

## **NOPR Comments Filed 8/19/2022 Supporting Transmission Competition and Opposing the Proposed ROFRS in the FERC NOPR<sup>1</sup> (Listed Alphabetically)**

### **Advanced Energy Buyers Group**

- “Efficient, competitive transmission infrastructure will deliver customer cost savings, improve reliability outcomes, and enable the transition to a decarbonized electricity system that is being driven by shifts in technology, policy, and the needs and preferences of customers such as the members of the AEBG.” (page 2)
- “In summary, AEBG expressed support for transmission policies that would: ...(2)Always consider and aim to minimize the cost of meeting transmission needs (e.g., through competition and through use of grid-enhancing technologies); (3) Improve the reliability and market efficiency of necessary transmission expansion (e.g.,by leveraging the benefits of competition); ... AEBG stands by these principles, and emphasizes the importance of identifying opportunities to unlock the most cost-effective renewable energy resources while minimizing the costs of transmission investment by increasing the efficiency of existing transmission infrastructure and leveraging the benefits of competition.” (page 4)
- “Consistent with our support of competition as a means to reduce the cost of needed transmission buildout, AEBG does not support finalization of any reinstatement of the federal Right of First Refusal in a final rule in this proceeding, and we support the comments of Advanced Energy Economy urging the Commission to instead take this issue up through another vehicle, such as the pending cost containment proceeding in Docket AD22-8-000.” (footnote 6, page 4)

### **Advanced Energy Economy**

- “For these reasons, AEE recommends that the Commission decline to finalize its proposed partial reinstatement of the federal ROFR in the final rule, and instead conduct a fulsome examination of the issues surrounding transmission competition in another docket (such as the pending cost containment docket) before proceeding to make changes.” (page 37)

### **Americans Clean Power Association (ACP), MAREC Action, Clean Grid Alliance, The Alliance for Clean Energy-New York, and New York Offshore Wind Alliance**

- “The Clean Energy Associations do not take a position on the Commission’s proposal to allow federal Rights of First Refusal for regional transmission projects that utilize a joint ownership structure, or whether a ROFR should be provided to facilities identified through ‘right-sizing’. However, consistent with ACP’s past positions on MISO and SPP’s proposals for storage-as-transmission, the Clean Energy Associations urge the Commission to determine that ownership and operation of these resources is open to any qualified entity.” (page 42)

### **Americans for Fair Energy Prices, Inc**

- “Simply put, the ROFR should be removed from the NOPR.” (page 2)
- “Without competition, the only other option is more regulation, which would likely drive costs higher.” (page 3)
- “It is clear that competitive bids for transmission would provide savings to consumers.” (page 3)

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<sup>1</sup> A few selected comments are also included that support regional transmission planning down to 100 kV and that the right-sized voltage threshold is inadequate, consistent with ETCC position. ETCC opposes a right of first refusal for right-sized projects.

- “Consumers’ need for immediate improvement in transmission planning and delivery at the lowest reasonable cost is of the utmost importance. Reinstating the federal ROFR would increase costs to consumers, delay improvements to regional development, and counter the Commission’s efforts to improve competition in markets. Going backwards and spending more time to remove competition is not the right approach. Removing the ROFR [proposal] would help the Commission move forward in the development and implementation of electric transmission.” (page 4)

### **Anbaric**

- “The short answer is that the proposed Conditional ROFR in no way aligns with the pro-competition goals embodied in the Order No. 1000 reforms. The proposal will harm consumers, as its adoption would cement further the demonstrated hold that many incumbent transmission owners have on the development of new and needed facilities. Worse, this proposal will undermine efforts in regions which competition has been, and continues to be, used successfully to select project developers.” (page 12)
- “That many incumbents prefer projects that can be built without the fear of competition is not surprising. But this preference is not a reason to jettison competition and its benefits it provides customers. It is instead a reason to close the loopholes left by Order 1000.” (page 14)
- “Allowing for the possibility that some third parties could buy into a portion of a project developed by an incumbent is not a substitute for competition. And, in any event, beneficial joint ownership is far more likely to emerge when competition is permitted to flourish.” (page 16-17)
- “Concerns about placing control in the hands of incumbents is particularly acute with respect to the development of transmission needed to connect offshore wind.” (page 17)
- “But the incumbent transmission owners, who may receive ROFR rights over land-based improvements, have an incentive to support more expensive onshore upgrades that will be needed if offshore wind generation is integrated through suboptimal, radial-by-radial interconnection facilities. In other words, the incumbents-unlike competitive entrants-have little incentive to implement the most efficient offshore wind transmission configuration-and the Conditional ROFR insulates them from needing to do so.” (page 17)
- “Worse, the Conditional ROFR as proposed leaves ample room for gaming and abuse. The NOPR is express that partnerships between affiliated entities will not meet the requisite "condition" (NOPR P 371), but is silent as to other arrangements that are equally undesirable. While the NOPR states that the Commission "intend[s] for incumbent transmission providers pursuing joint-ownership proposals to offer unaffiliated entities a reasonable chance at meaningful participation," it fails to foreclose the potential for two incumbent transmission owners (or their affiliates) to team up and swap a portion of their respective projects as a means to satisfy the joint ownership requirement. Id. These seemingly acceptable arrangements would simply maintain the status quo.” (page 18)
- “Accordingly, any expectation that jointly-owned projects will benefit from the diverse experience and abilities of non-incumbent participants will not be served by a policy that subordinates those experiences and abilities to incumbent control” (page 19)
- “But if the Commission intends for "meaningful participation" requirement to be met with a third-party ownership share that is well below 50%, then we expect the effect of such participation to be little more than window dressing on what would otherwise be simply another incumbent project.” (page 20)
- “ Rather than turn away from a competitive regime that continues to hold great promise and has not been given sufficient chance to work, the Commission should affirm Order 1000's mandates and expand opportunities for competitive transmission development. Doing so requires removing the

"immediate need" and other exceptions approved in various ISO and RTO Order 1000 compliance plans." (page 21)

### **American Chemistry Council**

- "While acknowledging that under the current policy, Transmission Providers may be underinvesting in Regional transmission to circumvent the competitive process, ACC questions where reinstating a broad right of first refusal "ROFR" policy is the proper solution, with or without the requirement for joint ownership. For a more detailed discussion on the risks and benefits of the current proposal, ACC directs the Commission to the comments of the comments of the Electricity Transmission Competition Coalition. ACC recommends FERC consider whether there may be other policy options, short of reestablishing ROFR, that would address the infirmities of the current policy and retain the benefits of competition while incentivizing appropriate attention to Regional Transmission needs. To provide time for this analysis, ACC recommends FERC establish a separate proceeding focusing on the competition issue, with a focus on identifying more targeted policy reforms to prioritize regional transmission investment." (page 8)

### **California Department of Water Resources State Project**

- "Yet, in-kind replacements constitute the majority of spending within CAISO-PG&E, for example, spends 75% of its overall revenue requirement on asset management projects. In the NOPR, the Commission expressed its concerns "that local transmission planning processes may lack adequate provisions for transparency and meaningful input from stakeholders, and that regional transmission planning processes may not adequately coordinate with local transmission planning processes." Those problems are magnified for in-kind replacements. SWP supports the Commission's proposal for much-needed improvements to the local planning process. And SWP supports the proposal, subject to the competition concerns raised below, to require evaluation of right-sizing in-kind replacement projects... But, in addition, the Commission should expand the improvements for local planning process to include in-kind replacements." (page 3)
- "SWP supports the Commission's goal of encouraging the "right-sizing" of in-kind replacement projects.<sup>16</sup> But the NOPR's proposal to apply the right of first refusal ("ROFR") to right-sized replacement projects will erase the cost benefits of the local planning process and potential right-sizing. Currently, and as described elsewhere in these comments, California's competitive process is working well, with projects garnering multiple bids and saving ratepayers up to 50%. If a right-sized replacement project satisfies CAISO's requirements for competitive solicitation, then there is no reason to exempt that project from competition and forgo the potential savings." (page 8)
- "Instead of providing a ROFR to incumbent transmission owners, the Final Rule should make clear that any construction of in-kind replacements after a right-sized project has been selected will be presumed imprudent. The burden should then be on the incumbent transmission owner to prove that the double building was necessary before recovering the cost of the in-kind replacement project from ratepayers. Providing a ROER for right-sized projects will not capture the cost containment potential of the Commission's proposed planning enhancements. Instead, it will allow incumbent transmission owners to construct right-sized projects without any cost guardrails, which could end up being more expensive than if they had simply constructed the in-kind replacements. To adequately protect ratepayers from unjust and unreasonable rates, the Commission should revise its proposal to allow right-sized projects to be eligible for competitive solicitations." (page 9)
- "The Commission should require competition for upgrades and local projects.... The Commission should address this problem by expanding competition to include upgrades and local projects. SWP also supports the CPUC's suggestion in its ANOPR Comments, where it encourages the Commission to "delink" eligibility for competition from cost allocation and subject both regional and local projects to

competition. 20 Competition has been successful in containing costs in California and the local planning process should not only look to provide oversight into projects, it should also look to contain costs and the most efficient way to do that is to foster competition.” (page 10)

