owners contend that the Commission's existing regulatory framework around the prudence standard and the use of formula protocols to challenge recovery of transmission project expenses is more than sufficient to protect consumers.[310] Yet, if the prudence standard and formula rate protocols provided sufficient protection to consumers, then protestors would surely be able to highlight several successful challenges to imprudent transmission investments; yet, protestors do not (and cannot).

The Indicated New England Transmission Owners attempt to defend the Commission's prudence standard by invoking a red herring: "Complainants ignore the fact that….a transmission owner bears all of the risk in making project investments."[311] First, it is misleading to assert that the utility bears all risk in the context of a market with monopoly providers and captive customers. Second, the degree to which the utility bears any risk is not relevant to the prudence standard; risk is relevant to the Commission's Incentives framework under Order No. 679. Under the Commission's Incentives framework, several utilities enjoy multiple risk-

[310] WestConnect Transmission Owners MTD at 47-50; PGE MTD at 2, 15, 23-26; ITC Comments at 3, 13; Motion to Dismiss and Answer of PacifiCorp at 25-27; NETO MTD at 8, 55-58; NY Transmission Owners MTD at 49-51.

[311] NETOs at 56.

reducing incentives, including the Abandoned Plant Incentive, the Construction Work in Progress Incentives, and an RTO Participation ROE adder.

The prudence standard concerns whether a *reasonable utility manager*[312] would have made similar decisions on incurring costs as the utility being challenged in a prudence review. The standard is as follows:

> [M]anagers of a utility have broad discretion to conduct business affairs and to incur costs necessary to provide service to utility customers. The Commission held that the appropriate test to be used in a prudence review is whether the costs incurred are the costs which a reasonable utility management would have made, in good faith, under the same circumstances, and at the relevant point in time.[313]

The Commission has further explained:

> A prudence inquiry addresses whether the [utility] conducted reasonable evaluation of the costs and benefits prior to incurring a financial commitment. A prudence determination is based upon what the [utility] knew or should have known at the time a decision was made. The prudence standard ensures that ratepayers are not required to pay for 'unnecessary costs.'[314]

Formula Rate Transmission Protocols do not adequately protect consumers from imprudent planning because, even under most formula rate protocols, the burden of denying cost recovery for a transmission project investment lies with the consumer, instead of the burden of justifying cost recovery for a transmission project planning and investment lying with the utility.[315] Protocols do not give consumers an adequate opportunity to make a challenge to the

[312] Given the Commission recognized self-interest of Respondent utilities, the standard for what a reasonable utility manager at one of these utilities would do simply allows the transmission owners to point to each other to establish the prudence of their collective actions.

[313] *New England Power Co.*, 42 FERC ¶ 61,016 (1988), *citing Re New England Power Co.*, 31 FERC ¶ 61,047 (1985).

[314] *Louisiana Pub. Serv. Comm'n, Arkansas Pub. Serv. Comm'n, & Council of the City of New Orleans, Louisiana Sys. Energy Res., Inc., Entergy Servs., LLC, Entergy Operations, Inc., & Entergy Corp.*, 181 FERC ¶ 61,135 (2022), internal citations omitted ("*La. PSC v. Entergy*").

[315] *See* NESCOE Comments at 6, 25-28 (demonstrating that formula rate protocols in New England do not provide adequate oversight or cost management for asset condition projects).

proposed cost recovery. And even if the challenger successfully overcomes the burden of proof and exhausts its procedural options, the transmission owner has often proceeded with, or even completed, project construction, which places the Commission in a difficult position of denying cost recovery for a facility that has been placed in service. Most protocols provide no opportunity to compel transmission owners' responses to discovery, and do not provide any opportunity to cross-examine utility witnesses about the decisions to engage in project spending. Further, the burden rests with the consumer or challenger to exhaust all possible mechanisms during the challenge process before initiating a Section 206 complaint.

