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April 25, 2023

The Honorable Joe Manchin III

Chairman Committee on Energy and Natural Resources

U.S. Senate

304 Dirksen Senate Office Building

Washington, DC 20510

The Honorable John Barrasso

Ranking Member

Committee on Energy and Natural Resources

U.S. Senate

304 Dirksen Senate Office Building

Washington, DC 20510

***Re: Iowa Supreme Court Rejects Electricity Transmission Right of First Refusal Law – Described as “Quintessentially Crony Capitalism; Rent Seeking; Protectionist and Anti-Competitive”***

Dear Chairman Manchin and Ranking Member Barrasso:

America’s electricity consumers once again reach out to you to ask for your support in reminding the Federal Energy Regulatory Commission (FERC) that their core mission under the Federal Power Act is to protect electricity consumers[[1]](#footnote-1) and that you do not support FERC backtracking on transmission competition as their current Notice of Proposed Rulemaking (NOPR)[[2]](#footnote-2) contemplates.

Competitive bidding of new transmission projects reduces electricity costs for consumers, is sound anti-inflationary policy, and is a bipartisan conclusion. Under both Presidents Trump and Biden, the Department of Justice (DOJ) has challenged state incumbent preference laws (also known as rights of first refusal laws) that seek to circumvent FERC’s existing requirements for transmission competition.[[3]](#footnote-3) Last year, DOJ, this time joined by the Federal Trade Commission (FTC), reiterated that stance in comments on the NOPR’s proposal to significantly abandon transmission competition.[[4]](#footnote-4)

FERC’s Order No. 1000,[[5]](#footnote-5) issued over a decade ago, found that transmission competition was essential to FERC’s duty to determine just and reasonable rates and that eliminating contractual preferences in tariffs or agreements under federal jurisdiction was in the public interest.[[6]](#footnote-6) FERC’s pronouncement about the benefits of competition on transmission rates proved correct as savings from competed projects are significant and consistent with studies that have shown that competition could reduce the cost of transmission projects by up to 40 percent.[[7]](#footnote-7) Yet only three percent of all transmission investment since Order No. 1000 has been competitively awarded because of a lack of FERC enforcement of Order No. 1000 and incumbent lobbying efforts at the state level. With one study suggesting the United States may need to spend $2.1 trillion by 2050[[8]](#footnote-8) to build-out the transmission grid, time is of the essence and your voice is essential now.

Just weeks, ago the Supreme Court of Iowa added their voice to Senators Heinrich and Lee,[[9]](#footnote-9) the DOJ, FTC, the United States Court of Appeals for the Fifth Circuit, and hundreds of consumers and bipartisan groups[[10]](#footnote-10) in saying that consumers need competition to tackle the ever-rising electricity costs. The Iowa Supreme Court was very succinct that preferences are “quintessentially crony capitalism . . . rent-seeking, protectionist legislation is anticompetitive.”[[11]](#footnote-11) This conclusion is true whether the preference arises from a state preference law geared to get around the Federal Power Act and FERC rules or incorporated by FERC itself. As the Iowa Supreme Court held, “common sense tells us that competitive bidding will lower the cost of upgrading Iowa’s electric grid and that eliminating competition will enable the incumbent to command higher prices for both construction and maintenance.”[[12]](#footnote-12)

As Senators focused on common sense measures for the public benefit,[[13]](#footnote-13) we ask that you lend your voice, and ultimately that of the entire Energy and Natural Resources Committee, to remind FERC that consumers come first, even during times of transition and that more transmission competition is the right direction, not less. The cost reductions from projects that have been competitively bid across the country and the opinion of the Iowa Supreme Court shows just how out of step the FERC’s transmission planning NOPR is on this critical issue. We urge you to tell FERC that transmission competition is essential to their mission, and to support the ETCC initiatives.[[14]](#footnote-14)

Sincerely,

Paul N. Cicio

Paul N. Cicio

Chairman, Electricity Transmission Competition Coalition

<https://electricitytransmissioncompetitioncoalition.org/>

cc: Senate Committee on Energy and Natural Resources

Federal Energy Regulatory Commission

The Honorable Jennifer Granholm

**MEMBERS OF THE ELECTRICITY TRANSMISSION COMPETITION COALITON (ETCC)**

Ag Processing

Alliance of Western Energy Consumers

Aluminum Association

American Chemistry Council

American Forest and Paper Association

American Foundry Society

American Iron and Steel Institute

Ardagh Group

Arglass Yamamura

Arkansas Electric Energy Consumers, Inc.

Arkansas Forest and Paper Council

Association of Businesses Advocating for Tariff Equity

CalPortland Company

Can Manufacturers Institute

Carolina Industrial Group for Fair Utility Rates

Carolina Utility Customers Association, Inc.