- “The Commission's proposal to reinstate the federal ROFR for projects that are jointly owned will harm California ratepayers” (page 10)
- “Instead of reinstating the ROFR for jointly-owned projects the Commission should instead: (1) subject projects not selected through competitive bidding to heightened prudency review; (2) increase scrutiny of local projects; (3) subject local projects to competition. These proposals will solve the competitive solicitation problems identified by the Commission and will provide even more benefit to California's ratepayers. Because the Commission is proposing to undertake the second item on this list (increasing scrutiny into local projects), it should, at the very least, delay action on reinstating the federal ROFR until after the NOPR's proposed local planning processes have had time to be established and utilized.” (page 11)
- “In California, joint ownership works with competition. CAISO's competitive solicitation process specifically includes an "Opportunity to Collaborate" that allows for incumbent transmission owners to offer joint ownership for projects that are eligible for competition.” (page 12)
- “The Commission presents no evidence that the benefits of joint ownership that it cites could not accrue through the competitive process. Therefore it is not just and reasonable to strip California of the cost-savings that it gains through competition for a process that does not assure that ratepayers will earn benefits above and beyond what they have already received through the competitive solicitation process.” (page 14)

#### **California Independent System Operator**

- “The CAISO's ability to evaluate and ‘right-size’ such replacement or maintenance projects to meet CAISO-identified transmission needs is not limited to just to high voltage facilities, i.e., facilities at and above the 230 kV threshold proposed in the NOPR, it applies to all transmission facilities under the CAISO's operational control...Finally, the CAISO requests that the Commission clarify that the NOPR does not preclude the CAISO from continuing to consider modifications to “in-kind” replacements for facilities below 230 kV in its annual transmission planning process. As indicated above, in its Commission-approved planning framework the CAISO approves facilities at all voltage levels in its transmission planning process. Thus, if the CAISO identifies a transmission need, and modifying or expanding an in-kind replacement of a facility below 230 kV can meet that need, the CAISO has the authority to approve such a project in its planning process. Precluding the CAISO from modifying in-kind replacements of facilities below 230 kV would undermine efficient transmission planning in the CAISO region.” (page 48 and 50)

#### **California Municipal Utilities Association**

- “Transmission costs have almost tripled for certain California wholesale customers over the last decade. As set forth below, CMUA studies suggest adding anticipated long-lead time policy transmission identified by the CAISO and historical rate of utility CAISO and self-approved (not subject to CAISO-approval) capital additions lead to transmission costs twice today's already high rates over the next decade and a half. This is an unacceptable escalation in costs, and must be considered when assessing planning reforms that may, on balance, produce further cost increases.” (page 3)
- “CMUA has concerns about the vague joint ownership articulation in the NOPR and its linkage to the conditional Right of First Refusal. CMUA members do not support sacrificing competition and possible cost containment measures for a "joint ownership" provision that is largely symbolic. The Order No.

1000 competitive solicitation process administered by the CAISO appears to result in meaningful competition and should not be discarded.” (page 4)

- “The joint ownership constructs in the NOPR require more discussion, articulation, and specification. They should not be linked to proposals to erode competitive processes.” (page 14)

### **California Public Utilities Commission**

- “The CPUC is particularly concerned, however, by the Commission's proposals to retreat from competition, as reflected in both the NOPR's proposed reinstatement of a right of first refusal ("ROFR") for regionally cost allocated transmission projects conditioned on incumbent utilities entering joint ownership arrangements, and the ROFR proposed in conjunction with the NOPR's right-sizing proposal. By disregarding the demonstrated cost savings benefits of competition, as thoroughly documented in the record of this proceeding, these NOPR proposals would result in ratepayers being compelled to pay significantly more to modernize the grid, than if competitive processes were used to procure regional transmission projects. (page 2-3)
- “Thus, the Commission's proposals, if applied in the CAISO, could result in the loss of expected project cost savings from competition of over \$8.8 billion in the next two decades.” (page 3)
- “The CPUC notes that recent experience suggests the expected cost savings from competition attainable in the CAISO would likely be greater than 29%. See notes 243-253 infra and accompanying text (explaining that the actual cost of two recently completed projects in the CAISO that were procured using competitive processes demonstrate cost savings of 29% and 55%, respectively, as compared to the CAISO's initial estimates and the historical cost escalation of 41% experienced in the region for traditional project development by incumbent utilities).” (FN 9, pg4)
- “The Commission Should Increase Competition for the Development of Transmission Infrastructure; Not Effectively Eliminate it.” (page 58)
- “To paraphrase Kansas Corporation Commission Commissioner Andrew French: with the SPP presently reaping substantial cost savings, now seems an imprudent time to constrain competitive solicitation processes.” (page 71-72)
- “Significantly, the NOPR does not specifically address whether an incumbent utility could invoke its conditional right of first refusal to preclude a state from using a competitive procurement process for a regional transmission project that it intends to fund itself, namely, whether the Conditional ROFR would effectively supersede the State Agreement Approach in PJM Operating Agreement.” (page 78)
- “...the Conditional ROFR raises the precise concerns that led the Commission to eliminate federal ROFRs in the first place. As set forth below, there are many problems with the Conditional ROFR. Most fundamentally, it proposes the wrong remedy: instead of improving the competition mandate In Order 1000 by broadening the applicability of competitive procurement requirements and getting rid of anti-competitive carve-outs, the Commission proposes to greatly restrict competition, if not eliminate it all together. For all of the reasons explained below, the CPUC strongly urges the Commission to reconsider the efficacy of, and legal support for, its proposal.” (page 79)
- “As explained above in Section II(G)(2)(a)(I), however, there is nothing that would prevent incumbent utilities from simply agreeing to partner with each other to circumvent competition and simultaneously create barriers to entry for other potential market participants.” (page 80)
- “This begs the question: why,
- “When given the choice, would incumbent utilities now choose to partner with transmission dependent utilities ("TDUs"), including public power entities, when, historically, so few incumbent utilities have previously agreed to do so?... Given incumbent utilities' historical reluctance to share transmission ownership with TDUs, including public power entities, and that the Conditional ROFR

allows incumbent utilities to choose their development partners, it is illogical for the Commission to assume that incumbent utilities will now prioritize joint ownership arrangements with TDUs and other potential new entrants, over other options, including, as described above, foreseeable reciprocal agreements to divvy up regional transmission projects among incumbent utilities.” (page 84-85)

- “First, limiting the Conditional ROFR to only apply to inclusive joint ownership arrangements would discriminate against all other potential market participants... Second even were the Commission to only apply the Conditional ROFR to inclusive joint ownership arrangements, such a limitation would not necessarily result in the other two benefits that the NOPR contends will accrue to customers, i.e., "greater innovation," "and potentially lower costs of transmission development.” (page 86-87)
- “Thus, instead of trying to improve upon the flawed construct of the Conditional ROFR, if the Commission wants to encourage more inclusive joint ownership arrangements, it should adopt TAPS' recommendation to treat "[i]nclusive joint ownership ... as a positive factor in evaluating bids" in competitive processes, provided that such arrangements result in demonstrable benefits to customers, e.g., by returning project revenues to customers.” (page 88)
- “In regions such as PJM and the NYISO that use the sponsorship model, the Conditional ROFR would not just discourage, but explicitly preclude, consideration of potentially more innovative, efficient, and cost-effective solutions.” (page 89)
- “The results of PJM's New Jersey Offshore Wind SAA proposal window illustrate the negative consequences for ratepayers of eliminating any consideration of alternative proposals for how to address an identified transmission need. As shown by the results of the solicitation presented to stakeholders on July 18, 2022, the joint proposals submitted by the incumbent utility, Public Service Electric and Gas ("PSE&G"), and its affiliate Orsted, do not appear as competitive as other transmission developers' proposals. For example, the Transmission Expansion Advisory Committee concluded that among combined proposals for Option 1B, i.e., "Onshore New Transmission Connection Facilities," and Option 2, i.e., "Offshore New Transmission Connection Facilities," "PSEG-Orsted has the highest unit cost, as measured by \$million/MW." Further, it appears that PSEG-Orsted only offered cost containment commitments for one of their two joint proposals, and that proposal contained the highest cost cap-of \$7 billion-as compared to the other seven transmission developers that offered some form of capping mechanism. Under the Conditional ROFR, however, if PSEG had invoked its right of first refusal, and selected an unaffiliated entity to partner with, then PJM would not have been permitted to administer a proposal window seeking solutions to the identified transmission need and New Jersey would be stuck with a potentially significantly less competitive proposal. Thus, not only would the Conditional ROFR have precluded consideration of potentially more innovative, efficient, and cost-effective alternative solutions, but it would also have prohibited New Jersey from using the State Agreement Process in the first instance.” (page 91)
- “In addition, although the NOPR identifies a handful of parties, including the CPUC, that support increased use of competitive processes to procure transmission projects, the Commission fails to acknowledge, as documented in LS Power's ANOPR Reply Comments, that "over a hundred individual entities," including "State commissions, federal agencies, consumer groups, and environmental groups," "agree that competitive transmission delivers cost discipline and is needed to ensure that dollars are spent on more efficient and cost-effective transmission solutions, and, in tum, that rates are just and reasonable." Most importantly, the NOPR fails to substantively address any of the arguments contained in the thousands of pages of comments submitted by this diverse group of stakeholders who urge the Commission to increase and improve upon the implementation of competitive processes-not effectively eliminate their use altogether.” (page 94)