Likewise, prudence challenges are not a viable option for consumers to contest the planning of transmission projects, let alone the spending. As consumers have advocated to the Commission before, there appear to be no cases in at least the past 20 years in which FERC has rejected electric transmission expenditures as imprudent. Indeed, PGE, in arguing that prudency tools are "a powerful tool" for consumers, is only able to cite to a handful of cases involving generation-related expenses.[316] The lack of successful prudence challenges regarding transmission expenses is not surprising, and Complainants do not "dramatically overstate[]"[317] the impact of the presumption of prudence enjoyed by the transmission utility.

As to the burden shifting during a challenge, the Commission further explained:

> The regulated entity has the burden of proof to establish prudence . . . in order to ensure that rate cases are manageable, a presumption of prudence applies until the challenging party 'creates a serious doubt as to the prudence of an expenditure . . . . ' Serious doubt must be more than a 'bare allegation of imprudence,' but this threshold may not be so demanding that it effectively reverses the statutory burden of proof. Once such serious doubt has been raised, the [utility] has 'the burden of

[316] PGE Motion to Dismiss and Answer at 25, n. 11 (citing cases involving Fern Solar LLC's generation facility, Basin Electric Cooperative's coal unit, and a nuclear plant).

[317] Motion to Dismiss and Answer of PacifiCorp at 26.

> dispelling these doubts and proving the questioned expenditure to have been prudent.'[318]

The presumption of prudence provided to transmission owners is highly deferential and must be overcome by concrete evidence presented by consumers, who are operating from an information deficit and a resource deficit,[319] before the transmission owner bears the burden of affirmatively demonstrating the prudence of its transmission investment. In addition, prudence determinations are highly fact-determinative and require the complainant "to do more than make mere unsubstantiated allegations."[320]

The Commission has ordered evidentiary hearings to explore the prudence of certain investments, for both electric transmission and electric generation.[321] However, it appears that the only recent case in which FERC found that the complainants met the burden of serious doubt was where a utility owned a minority interest of a coal plant and a nuclear plant and failed to sue the majority interest holder of both plants, which operated the plants.[322] While the minority interest holder sued the plant manager for the operation of the nuclear plant, FERC found that it

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[318] *La. PSC v. Entergy* (citing *BP Pipelines*, 153 FERC ¶ 61,233 at PP 12-13 (citing *New England Power Co.*, 31 FERC ¶ 61,047, at 61,084 (1985), *order on reh'g*, 32 FERC ¶ 61,112, *aff'd sub nom., Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986))).

[319] Indeed, utilities often enjoy the ability to recover litigation expenses from consumers in rates unlike most parties challenging the prudency of a particular investment.

[320] *New England Conf. of Pub. Utilities Commissioners, Inc.*, 124 FERC ¶ 61,291 (2008).

[321] *See Potomac-Appalachian Transmission Highline, LLC Alison Haverty*, 140 FERC ¶ 61,229, at P 79 (2012)(exploring the prudence of transmission-related ""lobbying costs, general advertising and outside services employed, Reliable Power Coalition's costs, double-counting of costs between FERC accounts, shared parent company costs among affiliates, membership costs, and donations and expenditures for civic, political and related activities . . . ."); *Louisiana Pub. Serv. Comm'n, Arkansas Pub. Serv. Comm'n, & Council of the City of New Orleans, Louisiana Sys. Energy Res., Inc., Entergy Servs., LLC, Entergy Operations, Inc., & Entergy Corp.*, 181 FERC ¶ 61,135 (2022)(in a generation-related proceeding, setting for hearing "the issue of the prudence of the 2012 Uprate, including Respondents' request for privileged treatment of the 2009 Investment Proposal").

[322] *See Towns & Cities of Clayton, Lewes, Middleton, Milford, New Castle, Newark, Seaford, & Smyrna, Delaware*, 72 FERC ¶ 61,289 (1995).

was imprudent that the utility did not sue the manager for the operation of the coal plant. FERC noted that while it was hesitant to second-guess the utility and that it did not want to "encourage empty litigation," it could not conclude on the pleadings that the complainants met their burden, and it instituted a limited Section 206 investigation into the utility's prudence, and whether the investigation was barred by the terms of the Municipality's settlements.[323] The lack of cases in the past 20 years in which the Commission has rejected as imprudent any transmission-related investment confirms the ineffectiveness of the existing regulatory framework.