Century Aluminum

Chemistry Council of New Jersey

Chemical Industry Council of Illinois

Coalition of MISO Transmission Customers

Coastal Energy Corporation

Commercial Metals Company

Council of Industrial Boilers Organization

Delaware Energy Users Group

Digital Realty

Domtar Corporation

Eramet Marietta Inc.

Formosa Plastics Corporation, U.S.A.

Foundry Association of Michigan

Gerdau Ameristeel Inc.

Glass Packaging Institute

Illinois Industrial Energy Consumers

Indiana Industrial Energy Consumers

Industrial Energy Consumers of America

Industrial Energy Consumers of Pennsylvania

Industrial Energy Users-Ohio

Industrial Minerals Association-North America

Iowa Business Energy Coalition

Iowa Industrial Energy Group, Inc.

Iron Mining Association of Minnesota

Kimberly-Clark Corporation

Large Energy Users Coalition (NJ)

Lehigh Hanson, Inc.

LS Power Development, LLC

Maine Industrial Energy Consumer Group

Marathon Petroleum Company

Messer Americas

Metalcasters of Minnesota

Michigan Chemistry Council

Midwest Food Products Association

Minnesota Large Industrial Group

Multiple Intervenors, NY

National Council of Textile Organizations

National Retail Federation

NextEra Energy, Inc.

North Carolina Manufacturers Alliance

NovoHydrogen

Office of the People’s Counsel for the District of Columbia

Ohio Cast Metals Association

Ohio Chemistry Technology Council

Ohio Energy Group

Ohio Manufacturers’ Association

Oklahoma Industrial Energy Consumers

Olin Corporation

Owens-Illinois

Pennsylvania Energy Consumer Alliance

PJM Industrial Customer Coalition

Portland Cement Association

Public Citizen, Inc.

R Street

Resale Power Group of Iowa

Retail Industry Leaders Association

Riceland Foods, Inc.

Rio Tinto

Skana Aluminum Company

Steel Manufacturers Association

Texas Cast Metals Association

TimkenSteel Corporation

Vallourec STAR LP

Vinyl Institute

Virginia Manufacturers Association

West Virginia Energy Users Group

West Virginia Manufacturers Association

Wisconsin Cast Metals Association

Wisconsin Industrial Energy Group

1. Federal Power Act. [↑](#footnote-ref-1)
2. “Building for the Future Through Electricity Regional Transmission Planning and Cost Allocation and Generator Interconnection,” Notice of Proposed Rulemaking, April 21, 2022. Although the NOPR was initiated under the former Chair, it remains pending. [↑](#footnote-ref-2)
3. [cite to 5th Circuit brief] [↑](#footnote-ref-3)
4. Federal Trade Commission, DOJ Urge FERC to Preserve Robust Wholesale Electricity Markets | Federal Trade Commission (ftc.gov) [↑](#footnote-ref-4)
5. [cite] [↑](#footnote-ref-5)
6. [cite to public interest orders] [↑](#footnote-ref-6)
7. Brattle Group: Cost Savings Offered by Competition in Electric Transmission, <https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf> Even a 25 percent savings would save consumers an estimated $525 billion by 2050. More specifically, reports indicate that competitive bidding processes could yield savings as follows: MISO (Midwest region): 15-28 percent cost savings; Southwest region (Southwest Power Pool): 50-58 percent savings; and Mid-Atlantic (PJM) region: 60-67 percent savings. [↑](#footnote-ref-7)
8. NET-ZERO AMERICA: Potential Pathways, Infrastructure, and Impacts, Princeton University, <https://netzeroamerica.princeton.edu/?explorer=year&state=national&table=2020&limit=200> [↑](#footnote-ref-8)
9. https://www.ieca-us.com/wp-content/uploads/2022.9.30-FINAL-Pro-Competition-Senate-ENR-letter-to-FERC\_-Heinrich-Lee.pdf [↑](#footnote-ref-9)
10. <https://electricitytransmissioncompetitioncoalition.org/> Groups as divergent as the California Public Utilities Commission and the R Street Institute agree that transmission competition is essential to electricity consumers, large and small. [↑](#footnote-ref-10)
11. Iowa Supreme Court: <https://www.iowacourts.gov/courtcases/15908/embed/SupremeCourtOpinion> at 34. [↑](#footnote-ref-11)
12. Id. [↑](#footnote-ref-12)
13. <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=7ED77CFE-162B-4ACE-9821-E45E785B8F5E> [↑](#footnote-ref-13)
14. See, <http://electricitytransmissioncompetitioncoalition.org/wp-content/uploads/ETCC-ANOPR-Comments-Filed1.pdf> asking for competition for transmission at 100 kV and above, and independent transmission planning. [↑](#footnote-ref-14)