- “Apart from the many instances in which the Commission successfully invokes section 309 to handle individual cases, applying the provision jointly with section 205 to amend a general order is entirely without precedent. The Commission cannot rely on section 309, a provision clearly intended for a different set of circumstances, as the authority for the Conditional ROFR simply because it finds no such authority to enact this proposal elsewhere in the FPA.” (page 102)
- “The CPUC respectfully submits that, for all the reasons explained above, the Commission should not pursue the Conditional ROFR, but should instead hold a technical conference to comprehensively consider parties' proposals for eliminating anti-competitive carve outs, improving implementation of Order 1000 compliant competitive processes, and expanding the applicability of such processes to a greater number of transmission projects in Docket No. AD22-8-000 or a new proceeding.” (page 103)
- “First, the Commission should expressly provide that the proposed Stakeholder Review Process applies to both local transmission planning and utility self-approved projects. This is a critical point of clarification because as the CPUC, NARUC, and many other parties emphasized in response to the ANOPR, there needs to be more external scrutiny of utility self-approved projects to reduce incumbent utilities' existing perverse incentive to overinvest in these types of projects due to their lack of external review.” (page 111)
- “The Right-Sizing ROFR would needlessly expand the existing ROFR for upgrades to a utility's own facilities... In direct contradiction of Order 1000-A, under the Right-Sizing ROFR proposal, if a grid operator determined that a regional transmission project would more efficiently and cost-effectively address the identified transmission need than an incumbent utility's planned in-kind replacement, then the Commission would allow a "federally established monopoly over the development of an entirely new [regionally cost allocated ] transmission facility." The Commission does not attempt to reconcile, or even acknowledge, this contradiction in the NOPR, i.e., that the Right-Sizing ROFR would expand the scope of the existing ROFR for upgrades to an incumbent utility's own facilities by now allowing it to apply to "entirely new" transmission facilities. As explained above in Section II(G)(3)(a) in relation to the Conditional ROFR, the NOPR also fails to articulate a reasoned explanation supported by substantial evidence for its departure from the nonincumbent transmission developer reforms of Order 1000 and Order 1000-A in proposing the Right-Sizing ROFR.” (page 116- 117)
- “Third, the Commission's proposal to limit replacement projects eligible for right-sizing to those operating at or above 230 kV would impose an arbitrary and significant limitation on the proposal's effectiveness.” (page 117)
- “In addition, limiting review of projects under the Commission's Right-Sizing Proposal to only those that would operate at voltages of 230 kV or above fails to effectively promote consideration of advanced technologies as potential alternatives to asset replacement projects...This laudable goal is undermined, however, by the 230 kV limitation because some advanced conductor technologies, such as DLRs are often more effective at voltages below 230 kV. Broader deployment of advanced technologies, like DLRs, could be hampered by setting the threshold for right-sizing in-kind replacements at or above 230 kV.” (page 118)

#### **Center for Biological Diversity**

- “Rejecting these arguments, the D.C. Circuit explained that "basic economic principles make clear that rights of first refusal are likely to have a direct effect on the costs of transmission facilities because they erect a barrier to entry; namely, non-incumbents are unlikely to participate in the transmission development market because they will rarely be able to enjoy the fruits of their efforts." (page 25)

- “However, in moving in this direction the Commission has thus far failed to seriously consider another solution suggested in comments: expanding the competitive transmission development process. It is certainly logical that under Order 1000 transmission providers had "flawed investment incentives," given that they could continue to avoid competition by focusing on projects where rights of first refusal remain. However, the purpose of this provision in Order 1000 was to maximize cost-effective solutions and avoid preferential treatment by opening these projects up to competition. Thus, while the new approach the Commission proposes might succeed in incentivizing these projects, the Commission has not explained how doing so will address the concerns this aspect of Order 1000 sought to remedy. Indeed, reinstating the right of first refusal would appear to conflict with the D.C. Circuit's conclusion that such an approach is "likely to have a direct effect on the costs of transmission facilities because they erect a barrier to entry. On the other hand, expanding the projects in which providers would have to compete - by, for example, eliminating rights of first refusal for all projects, including local projects- could address this concern. At the same time, it would also remove providers' "flawed investment incentives" by no longer providing avenues for them to invest without being subject to competition.” (page 26)

### **City of New York**

- “The Commission similarly expressed concern that the in-kind replacement of existing transmission facilities is not subject to any transmission planning process. Avoiding such process may create a lack of coordination between local and regional transmission planning processes that misses opportunities to "right-size" local upgrades to existing transmission facilities so that they can meet broader regional needs.” (page 11)
- “Competition has led to the ongoing development of several important transmission solutions in New York. Commissioner Clements acknowledged as much, describing the success of competitive solicitations for the NYISO's competitive public policy transmission planning process as "a bright spot in the Order No. 1000 landscape." Importantly, Commissioner Clements also recognized that the continuation of this success will depend on how federal ROFRs are (or are not) enabled in New York. The City agrees with this assessment.” (page 12)
- “When multiple developers compete to serve customers, however, the competitors have a compelling motivation to minimize costs as well as to maximize benefits through innovation. Competition can increase economic efficiency and produce lower costs to consumers. The NYISO's solicitations for transmission solutions to public policy needs have demonstrated this economic principle. There was robust participation by non-incumbent developers in each of these solicitations, and the non-incumbent proposals included some form of cost containment (whereas incumbent transmission owners have opposed cost containment).” (page 12)
- “When multiple developers compete to serve customers, however, the competitors have a compelling motivation to minimize costs as well as to maximize benefits through innovation. Competition can increase economic efficiency and produce lower costs to consumers. The NYISO's solicitations for transmission solutions to public policy needs have demonstrated this economic principle. There was robust participation by non-incumbent developers in each of these solicitations, and the non-incumbent proposals included some form of cost containment (whereas incumbent transmission owners have opposed cost containment).” (page 13)
- “If, notwithstanding the foregoing, the Commission decides to expand the federal ROFRs as proposed in the NOPR, then the City respectfully urges the Commission to limit such expansion to only those regions where competition has fallen far short of its expectations. Transmission planning regions such as the NYISO, where competitive transmission development processes have had some



success, should be allowed to continue without being undermined by expanding federal ROFRs.”  
(page 13)

### **Clean Energy Buyers Association**

- “CEBA believes the federal right of first refusal (ROFR) conditioned on transmission owners developing projects under a "joint-ownership" model is a significant departure from precedent and could cause substantial harm to consumers. While we stop short of providing a ringing endorsement of competition in all aspects of transmission development, CEBA believes the NOPR's proposal is a solid step in the wrong direction.” (page 5)
- “Fundamentally, the re-establishment of a federal ROFR, even if conditional, likely fails to provide the necessary incentives for transmission developers to provide the most cost-effective solutions.” (page 31)
- “The evidence in the record is simply too scant to justify such a significant departure from precedent and we therefore encourage the Commission to remove this proposal from an otherwise very positive NOPR. If the Commission is concerned that "recent investment appears to be concentrated in transmission facilities not subject to Order No. 1000 competitive transmission development processes", perhaps the other reforms in the NOPR, requiring development of a Long-Term Regional Transmission Plan and related cost allocation reforms, along with reforms being considered in other generic proceedings, will result in creating increased opportunities for competition in transmission development. We are poised to continue to invest substantially in transmission for the next 10-20 years and appropriate measures-for cost containment should be implemented while accelerating the buildout of transmission in a prudent manner.” (page 32)