To show that a project is imprudent is highly-fact intensive and the burden of proof is nearly impossible to meet. Transmission owners do not have an affirmative obligation to establish that their projects are prudent before they can begin construction and pass the costs onto consumers, which occurs rather easily through transmission formula rates. Consequently, consumers cannot reasonably rely on consumers' right to file prudence challenges as an effective check on transmission project spending. The Complaint seeks to ensure that planning is conducted proactively, holistically, and appropriately from the outside. Backstop reliance on the prudence standard and costly litigation to fix or challenge a costly project – that perhaps should not have ever been planned and approved – is bad policy.

In summary, protesters' invocation of formula rate protocols and the prudence standard to advocate for continuance of the *status quo* planning process actually confirms and highlights the need for Commission action because the *status quo* is not working to protect consumers and to ensure cost-effective transmission is planned to meet the combined regional needs[324]

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[323] *Towns & Cities of Clayton, Lewes, Middleton, Milford, New Castle, Newark, Seaford, & Smyrna, Delaware,* 72 FERC ¶ 61,289 (1995).

[324] Commission Chair Christie has recognized the limitations of the existing regulatory construct given that large-scale projects are often approved, with incentives, prior to any evaluation for need and prudence by a state commission. *See* "Chairman Christie's Concurrence in Part and Dissent In Part re Incentives to Citizens Electric Corporation, ER25-224," *available at* https://www.ferc.gov/news-

C. Stakeholder Processes Are Inadequate to Advance Enhancements to Tariff Provisions Allowing Individual Transmission Owner Self-Planning.

Trying to distinguish ISO-NE from other planning regions, the Indicated New England Transmission Owners assert that, "unlike other regions, ISO-NE has…a long history of regional planning" with "most transmission projects…subject to comprehensive review by stakeholders."[325] The ISO-NE Transmission Owners further highlight efforts around improving transparency for asset management and asset condition projects.[326] Similarly, MISO contends that all is well in the Midcontinent region because the MISO Transmission Expansion Plan ("MTEP") process is open and transparent "with multiple opportunities for stakeholder review."[327] However, the root problem is not the inability to comment in the MISO and ISO-NE regions; it is the authority of the transmission owners to Self-Plan projects outside the regional process despite the interconnected nature of the grid. Notably, the primary purpose of the Complaint is not to increase the level of stakeholder participation and transparency; the primary purpose of the Complaint is to remove individual transmission owner Self-Planning authority altogether for transmission in interstate commerce by establishing a 100 kV threshold for regional planning. Additional transparency, while welcome, will not remedy the root cause – individual transmission owner Self-Planning authority that has resulted in inefficient, balkanized

events/news/chairman-christies-concurrence-part-and-dissent-part-re-incentives-citizens (*last accessed* Apr. 23, 2025). Chairman Christie explained that "without such a review and finding [of prudence and need], ratepayers are on the hook for the costs of transmission projects that ultimately may never get built because they were never found to be necessary or prudent as to cost to begin with, which is exactly what happened with the infamous PATH project, which never received a state CPCN yet cost consumers a quarter billion dollars for a project in which a single ounce of steel never entered the ground.").

[325] NETO MTD at 5.

[326] *Id.* at 5, 8.

[327] MISO Answer at 15.

transmission planning outside of a robust, holistic, and efficient regional planning, notwithstanding the interconnected nature of the grid.