### **DC Office of People’s Counsel and MD Office of People’s Counsel**

- “Even at the low end of the Brattle Report’s demonstrated savings, the potential reduced costs for consumers are in the billions of dollars.” (page 42)
- “Beyond cost saving and a reduction of ratepayer risk, transmission competition can play an important role in the type of grid transformation envisioned by the NOPR-especially in a region with a "sponsorship solutions-based competitive procurement process like PJM. As the Brattle Report explains 'competition can foster significant additional benefits from innovative project design and risk mitigation to address the identified need. Under the sponsorship approach, developers and incumbent transmission owners are not only competing on price, but on design qualities. Such an approach ensures that the best project is selected-one that is not only cost conscious, but also best addresses the transmission needs for the region it will serve.” (page 42)
- “It is an unfortunate step backwards- abandoning rather than enhancing opportunities for competitive transmission solicitation. The Joint PCs vigorously oppose this proposed rule as it will raise consumer costs in an unjustified and unreasonable fashion, is clearly discriminatory, and will lead to decreased innovation in transmission solutions at a time when creativity and flexibility should be paramount. It is particularly distressing that the NOPR would not even allow the existing competitive solicitation structure in regions and markets such as PJM where they have a proven history of successfully bringing transmission project on-line while saving ratepayer dollars.” (page 43)
- “The NOPR rewards those who have perverted the incentives for regional planning.” (page 44)
- “To begin with, the proposal is nearly as unworkable as it is illogical and illegal. The NOPR provides scant rules defining exactly how any potential joint ownership would operate. For example, what level of owner hip of the unaffiliated entity would be required for their investment to be "meaningful"? What level of management and control by the unaffiliated

entity would be required for their participation to be 'meaningful'? What if the level of investment and management of the unaffiliated entity were non-synchronous (for example, the unaffiliated entity contributes 80% of the project capital but all its interests are class 'B', non-voting shares). Do the unaffiliated entity's interest and investment need to remain constant throughout the life of the project or can the incumbent utility buy out some or all of its partner's interest (with ratepayer money)? If so, when—immediately after solicitation is finalized; during construction; or only after the facility has been in-service for a set time period? These aren't simply hypothetical questions but go to the heart of whether the unaffiliated entity is a true partner in the joint ownership of the transmission facility or simply a front to subvert competitive solicitation. The lack of clarity on the important questions this late in the development of an potential final rule undermines the legitimacy of the rulemaking process and calls into question the reasoned decision making regarding this aspect of the NOPR.” (page 45)

- “Finally, the return of the ROFR is simply bad transmission policy.” (page 46)
- “Instead of reinstating a costly and discriminatory policy like federal ROFR, the NOPR could tackle the deficiencies of Order No. 1000 by removing the requirement that cost allocation or project size are determinative in a project’s eligibility for competitive solicitation.” (page 47)
- “The NOPR also proposes to end-of-life transmission planning by incorporating in its rules a process that is nearly identical to the existing Attachment M-3 process in PJM. As previously discussed, the current Attachment M-3 has utterly failed to either control spending or provide opportunities for meaningful stakeholder participation in the PJM region.” (pages 47-48)
- “Adoption of an Attachment M-3 like process will result another new avenue for incumbent transmission owners to exercise a ROFR, all but ensuring that competition will be eliminated and further unjustifiably raising consumer costs.” (page 48)
- “However, granting incumbent transmission owners a ROFR on end-of-life projects demotes the RTO/ISO role as the regional planner at a time when that responsibility is most needed.” (page 48)

#### **Department of Justice (US) and Federal Trade Commission**

- “The Agencies, however, are concerned that the reinstatement of a federal right of first refusal (“ROFR”) is not justified. With a ROFR, consumers will lose the many benefits that competition can bring, including lower rates, improved service, and increased innovation, leading to a more efficient, reliable, and resilient grid. The rulemaking requirement that the ROFR can be exercised only if the incumbent transmission provider establishes joint ownership of the new transmission facilities does not alleviate the Agencies' concern.” (page 1)
- “The NOPR includes many proposals other than the ROFR that may meaningfully improve regional transmission development. Until FERC evaluates the impact of those proposals that it ultimately approves, there will be an insufficient basis to conclude that transmission policy cannot harness the benefits of competition.” (page 2)
- “The President's Executive Order specifically highlights FERC's role in protecting conditions of fair competition.” (page 2)
- “Similarly the Supreme Court has recognized FERC’s obligation to consider competition policy, noting that the Commission's "power clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations .... The [Federal Power] Act did not render antitrust policy irrelevant to the Commission’s regulation of the electric power industry.” (page 2)
- “American consumers and-businesses should not be denied the benefits of competition when paying for this significant transmission investment. Thus, consistent with longstanding antitrust

policy generally disfavoring regulatory barriers to entry, the Agencies have significant concerns about the proposed ROFR.” (page 3)

- “To the extent that Order No. 1000 may have inadvertently led incumbent utilities to overinvest in local transmission facilities at the expense of more efficient regional facilities, the Agencies point out that this distortion has multiple causes, including ones that the NOPR does not address. One cause is that the continued existence of ROFRs for local and other exempt facilities gives incumbents incentives to invest in those facilities rather than pursuing regional facilities that are subject to competition. Another cause raised by a number of commenters is the continued existence of mechanisms that enable incumbent utilities to exert undue influence over the allocation of ratepayer dollars between local and regional transmission projects. The distortion could be resolved by addressing either of these causes. The Agencies therefore urge FERC not to displace competition, but instead to consider solutions to utilities' misaligned incentives that are consistent with and promote competition.” (page 7)
- “Previous experience has demonstrated that allocating the design and construction of regional transmission facilities to developers through competitive processes can significantly reduce costs and drive innovation. The Agencies therefore encourage FERC to reconsider its current proposal to use a ROFR, conditional or otherwise, to attempt to resolve the regional and interregional transmission challenge.” (page 9)
- “Reforms that will encourage new regional transmission development can take place without abandoning competition. FERC's proposals around transmission planning and cost allocation may go a long way toward addressing the logjam that FERC has identified, and those reforms can go further if FERC addresses the anticompetitive incentive and ability for incumbent transmission owners to influence transmission planning processes to favor transmission projects over which they can maintain their monopolies. We urge FERC to focus on these initiatives, including potential reforms suggested by a range of ANOPR commenters to address the adverse effects of ROFRs for local and exempt projects, before concluding that the absence of a ROFR is the cause of the current industry problems, or that the adoption of a ROFR is the cure.” (page 10)
- “Enabling competition in transmission development, where viable, is the best way to achieve these goals. We urge FERC to examine the competitive impacts that the proposed ROFR is likely to have, including increasing entry barriers that may result in higher prices for transmission and electricity, reducing innovation, and a less efficient, less reliable, and less resilient grid. Moreover, the proposed ROFR may not only yield sub-optimal transmission development in the short run, but could also serve to further entrench incumbents over the long run.” (page 11)
- “Even when the incumbent wins, consumers also win, because incumbents tend to make more competitive proposals when they face competition.” (page 13)
- “To illustrate, there are many instances in which the competitive process benefitted consumers, including the following:
  - PJM's Artificial Island Project: PJM initiated this project to improve performance of the bulk electric system in the Artificial Island area in Southern New Jersey, which is the site of three nuclear reactors. In 2013, PJM received 26 proposals from seven sponsors reflecting a diverse range of technologies, including new overhead and underground/underwater 230 kV lines, overhead 500 kV lines, and HVDC lines. Original cost estimates ranged from \$100 million to \$1.55 billion. During the process, LS Power submitted a cost commitment of \$146 million for its portion of the project. In response to this proposal, PJM allowed three of the other bidders to supplement their proposals. Three of the four finalists submitted proposals containing a cost commitment or cost

containment proposal. In 2015, LS Power was awarded the project, which was then expanded in 2017 to include additional work performed by the incumbents to address permitting issues and technical challenges identified after the initial award. 43 Including the incumbents' portion of the work on their transmission facilities, the total cost is estimated at \$280 million. PSE&G, the incumbent transmission owner, submitted fourteen proposals ranging in cost from \$692 million to \$1.173 billion, meaning PSE&G's lowest-cost proposal was more than twice as expensive as the estimated total cost of the project.