Neither the ISO-NE Transmission Owners nor MISO demonstrate that continuation of the *status quo* "local" project planning will ensure selection of the most cost-efficient project for the regional interconnected grid. If everything was working well in New England, then it begs the question as to why multiple New England stakeholders have expressed strong support for the Complaint to ensure more oversight and regional planning of billions of dollars in asset condition projects.[328] MISO fails to demonstrate the justness and reasonableness of the Other Project category, and it is telling that MISO does not show or demonstrate all the times MISO has rejected Other Projects proposed by the transmission owners.[329] While Other Projects are placed into the MISO MTEP, Other Projects are planned by the transmission owners and accepted by MISO, which then places those Other Projects into the regional plan. MISO even concedes that Other Projects – which include projects at voltage levels of 230 kV and 500 kV[330] – "reflect[] the *needs* of the Transmission Owners."[331] The Complaint, if granted, would actually allow MISO to do its job more independently based on the regional grid's needs. The Complaint seeks relief

[328] *See* Comments of the New England States Committee on Electricity at 2-3, 5-18; Comments of the Massachusetts Office of the Attorney General at 3-8; Comments of the New Hampshire Office of the Consumer Advocate at 3-10; Comments of the New England Conference of Public Utilities Commissioners at 4-6.

[329] MISO indicates that projects that may provide broader regional benefits are analyzed using and economic screener to determine if projects would qualify as Market Efficiency Projects of Multi-Value Projects. MISO Answer at 18. However, the Complaint demonstrates that several of the MISO 'local' projects should be regionally planned and that the current process does not screen out the 'local' projects. MISO's process confirmed that the 500 kV projects in Entergy Louisiana should not be characterized as regional projects, thus demonstrating that this economic screening approach is not a reliable proxy for the regional nature of 500 kV transmission. *See* MISO Answer, Furnish Testimony at 18:14-22:21.

[330] *See* Complaint at 89-90 (highlighting Entergy Louisiana's Amite South Reliability Project Phase 1).

[331] MISO Answer at 27; *see* MISO Answer at 17 (explaining that the "local portion" of the MTEP "relies on a partnership with the MISO [sic] Transmission Owners").

that would allow MISO to independently plan all regional projects as the ITP without any pressure from transmission owners, as transmission owner authority over projects at 100 kV and above would be removed. MISO would be in a better position to reject or revise any proposal by a transmission owner for a particular project that MISO determines is not in the best interest of the overall transmission grid.

Similar to the arguments of the ISO-NE Transmission Owners, MISO contends that the "appropriate forum" for seeking enhancements to MISO's planning process "would be to leverage the stakeholder process."[332] The Complaint already explained that "further use of stakeholder processes would have been impractical, time-consuming, protracted, and unlikely to produce a resolution on the policy and legal issues raised by this Complaint."[333] Complainants recognize that MISO and ISO-NE provide opportunities to comment, but the mere ability to comment does not necessarily translate into consumer-oriented and public interest concerns being heard and effectively addressed.

D. The Complaint Does Not Address Competition for Regionally Planned Projects.

Certain Respondents or Intervenors assume that the Complaint is intended to expand projects that are available for competitive solicitation. CAISO for example argues that "Complainants fail to explain how a transmission facility can be considered a Regional Transmission Facility for planning and competitive solicitation purposes, but not for cost allocation purposes."[334] MISO Baseline Reliability Projects and certain PJM regionally planned projects under 200 kV are regionally planned today that have no regional cost allocation and thus

[332] MISO Answer at 9.

[333] Complaint at 273.

[334] CAISO Answer at 67.

no competition. The focus of the Complaint is the Complainants' desire for, and the Commission obligation to ensure, planning the more-efficient or cost-effective transmission for the integrated grid, not changing established cost allocation for project voltages or categories, or forcing competition.

In this regard, WIRES creates a strawman when it asserts that Complainants "seem to assume that if the regional planner were to oversee local planning for facilities 100 kV and above, solutions to address all needs, local and regional, would be subject to the RTO/ISO's Order No 1000 competitive solicitation requirements."[335] WIRES goes on to assert that RTOs/ISOs are not staffed for the additional competition that the 100 kV threshold would bring. The Commission should ignore this strawman argument and focus on determining the appropriate just, reasonable, not unduly discriminatory or preferential replacement rate. To the extent that parties believe on compliance that the implications of that replacement rate would be unduly burdensome, the Commission has ample authority to phase the implementation of any implications, without phasing the relief.[336]

E. The 100 kV Threshold for Regional Planning is a Just and Reasonable Replacement Rate.

The Respondents collectively seek to demonstrate that the proposed replacement rate is not just and reasonable by touting the value of their respective "local planning process."[337] Those assertions ignore the overarching point of the requested replacement rate: transmission at 100 kV and above is not "local" as that transmission, unless excepted, is part of the Bulk Electric

[335] WIRES Protest at 28.