- NYISO 's Western New York Public Policy Transmission Project: In November 2015, the New York Independent System Operator ("NYISO") sought proposals to relieve transmission congestion in Western New York, including access to renewable energy from the Niagara hydroelectric facility and imports of renewables from Ontario. NYISO received twelve proposals from seven transmission developers. NYISO determined that ten proposals were viable and sufficient and ranked those proposals. In October 2017, the NYISO Board selected one of NextEra's Energy Transmission's proposed projects as the winner, noting that it was "both the more efficient and more cost-effective transmission solution" to address the identified need. That NextEra project cost \$181 million, while the lowest-cost proposal from an incumbent- a joint proposal from the New York Power Authority and New York State Electric & Gas Corporation-was \$222 million. NextEra's project represents a 22 percent savings over the incumbent's proposal.
- California Independent System Operator ("CAISO") identified a reliability-driven need for this project in its 2018-19 transmission planning process. In 2019, CAISO conducted a competitive solicitation for proposals for two alternative configurations of the project. Six developers submitted a total of fourteen proposals, twelve of which were qualified under CAISO's tariff. In February 2020, CAISO selected LS Power Grid California, LLC to finance, construct, own, operate, and maintain the project. In discussing the selection factors, after noting there were no material differences or only slight differences among the proposals with regard to many of the selection factors, CAISO highlighted the cost containment factor, which did have material differences. CAISO noted that LS Power "proposed the strongest binding cost containment commitment proposal." CAISO further noted that LS Power proposed more robust capital or construction cost, return on equity, and equity percentage caps that should result in lower costs and present less risk compared to the proposals of the other five project sponsors ... thus benefitting ratepayers." CAISO also noted LS Power's 15-year annual revenue requirement cap and lower interconnection costs as advantages of LS Power's proposal." (page 13-16)
- "FERC's proposed conditional ROFR could have the effect of eliminating similarly competitive bids in the future. Indeed, courts have recognized the anticompetitive effects of ROFRs...And these critiques of unconditional ROFRs also apply to the proposed conditional ROFR." (page 16)
- "A ROFR conditioned on joint ownership does not result in multiple bidders, so it is not a competitive process and does not offer the same benefits as competition. While joint ownership proposals can be procompetitive if they are part of a competitive process, they cease to be so if tied to a ROFR, which eliminates competition." (page 17)
- "Here, the conditional ROFR does not create this type of incentive to seek out the best partner in order to compete, because the joint venture will not be facing pressure to compete. That is, the mere existence of a joint venture partner does not bring competition to a project, nor does it necessarily result in the best partner for a project in terms of skill, cost, or innovation. Instead,

the conditional ROFR supplants competition, and a conditional ROFR as proposed by FERC will result in a joint venture that faces no competition.” (page 18)

- “To the extent that a joint venture could bring these benefits to a project, competition will provide incentives to incumbent transmission owners to form joint ventures to achieve these benefits regardless of whether a conditional ROFR policy is advanced. It is far better to rely on competition, rather than the promise of a share of monopoly profits, to provide such incentives.” (page 18)
- “Moreover, the ROFR encourages the formation of a partnership when it may or may not be efficient and raises the risk that parties will act collusively, especially where two incumbent transmission owners form a joint venture that protects each other's territories from competition. To the extent that FERC seeks to encourage efficient joint ventures, FERC should do this in ways consistent with competition.” (page 18)
- “Many stakeholders have proposed solutions that specifically address the potential issue of incumbent utilities facing a "perverse investment incentive" to overdevelop local facilities to avoid Order No. 1000 competitive processes for regional projects. Without assessing the merits of any particular proposal, we note the following examples:
  - Eliminating exceptions to Order No. 1000 that enable incumbents to circumvent competitive processes.
  - Expanding the set of transmission projects that are subject to competitive processes.
  - Subjecting local and/or noncompetitive transmission investments to increased scrutiny.
  - Creating an Independent Transmission Monitor (or regional Monitors) to limit the influence of incumbent utilities over the planning process.
  - Applying a standardized cost-benefit analysis to all transmission projects, including local projects.

To the extent that Order No. 1000 may have inadvertently caused incumbent utilities to overinvest in local facilities, we urge FERC to pursue solutions that would bring investments in local and in regional transmission facilities back into alignment by reducing incumbents' opportunities and incentives to avoid competitive processes.” (page 22)

- “Rather than attempting to encourage long-distance transmission development by granting market participants exclusive design and construction rights for regional and interregional transmission networks, the Agencies encourage FERC to employ better, procompetitive options. A ROFR conditioned on formation of a joint venture will eliminate or distort the benefits of competition. Adopting reforms that promote competition where possible will make transmission development less costly, more resilient, and more innovative for the American consumer than it otherwise would be. **Further, failure to do so would be counter to the Executive Order's call to FERC to avoid exercising its regulatory authority in a way that creates unnecessary barriers to competition.**” (page 22)

#### Elcon

- “In ELCON’s view, competition should thus be applied as broadly as feasible in both the generation and transmission development to ensure consumers are paying rates that are just and reasonable.” (page 22)

#### Electric Power Supply Association

- “More specifically, EPSA has deep concerns over the move away from competitive mechanisms to support not only the development of transmission but also the assessment and support for all technical solutions – transmission and non-transmission solutions alike – which may resolve

emerging system concerns or assist in the infrastructure expansion necessary to meet aggressive national, regional, and state climate goals. This retreat from competition is in fact a perverse step backwards at the very time that there is broad consensus regarding the extent of infrastructure development needed to drive and support changes in the resource mix and demand.” (page 3)

- “If anything, the Commission should address and enforce the independence of the regional transmission planning processes to disallow the inordinate influence of incumbent transmission developers both in the organized markets (...) and in all other regions.” (page 4)
- “For this reason, EPSA urges the Commission to reassess its retreat from competitive transmission development principles...” (page 5)
- “The ROFR closes the door on competitive solutions which include, for instance, generation alternatives, innovative non-transmission solutions options, projects subject to competitive bidding processes, and merchant transmission projects which address identified needs. Reinstatement of the ROFR in this NOPR represents a radical change to how the regional transmission planning process may function. Rather, it is critical that the Commission leverage its long-standing commitment to competitive procurement and competitive wholesale markets to achieve our shared goals for reliable, cost-effective, and cleaner power for consumers.” (page 6)
- “Further, the competitive procurement process assists in determining the system need to be addressed and offers opportunity for all options to participate, including non-transmission solutions which may be more timely, efficient, cost-effective, and/or technologically advanced than the addition of new high-voltage transmission facilities. A competitive procurement also disciplines the costs of possible solutions, often incenting voluntary cost caps or cost containment measures which protect consumers from unnecessary or unchecked excess costs or development delays.” (page 9)
- “Alas, as seems inevitable in hindsight, incumbent transmission developers saw this vulnerability in the Order No. 1000 process and pulled that thread until the fabric unraveled enough to allow them to circumvent competitive pressures entirely. By focusing development efforts on Order No. 1000 exempt projects, expanding the reach of local planning, and utilizing state ROFRs or other barriers to thwart competition whenever possible, this class of incumbents has proliferated obstructionist self-interest to the detriment of large-scale regional planning as a tool to identify and support regional transmission planning or other systems solutions. The answer to this experience is not to hand a win to the obstructionists.” (page 10)
- “The duty of the Commission is to address the perverse incentives for incumbents by better enforcing the principles of Order No. 1000 and doubling down on competition...” (page 10)
- “It is hard to square the logic in the NOPR that the ROFR elimination was overly broad, thus allowing “potentially flawed investment incentives that may be restraining otherwise more efficient or cost-effective regional transmission facility development. It is in the fact the preponderance of loopholes that has allowed incumbents to circumvent Order No. 1000...” (page 10)
- “EPSA is concerned that these ‘joint partnership ROFRs’ offer a means to specifically preclude non-transmission alternatives from being considered. Effectively, as soon as an incumbent raises its hand with a partner, competition for the best ideas, including non-transmission solutions, is eliminated.” (page 11)
- “How does a ROFR, which offers incumbents the ability to block any alternative proposals in their footprints, offer a way to incent new market entry or spur innovate projects? It is of great concern to EPSA, as it should be to all parties, how implementation of a ROFR excludes all viable alternatives and options, including non-transmission solutions which may include deployment of demand side resources, grid-enhancing technologies, battery or storage options, or supply resources which can be quickly and more cost effectively developed.” (page 12)