[336] For example, if the addition of full regional planning for 100 kV and above transmission facilities would, under current regional tariffs, result in an excessive number of competed transmission projects, the Commission could phase the competition, for example by cost estimate, or voltage, or both, until regional planners were sufficiently staffed, and experienced with implementing the Complaint's requested reform.

[337] *See, e.g.*, New York Transmission Owners MTD at 28-32.

System powering the United States' industrial, commercial, and residential sectors. The Respondents also advance various arguments to assert that adopting a bright line threshold for regional transmission is "not supported by the text of the statue, governing judicial precedent, or FERC's own precedent."[338] These arguments misrepresent the Complaint, the Commission's statutory mandate, and the precedent. This is not surprising as the Commission itself has determined that, with a few exceptions recognized in the Complaint, that transmission 100 kV and above is part of the Bulk Electric System, *i.e.*, regional in nature.

As a starting point, the 100 kV threshold is not an "arbitrary" threshold. As discussed above, and in the Complaint, it was the threshold, subject to exceptions, that the Commission adopted as constituting the Bulk Electric System under the Commission's Congressional mandate to protect that Bulk Electric System for national security and economic reasons.[339] Numerous parties argue that the Bulk Electric System designation of 100 kV is a "reliability threshold" and not a "planning threshold"[340] as if that distinction is somehow relevant to the focus of the complaint: that 100 kV and above transmission is regional in nature because it is part of the Bulk Electric System. In this regard, the SPP transmission owners assert that it is appropriate to have different voltage thresholds for "fundamentally different purposes."[341] There is no "different purpose" that is relevant to the Complaint, the focus is whether the transmission facilities are part of an interconnected grid of near nationwide scope, just as the Bulk Electric System orders did.

[338] *Id*. at 33.

[339] Complaint at 211-212.

[340] New York Transmission Owners MTD at 37; SPP Transmission Owners MTD at 18.

[341] SPP Transmission Owners MTD at 18.

Although the Commission has never made applied an electrical application of what is "local" or "regional" transmission to transmission planning,[342] until this Complaint it has never been tasked with answering the question of whether 100 kV and above transmission is inherently regional and must be planned exclusively as such. Section 215 of the Federal Power Act answers the question by requiring the Commission to establish reliability standards for the transmission facilities that impact the entire *interconnection*, and by establishing *regional* entities to enforce those standards.[343] But the standards do not just apply to existing facilities and their operation, but also to "the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system . . .."[344] It is arbitrary and capricious to call a 100 kV and above facility part of the Bulk Electric System for reliability planning purposes but "local" when allowing individual transmission owners to plan those interconnection-wide impacting facilities as they see fit, and the very same facilities regional when a regional entity plans.

The Respondents also argue that adopting the 100 kV threshold is improper as a replacement rate as it would *interfere* with states' role in local planning, but the point of the Complaint is that 100 kV transmission is currently being planned in **both** local and regional planning processes that overlap. In fact, all FERC jurisdictional transmission is subject to overlapping planning processes. The same 100 kV transmission cannot be both "local" and "regional" solely based on the whims of the individual utility or the state. Transmission in interstate commerce is inherently regional. The Commission has established rules that allow

[342] As discussed below in this section, Order No. 1000 did not make the local versus regional distinction based on the function of the transmission, only how the costs were to be allocated, as decided by the planning party.

[343] 16 U.S. Code § 824o.

[344] 16 U.S. Code § 824o(a)(3).

truly local 100 kV and above transmission to be excluded from the Bulk Electric System by being declared distribution facilities[345] or under NERC rules a Local Area Network. The courts upheld this distinction.[346] Just as some facilities at 115 kV have been determined to be distribution, some facilities below 69 kV have been determined to be "transmission." The exceptions allow impacted transmission owners and states to exclude their truly local facilities from the impact of the complaint. Thus, where the New York Transmission Owners asserts that the Complaint is "untenable because the Commission has recognized in multiple proceedings that lines exceeding 100 kV can and do function as part of the distribution network"[347] they are misrepresenting the Complaint because the Complaint does not cover those distribution facilities. If New York Department of Public Service believes that New York facilities are distribution facilities subject to its retail jurisdiction, it can apply the Seven Factor test and have appropriate facilities designated as distribution facilities. Or facilities falling with the NERC definition of a local area network could be established as such.

It is also worth noting that the Complaint does not seek to remove state involvement from transmission planning, or argue as PJM, AEP, MISO, and ITC have recently that regional planning deprives states of CPCN authority[348] or other inherent state police powers such as an injunction against unconstitutional actions.[349] The Complaint seeks regional planning as the only

[345] *Southern California Edison Co.,* 153 FERC ¶ 61,384, P 19 (2015).

[346] *New York v. FERC*, 783 F.3d 946, 955 (2nd Cir. 2015).

[347] New York Transmission Owners MTD at 34.

[348] *See, e.g.*, Brief of Appellee Transource Pennsylvania, LLC. (Transource Third Circuit Brief) at 3-7 and passim, Steven DeFrank, et al., v. Transource Pennsylvania, LLC., No. 24-1045 (3d Cir. July 10, 2024); Brief for Amicus Curiae PJM Interconnection, L.L.C. Supporting Appellee [Transource] and Supporting Affirmance at 2-3 and passim, Steven DeFrank, et al., v. Transource Pennsylvania, LLC., No. 24-1045 (3d Cir. July 17, 2024).

[349] *See* "Motion for Leave to File Amicus Curiae Brief" and "Amicus Curiae Brief of the Midcontinent Independent System, Operator, Inc." Case No. CVCV068040 (7th Cir.) (filed Feb. 6, 2024) at 10 (arguing against state interference with transmission planning because FERC's "[t]his comprehensive authority

mechanism to ensure just and reasonable rates for all consumers. NARUC, while not opining on the Complaint itself, acknowledged that there is a problem with individual transmission owner planning that the Commission needs to address.[350] The only viable way to address the issue is to adopt a brightline 100 kV threshold for regional planning.

Just as the Commission did in Order No. 1920-A with state participation in cost allocation determination for regionally planned projects, the Commission can ensure that state interests are protected in the replacement rate. The regional planner will recommend a project or projects to address all identified needs, whether state identified, IRP, FERC Form No. 715 planning criteria or whatever, with input from all parties. That regional plan, just as is true today, would give no party the right to actually build the planned project without receiving any required state approval. Thus, states retain the same authority they have today, with the added knowledge that a regional planner has looked at all needs and relevant alternatives.

In arguing against a brightline threshold for regional planning the Respondents also misconstrue the decisions the Commission made in Order No. 1000 as it relates to the relief requested by the Complaint.[351] In Order No. 1000 the Commission made no effort to focus its planning reforms on the function of the transmission but instead left the local versus regional planning divide in place based on the proposed cost allocation for the project planned, as decided by the entity that planned the project. As noted elsewhere, this local versus regional distinction based on cost allocation has meant a $2 billion 500-mile double circuit 345 kV facility is "local" when planned by an individual transmission owner and charged to its customers, but "regional"

over the transmission of electric energy in interstate commerce extends to matters of transmission planning and related transmission planning activities by jurisdictional public utilities, such as MISO.")

[350] NARUC Comments at 3.