- “Competition in development of transmission projects is the only means to achieve greater reliability, at lower costs, in a manner that results in fewer emissions....We agree with ETCC.” (page 14)
- “Further, while the reliance on Section 309 in the NOPR is unlawful and misguided, it also raises grave concerns that this would establish a precedent, paving a road of seemingly unlimited authority for any Commission to change course by overturning previous determinations outside of the requirements established by the FPA.” (page 16)
- “Thus, the Commission should remove ROFR provisions from any final rule.” (page 17)

**Electricity Transmission Competition Coalition (Ag Processing Inc., 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 Cast Metals Association, 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, Large Energy Users Coalition (NJ), Lehigh Hanson, Inc., LS Power Development, LLC, Maine Industrial Energy Consumer Group, Maryland Office of People's Counsel, 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 Institute, Resale Power Group of Iowa, 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, and West Virginia Energy Users Group)**

- “The Competition Coalition supports competition and competitive prices to maintain just and reasonable transmission rates. “It is long-established that the ‘primary aim’ [of the Federal Power Act] is the protection of consumers from excessive rates and charges.” Accordingly, the Commission should exclude from any Final Rule the NOPR’s proposals to establish rights of first refusal (“ROFRs”) because, instead of implementing competition and competitive processes in transmission planning and construction, the NOPR restricts development of competition to the detriment of consumers and fails to provide adequate consumer protections against unjust, unreasonable, and unduly discriminatory or preferential rates. In particular, the Commission’s proposals to permit the exercise of ROFRs for joint ownership of transmission facilities (“joint ownership ROFR”) and for over-sizing of transmission facilities (“over-sizing ROFR”) do not clear the necessary legal hurdles to upset Order No. 1000’s pro-competition directives, and the proposals

themselves have not been shown to be just, reasonable, and not unduly discriminatory or preferential.” (page 2-3)

### **Harvard Electricity Law Institute**

- “In this comment, we explain that while the Commission is correct not to disturb its conclusion that ROFRs are unduly discriminatory barriers to entry, its proposed remedy will not cure undue discrimination or lead to just and reasonable rates. Once implemented by incumbents, the proposed conditional ROFRs will be nearly indistinguishable from the pre-Order No. 1000 status quo. Incumbent investor-owned utilities (IOUs) will again be the only entities with incentives to propose regional projects. The evidence shows that incumbent IOUs will pair with each other in order to exclude non-profit utilities and non-incumbent developers. IOU pairings induced by the Commission's proposed remedy will not facilitate new entry or result in innovative transmission solutions. To the contrary, by allowing incumbents to cartelize transmission development, the NOPR would abandon the innovative potential of competitive transmission and doom customers to incumbents' suboptimal and unduly discriminatory planning.” (page 3-4)
- “As an initial matter, the Commission could defer the ROFR issue and its proposed decision to disallow construction work-in-progress (CWIP) financing to another proceeding” (page 4)
- “First, the Commission could allow an incumbent utility to apply for a ROFR only following the completion of a competitive process. The ROFR would allow the utility to own no more than fifteen percent of the project.” (page 5)
- “Second, the Commission could leave the scope of competition up to state regulators.” (page 6)
- “Regardless of which option it chooses, the Commission must not provide ROFRs to incumbent IOUs in PJM when they partner with each other. Earlier this year, the Commission approved revisions to the PJM Consolidated Transmission Owners Agreement that incentivize incumbents to maintain a 95% ownership share of transmission. If they dilute their ownership share through joint ventures with non-profit utilities or non-incumbent developers, PJM incumbents will lose absolute control over the PJM Transmission Owners Agreement Administrative Committee. Through that committee, the incumbents write section 205 filings on rate design and other matters. They will not voluntarily give up their control for the sake of partnering with their longtime rivals.” (page 6)
- “Moreover, removing the ROFR issue from this proceeding will eliminate a significant legal risk from the final rule.” (page 9)
- “In the NOPR, the Commission proposes to invoke FPA section 309 to edit Order No. 1000...The Commission has never used section 309 to revise an Open Access Rule.” (footnote 28, page 10)
- “History and recent IOU advocacy show that incumbents will partner exclusively with each other.” (page 12)
- “History shows that IOUs are likely to engage in tacit collusion, taking turns partnering with each other in order to exclude non-IOUs.” (page 16)
- “By abandoning competition, and in particular the sponsorship model that allows non-incumbent developers to propose transmission projects, the Commission forces ratepayers to fund only those transmission solutions preferred by incumbent utilities.” (page 28)
- “Transparency is not a proxy for competition. Without competition, no party will have sufficient incentives to probe utility assumptions or develop alternatives to incumbents' preferred projects. Transmission networks will feature last century's technologies, as incumbents without competitive pressures will have no incentive to implement grid-enhancing technologies, adopt non-transmission alternatives, or develop transmission to connect low-cost power that might undercut utility-owned generation.” (page 28)



- “The Commission’s proposed conditional ROFR will not facilitate new entry or lead to innovative transmission solutions.” (page 35)

### **Illinois Commerce Commission**

- “The ICC Opposes the Proposed Reinstatement of a Modified Federal Right of First Refusal” (page 18)
- “The Commission’s proposal would allow joint ownership proposals to be included in the transmission planning without soliciting either alternative proposals to the proposed transmission facility or competitive bids to construct the proposed transmission facility. This provides little comfort that the proposed transmission facility will either be the most efficient or cost cost-effective. This is a key concern, as transmission costs, as a percentage of overall electricity costs, continue to increase and the construction of new transmission facilities has a significant impact on prices in both the energy and capacity markets. Moreover, the costs of these projects will most likely be regionally allocated, making parties that have no say in the design and/or approval process of these projects shoulder a portion of their potentially inflated costs.” (page 19)
- “The ICC believes that competition among transmission developers spurs innovative results and helps control costs. While the Commission contends that competition is not working, the ICC would counter that there is no meaningful, transparent and/or robust mechanism for competition in the development of transmission.” (page 19)
- “While the joint ownership proposal will surely result in the construction of new transmission, there needs to be protections in place to ensure that the projects are the most efficient solutions and the most cost effective. Realistically, neither the RTOs, nor the Commission are in a position to perform the scrutiny and project review necessary to make such assurances. Rather, consumers would be better served by the use of competition that would hone the cost and efficiency of transmission projects.” (page 20)
- “Moreover, the affiliate restrictions provide little assurance that the partnership proposal will control project costs. Indeed, as two gas stations at the same intersection have a strong incentive to work together to maintain or elevate prices, under the partnership proposal, incumbent transmission owners have no incentive to work together to create the most efficient and cost-effective transmission solutions.” (page 20)
- “In light of this, the ICC opposes the proposal to abandon competition with the proposed joint ownership approach. While the ICC shares the Commission’s concerns regarding the need for new transmission facilities, the Commission needs to ensure that its partnership proposal is more than just a coordinated oligopoly approach that builds more expensive, less than optimal transmission solutions. The Commission has a longstanding responsibility to consider anti-competitive practices and to eliminate barriers to competition to the maximum extent possible.” (page 20)

### **Institute for Policy Integrity at New York University School of Law**

- “While the Commission's intent encouraging transmission build-out is commendable, a ROFR will generally lead to anticompetitive behavior because it will give more bargaining power to the incumbent transmission developer. Under the proposed Conditional ROFR, where the incumbent transmission developer partners with a non-utility transmission developer, it is likely that the partner will have little bargaining power in practice. As such, the proposed condition is unlikely to limit anticompetitive behavior and the associated consequences. “ (page 19)
- “The Commission should carefully consider other options for facilitating greater regional transmission development, including closing the loopholes that allow transmission developers investment to local projects not subject to competition to address the problem.” (page 19)

**Invenergy Solar Development North America LLC, Invenergy Thermal Development LLC, Invenergy Wind Development, and Invenergy Transmission LLC**

- “Incumbent Utilities’ Right of First Refusal Should Not Be Reinstated” (page 17)
- “This proposal should be rejected entirely. The portion of new transmission for which the Commission previously removed federal right of first refusal and which is currently subject to competition is already exceedingly low. Indeed, transmission providers recently narrowed this portion even further. Even though competitive bidding and competition typically results in lower prices for consumers, in most regions there are already so many exceptions, under which incumbent utilities can still exercise the right of first refusal that reinstating the right of first refusal as to this last narrow class of transmission would only foreclose any chance of competition. For example under the NOPR proposal that would reinstate the ROFR where there is ostensibly a joint ownership of the transmission facilities, the incumbent utility could simply coordinate or partner with a neighboring incumbent utility to exercise the ROFR and effectively foreclose even the illusion of competition for the entire area.” (page 18)
- “To the extent competition reforms set out in Order No. 1000 have not produced the anticipated results, this is due primarily due to the concerted utility efforts to undermine competitive transmission.” (page 20)
- “Yet it remains true that competition can invite innovation and may also result in lower costs, and if the Commission wants to promote transmission construction at the least cost to ratepayers, instead of adopting the NOPR proposal, it should focus efforts on improving the competitive process by refining the current rules to make more transmission subject to competition and to make competitive processes more efficient.” (page 20)

**ISO-NE**

- “For example, under the Commission’s proposal, only transmission facilities operated at or above 230 kV would be eligible for right-sizing considerations. This would limit the right-sizing opportunities in New England, where the regional transmission system comprises mostly transmission facilities at or above 115 kV, along with a limited amount of grandfathered 69 kV.” (page 39)

**Kentucky Public Service Commission Chair Kent Chandler**

- “I vehemently disagree with the Commission’s proposal to reinstate a Federal Right of First Refusal, conditional or otherwise. While the Commission may see the results of Order No. 1000 to be a failure to some degree, the cause of at least a portion of that failure is obvious. My experience over the past six years is that the entities who seek to gain from the implementation of a federal ROFR (and proposed the reinstatement of a ROFR in the ANOPR) are the same folks who have fought the implementation and expansion of competition since Order No. 1000.” (page 10)
- “However, taking the TAPS comments, especially given the focus of the comments on competitive bidding processes, and using it as a basis to reinstate a federal ROFR is an unsupportable leap.” (page 11)
- “Kentucky is proud of the benefits and success of the Duff-Coleman line, and at first blush its success might appear to provide support for the Commission’s jointly-owned ROFR proposal. However, it does not. Duff-Coleman was MISO’s first competitive transmission project under the Order No. 1000 framework. LS Power and Big River’s proposal blew the others out of the water as part of the MISO competitive selection process, scoring a 95 out of 100, with the remaining 10 proposals scoring between 80 and 41... For example, the Duff-Coleman line included proposals that the

Commission would not or legally could not require of the incumbent transmission owners. For instance, the LS Power & Big Rivers joint proposal included a cost cap, ROE cap, equity percentage cap and schedule guarantee.” (page 12-13)

- “I scoured the comments in the ANOPR and noticed incumbent transmission owners and their trade groups proposing the reinstatement of rules permitting them to exclusively build the transmission grid moving forward. However, notably absent from those requests were any commitments to not raise the return on previously employed capital, limit the percentage of equity capital for the life of the investments, or hard cost caps. Without those commitments, I suspect, based on precedent and applicable law, the Commission would be unwilling or unable to otherwise cap ROE returns or equity percentages.” (page 13-14)
- “Instead of promoting greater market entry, or new players, given the broad nature of the proposal I expect it will simply result in incumbent transmission owners entering into agreement with other incumbent transmission owners for some negligible amount of joint ownership.” (page 15)
- “Instead, facilities between 100 and 200 kV are going to play a greater role in the regional delivery of energy from generators to customers. Should the Commission keep its in-kind proposal, setting the facility voltage floor at 230 kV will miss much of the regional grid of the future.” (page 19)
- “Regardless, the proposed rule’s ROFR for the transmission owner to build the “right-sized” facility because “nothing in this proposed rule would alter existing law concerning the public utility transmission provider’s ability to proceed with developing its planned in-kind replacement transmission facility without the “right-sizing” renders this proposal unreasonable. The “solution” to this “problem” which prompted the Commission to provide additional ROFRs, further eroding competition, is for the Commission to alter the existing law accordingly.” (page 19)
- “Furthermore, the Commission’s apparent belief that 230 kV is the threshold between regional and local planning may not be accurate. Based on my experience in Kentucky, that threshold should be lowered to 100 kV for multiple reasons... Second, simply lowering the proposed threshold to 100kV does not necessarily mean fewer benefits to the system. Correctly or not, AEP has argued for years that, irrespective of the fact that the AEP-East zone in PJM stretches from Tennessee to Michigan and largely consists of 69kV and 138kV lines, that "AEP developed an extensive transmission system that serves as the medium for integrating the power supply resources of the member companies" across the region,,\_ and thus it is purportedly fair to allocate all the transmission revenues and expenses "among the AEP member transmission companies· even though many facilities are located only within state borders and are of lower voltage. There are few stretches longer between discrete service areas in PJM than the AEP service territories in Tennessee and Michigan.” (page 22-23)

### **LS Power**

- “The Commission’s proposed justifications for the resurrection of these two rights of first refusal are entirely unsupported by the extensive record in this docket and the administrative and judicial records and findings associated with Order No. 1000.4 Because the Commission cannot make the requisite finding under Section 206 that Order No. 1000’s elimination of the right of first refusal for incumbent transmission providers is unjust and unreasonable, to undo the sound policy decisions made in Order No. 1000, the Commission attempts to circumvent the inconvenient factual record through the use of a tortured interpretation of Section 309. Section 309 does not abrogate the Commission’s obligations to make the necessary findings under Section 206 that existing tariffs are unjust and unreasonable before ordering changes to such tariffs.” (page 2)
- “The NOPR will discourage nonincumbent transmission providers from engaging in regional planning processes, which the evidence demonstrates will have a negative impact on costs and therefore on

ratepayers, while rewarding incumbent transmission owners' self-interested actions to avoid the requirements of Order No. 1000 since its inception. The proposed revival of rights of first refusal will also raise significant antitrust concerns by encouraging even more collusion and making it more difficult to police anticompetitive utility behavior." (page 3)

- "When permitted to work, the regional planning process and competitive reforms of Order No. 1000 work better than the Commission envisioned. Indeed, competition has shown such positive consumer-centric rate impacts that when transmission competition is a viable option, as it is in most instances for transmission facilities above 100 kV, the Commission cannot determine just and reasonable rates without it." (page 4)

#### **Massachusetts Attorney General Maura Healey**

- "In finalizing the rule, we urge the Commission to: abandon its misguided proposals to partially reverse its prior findings and perm it the exercise of conditional federal rights of first refusal ("ROFRs"), which would significantly decrease competition for regional transmission solutions and increase consumer costs" (page 2)
- "The NOPR does not explain how the extensive findings in Order Nos. 890 and 1000 about the adverse effects of monopolies, the self-interest of incumbent utilities and the benefits of transmission competition are consistent with the Commission's proposal to allow conditional exercise of federal ROFRs. Indeed the Commission cannot do so." (page 42)
- "In addition, the Commission should clarify the implication that RTOs/ISOs may choose to adopt the new conditional ROFR in their sole discretion. In New England, both the states and NEPOOL stakeholders would and should have a substantial say in this decision." (page 44)
- "Because the NOPR does not define the parameters of the "condition" of joint ownership, incumbent transmission owners could maintain their monopoly by simply banding together and "jointly" owning all of the regional projects. Even if they allowed a third party to have some ownership interest in a project there is no evidence that this kind of joint ownership will actually simulate the proven benefits for consumers of competition (e.g., lower cost innovation, and transparency)." (page 45)
- "In New England, there is no evidence that the competition requirement has discouraged regional transmission development or caused 'perverse investment incentives. Instead competition in regional transmission development has been almost non-existent here due to flaws in the implementation of Order No. 1000 competition." (page 47)
- "Besides the fact that joint ownership in and of itself is not an adequate substitute for the many benefits of competitive solicitations, the current proposal would afford too much power to incumbent transmission owners to dictate self-interested terms rather than terms that are most cost-effective and beneficial to consumers or even to joint owners. The broad outlines of the Commission's proposal appear to allow an incumbent transmission owner, in its unfettered and self-interested discretion, to decide with whom to partner and on what terms. The joint ownership proposal in its current form raises the specter in New England of incumbent utilities "collaborating" to divide up the regional transmission project pie as joint owners of all of the regional transmission projects. Without a variety of safeguards that do not exist today such an approach would be extremely hostile to consumer interests and would not result in just and reasonable rates." (page 48-49)
- "A 'meaningful' ownership should be no less than 50 percent." (page 50)
- "Certain incumbent transmission owners and their associated trade groups argued in their ANOPR comments that the federal ROFR should be fully restored. The Commission asked for comment on this point. The Massachusetts AGO's answer is an unequivocal no. Instead of doubling down on this

legally unsound proposal, or reviving it in a conditional form, the Commission should leave the federal ROFR in the past for all the same reasons the Commission discarded it in the first place.” (page 50)