[351] See, e.g., PJM MTD at 48.

such that 50% is spread across all of PJM and 50% allocated by the distribution factor ("dFax") analysis when planned by PJM. The Complaint demonstrates that determining "local" versus "regional" based on cost allocation, which itself is based on the entity planning the transmission facilities, ignores the fact that electrically the facilities are exactly the same. Even here the Commission allowed some regional projects to be treated differently based on limited cost allocation,[352] demonstrating that cost allocation does not actually reflect whether a project is of a regional nature or not. As the Complaint noted, cost causation should "focus[] on project benefits, not on how particular planning criteria were developed."[353]

Demonstrating that cost allocation is not an accurate reflection of whether a project is regional, the Complaint demonstrated the wildly different cost allocations for projects of similar voltage based on whether they were planned by an individual transmission owner or regionally.[354] As the Complaint fully demonstrated, cost allocation is not the appropriate determinate for whether a transmission addition is local or regional, particularly when the very same project could be treated as either based on cost allocation geared to how it was planned. The Complaint does not seek to change the cost allocation for projects only the

Finally, the assertions that adopting a brightline test would interfere with state reserved authority in the Federal Power Act is misplaced. The rates and practices affecting rates for transmission in interstate commerce are exclusively FERC jurisdictional. To the extent that states have identified planning processes that address FERC jurisdictional transmission, those requirements can be incorporated into regional planning, just as state public policy requirements

[352] See, e.g., Midwest Independent System Operator, Inc. at al, 142 FERC ¶ 61,215 (2013) PP 519 et seq.

[353] Complaint at 201 (citing *Old Dominion Elec. Coop. v FERC*, 898 F.3d 1254, 1262 (2018)).

[354] *See, e.g.*, Complaint at 199 noting SPP regional cost allocation for 1/3 of the costs of 100 to 300 kV projects while there was exclusively local cost allocation for a 500 mile double circuit 345 kV project in Colorado that was planned by a single transmission owner.

are today. As noted above, states also retain the ability to determine whether certain facilities are distribution under the Seven Factor Test. But *New York v. FERC* made it clear that states do not have the ability to declare that transmission in interstate commerce is "local" and exclude it from FERC's jurisdiction.[355] The fact that the rates for the particular transmission may be bundled with distribution rates does not change this narrative. In Order No. 1000 the Commission required regional planning and a regional transmission plan for all utilities, regardless of whether they had bundled rates. The Complaint does not interfere with bundled rate determinations. The Complaint focuses on what transmission charges go into those bundled rates and therefore seeks a replacement rate to ensure that transmission in interstate commerce is planned consistent with its *regional* electrical nature, thereby yielding just and reasonable rates.

F. The Complaint Demonstrates the Need for Enhanced Transparency and Independence Requirements for Planning FERC-Jurisdictional Transmission.

Several parties contend that the Complaint should be rejected or dismissed because the requested implementation of an ITP is not legally sound and/or implementable.[356] As an initial matter, the appropriate replacement rate is the second step of the Section 206 analysis. To the extent that the Commission finds under the first step that the existing transmission owner Self-Planning tariff provisions are unjust, unreasonable, unduly discriminatory, or preferential, with respect to Commission jurisdictional transmission 100 kV and above, the Commission has wide latitude in determining the appropriate replacement rate, including additional procedures to make that determination. Further, as the Complaint emphasized, the proposed replacement rate includes two distinct proposals, the first of which is not contingent on the acceptance of the

[355] *New York v. FERC*, 535 U.S. 1 (2001).

[356] *See, e.g.*, WIRES Protest at 23; PGE Answer at 26; PacificCorp Answer at 30; NV Energy Answer at 35-36; Northwest Answer at 17-18; NYISO Answer at 17; CAISO Answer at 86; New York Transmission Owners Protest at 18.

second. To the extent that there are any concerns regarding the ability of the Commission to implement the ITP requirement, or to implement it across the board, it should not discourage, limit, or impede the Commission from granting the Complaint's requested replacement rate related to regional planning generally – the 100 kV project threshold for regional planning and removal of the applicable tariff provisions allowing transmission owner self-planning of transmission at 100 kV and above.[357]

Regarding the requirement for an independent system planner, the Complaint established the need for such an independent planner. In RTO/ISO regions, the Complaint explained that the existing RTO/ISO potentially could fulfill the role of the ITP so long as the RTO/ISO can meet the enhanced independence requirements.[358] The various answers of the RTO/ISO Respondents highlight the legitimacy of the Complainants' concerns regarding RTO/ISO independence as those entities echo transmission owner talking points or felt contractually limited. The Independent Transmission Planner concept is implementable in RTO/ISO region, and enjoys robust support from consumer advocates and independent third parties.[359] Further, WIRES does not show that requiring heightened standards for independence for existing transmission planners would impede critically needed infrastructure development. On the contrary, use of the ITP would instill more confidence in a broader swatch of the regulated community and more support for proposed projects, thereby reducing possibilities around siting and prudence challenges to projects.

[357] *See* Complaint at 229, n. 1010.

[358] *See* Complaint at 235-236; *see also* Comments of the Public Utilities Commission of Ohio's Office of Federal Energy Advocate at 13.

[359] *See* Maine Office of Public Advocate April 23, 2025 Response at 9-12; NESCOE Comments at 32-34; Comments of Independent Market Monitor for PJM at 4-5; Comments of Joint Consumer Advocates at 5-6.

In the non-RTO/ISO regions the Complaint demonstrated that despite more than a decade of required regional planning that leads to a regional plan, no regional projects had been planned. The WestConnect transmission owners acknowledge that they circumvent the regional planning process using their local planning tariffs, asserting "Due to jurisdictional requirements and the Commission's directive to eliminate the non-jurisdictional framework, **local planning is how the ETOs and non-jurisdictional utilities in WestConnect jointly develop transmission facilities**."[360] Thus, the need for independent regional planning is critical to the Commission's consumer protection mandate. While there has been no regional planning, there are nevertheless Order No. 1000 regional planning regions with established regional planning frameworks. As such, the replacement rate requirement for an independent regional planner in non-RTO/ISO regions would not be starting from scratch.

WIRES, appealing to fear, again raises "the sky is falling" arguments around staffing, knowledge, and cost but ignores that duplicate processes are happening today, costing consumer hundreds of millions in labor costs. Currently, consumers are paying for every utility to have an internal planning staff for transmission in interstate commerce that is all interconnected, and for each to engage in individualized transmission planning and regional planning. An independent system planner with a 100 kV regional threshold would eliminate much of that redundancy.

As demonstrated in the Complaint, where the Southeast Companies complain about the loss of rights related to "their facilities" the Complaint is focused on further facilities. An ITP presumably would not have planned a 161 kV cross-service AC transmission line to avoid regional planning thresholds resulting is a FERC complaint by other regional entities, as it would

[360] WestConnect Transmission Owners MTD at 64 (emphasis added).

have no self-interest in doing so.[361] Importantly though, the ITP requirement does NOT mean that transmission will be "operated [by] by an ITP" or control over end of life determinations.[362] The ITP would, however, make the planning determination as to whether the regional grid needed to rebuilt 60 year old transmission reaching the end of operational life (as determined by the owner of that transmission) as there is no transmission owner "right" to determine the grid of tomorrow or to, into infinity, perpetuate its status as a transmission owner. "[A]lmost all electricity flows not through 'the local power networks of the past,' but instead through an interconnected 'grid' of near-nationwide scope."[363] There is not right to ensure that the "local power networks of the past" are an integral part of the "interconnected 'grid' of near nationwide scope" of tomorrow.

[361] Complaint at 149-151 (citing *Duke Energy Florida, LLC v. Florida Power & Light, Co.*, et al. Docket No. EL21-93-000, filed August 06, 2021 ("Duke Complaint") at 3.

[362] Southeast Companies MTD at 49-50.

[363] *Advanced Energy United, Inc. v. FERC*, 82 F.4th 1095, 1102 (D.C. Cir. 2023) *quoting FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 267 (2016).

V. CONCLUSION

WHEREFORE, for the foregoing reasons, Complainants respectfully request that the Commission deny the various motions to dismiss and instead grant this Complaint and exercise its discretionary remedial authority as necessary to protect customers, ensure just and reasonable rates, and maximize regional transmission planning that identifies or selects the more efficient or cost-effective transmission projects. Respectfully submitted,

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April 24, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated this 24th day of April 2025.

/s/*Kenneth R. Stark*

McNees Wallace & Nurick LLC