- “First, this is not a conditional ROFR subject to joint ownership. Instead, the Right-Sizing ROFR would be a complete reinstatement of the federal ROFR for projects of this type. There is no “rational connection” between the Commission’s findings and an unconditional federal ROFR. This result is directly at odds with the Commission’s proposed findings and reasoning in this NOPR with respect to the conditional ROFR, as well as with the Commission’s findings in Order Nos. 890 and 1000. The Commission fails to provide “good reasons” for departing from its prior finding that federal ROFRs are unjust and unreasonable.” (page 51)
- “The Commission should reconsider the flawed ROFR proposals and abandon them in the final rulemaking.” (page 53)

**Massachusetts Municipal Wholesale Electric Company, New Hampshire Electric Cooperative, Connecticut Municipal Electric Energy Cooperative, and Vermont Public Power Supply Authority**

- “Public Systems support both the expansion of the use of competitive processes to elect projects and the Commission’s efforts to promote joint ownership, both of which can lower consumer costs. We are concerned, however, that as structured, the proposed conditional ROFR may well fail to meet the Commission’s objectives. The proposal lacks clear guideposts regarding eligibility, especially with respect to the scope of the “meaningful participation” requirement and the range of projects that are potentially subject to the ROFR. Absent the imposition of limitations, we fear that incumbents will be able to maneuver around the conditional obligation by offering proposals that are facially consistent with the NOPR’s requirements, but provide consumers none of the benefits that flow from joint ownership.” (page 3)
- “In addition, we urge the Commission to act to expand the scope of potential projects subject to the joint ownership or competitive solicitation, including the current exemption for so-called “immediate need” projects.” (page 3)
- “Over the past two decades, New England’s Regional Network Service transmission rate has grown nine-fold, from \$15.60 per KW-year (in 2003) to \$140.98 per KW-year (in 2021)... Worse, the region has compiled an abysmal record of cost containment: on average, between 2013 and 2017, actual transmission costs in New England exceeded projections by 70 percent.” (page 5)
- “Public Systems recognize the need to expand the transmission grid to facilitate the integration of the coming wave of clean energy resources. We believe the most cost-effective way to do so is by expanding the opportunities in the region for competition.” (page 7)
- “...any final rule should clarify that the conditional ROFR does not apply to ocean-based transmission facilities. This clarification is common sense: there are no incumbent service territories in the ocean, and therefore no incumbent TOs to seek or awarded a conditional ROFR.” (page 10)
- “Second, where a state or states are undertaking efforts to develop transmission outside the regional planning process, any final rule issued in this proceeding should honor and support those state-initiated arrangements-not impede them. For example, Massachusetts has very recently enacted legislation enabling the Massachusetts Department of Energy Resources to “competitively solicit and procure proposals for offshore wind energy transmission.” To the extent a state or states decide to develop transmission through competitive solicitation, the Commission should honor that choice, and make clear in any final rule that the conditional ROFR is inapplicable to such state-administered procurements.” (page 11)

### **Minnesota Public Utilities Commission**

- “Therefore, it appears to us that the joint ownership model proposed in the NOPR would create additional complexity but is not likely to provide the anticipated innovation and cost control benefit.” (page 8)

### **MISO**

- “MISO addresses the NOPR’s proposed reforms below. However, it is first necessary to discuss the Commission’s proposed findings of fact. Respectfully, for MISO, the presence of nonincumbent transmission developer requirements for projects selected in a regional plan for purposes of cost allocation does not influence MISO’s decision with respect to selecting the appropriate project to address a transmission need during the planning process... the potential application of competitive requirements is not a factor in determining the project type.” (page 73)
- “Fourth, the proposed reforms, while adding additional process and uncertainty, do not eliminate the implementation uncertainty created by the existing requirements for competition and may raise additional challenges with implementation. As explained above, MISO does not believe that the existence of competitive requirements informs the identification of regionally cost allocated transmission projects.” (page 83)
- “...MISO would encourage the Commission to not impose any prescriptions surrounding right-sizing.” (page 87)

### **NARUC**

- “First, FERC has proposed limiting local projects eligible for right-sizing to those operating at or above 230 kV. NARUC is concerned that this threshold could exclude a significant portion of utility self-approved projects and other grid-critical projects. For example, in PG&E’s service territory, 52% (\$5.6 billion) of the utility’s forecast capital expenditures for 2021 to 2026 (\$10.9 billion) are self-approved repair and replacement projects that are under 200 kV and are therefore not currently subject to CAISO review and would not be subject to review under FERC’s proposal. Providing another example, ISO-NE has many 115 kV lines, and the proposed 230 kV threshold would impede the ability to consider right-sizing many transmission projects in ISO-NE. States should have discretion and flexibility to agree to require right-sizing asset replacement at voltages below 230 kV to help ensure that the majority of project opportunities are addressed.” (page 64)

### **New England Consumer-Owned Systems**

- “First, the Commission needs to take more forceful steps in ensuring that the ability to participate in transmission development fully open consumer-owned utilities, in order to advance realization of the promise of competitive entry as a market-based means of transmission cost containment and promoting efficiency in design and operation of new transmission facilities. The means by which the NOPR proposes to pursue that objective - relaxing the limited ban imposed by Order No. 1000 on the massive barrier to entry imposed by a federal right of first refusal - is a poor choice of tool for promoting competitive entry. Effectively writing the removal of that barrier to entry out of the Commission’s rules (as the NOPR’s delineation of potential joint ownership partners does) is simply a massive step backward from the pro-competitive policies that animate Order No. 1000. The Commission should abandon the idea of using such a treacherous tool - federal ROFR - in such a foreseeably ineffectual way (allowing collusion between incumbents as a vehicle for preserving the federal ROFR) in the name of promoting competition.” (page 2-3)

## **NESCOE**

- “The Commission should not move forward with proposed actions on reinstating the ROFR in certain circumstances. Meaningful competition is critical to encouraging new market entrants, a bigger pool of ideas, and cost containment practices that incumbent transmission providers have no incentive to offer outside a competitive process. To the extent the Commission continues to be inclined to pursue a rollback of ROFR reforms, it should do so in a separate proceeding where a more focused record can be developed to facilitate the Commission’s decision.” (page 11)
- “The Commission Should Not Reinstate Any Form of Federal Rights of First Refusal at this Time In this Proceeding” (page 74)
- “It is unfortunate that the Commission inserts into a rulemaking aimed at improving long-term regional transmission planning a proposal that retreats from competition. In so doing, the Commission fails to give meaningful consideration to comments representing state and consumer interests in relation to the ROFR.” (page 75)
- “The Commission Should Not Use 230 kV as The Threshold. The NOPR proposes that transmission providers must evaluate whether they can right-size any 230 kV or above transmission facility that they anticipate replacing in-kind with a new transmission facility during the next ten years to more efficiently or cost-effectively address regional transmission needs identified in Long-Term Regional Transmission Planning. NESCOE urges the Commission not to lock in a fixed voltage level in this final rule. This would provide limited usefulness for the proposed reform in New England, where there are many 115kV transmission facilities.” (page 80)

## **New Jersey Board of Public Utilities**

- “The Board fully supports all of the Commission’s proposed reforms, with the notable exception of its proposal to restrict competition by reinstating federal rights of first refusal (“ROFR”) for regional transmission projects. The Board’s experience has been that transmission competition is one of the most effective mechanisms for developing innovative transmission solutions at competitive costs.” (page 1)
- “The Board vigorously opposes any proposal that would shield incumbent transmission owners from competition at ratepayers’ expense. Both the record evidence in this docket and the Board’s own experience soliciting transmission solutions for New Jersey’s offshore wind projects conclusively proves that transmission competition works and can save ratepayers billions of dollars.” (page 29)
- “Eliminating nearly all competition, as the Commission’s proposed ‘conditional’ ROFR would, will inflate ratepayers’ electricity bills by billions of dollars without offering them any improved service. The Commission should therefore exclude any provision rolling back current prohibitions on transmission ROFRs in any final order.” (page 29)
- “If anything, the Board’s own experience competitively soliciting transmission solutions through PJM’s State Agreement Approach to support New Jersey offshore wind development shows that Brattle’s savings estimates may be conservative.” (page 30)
- “Indeed, the Board itself received 80 proposals from 13 separate entities in response to its competitive solicitation of transmission solutions for New Jersey’s offshore wind needs. The number of possible choices for how to implement New Jersey’s offshore wind policies would simply not have been available outside of a competitive solicitation format. As to interest from competitive developers, the findings of the Commission’s own Staff indicates “that there is significant interest from and participation by many transmission developers in competing for the available opportunities. Furthermore, the Board received a number of cost-capping mechanisms from various competitors, again allowing New Jersey the option to select between a number of transmission proposals. These results suggest that employing a competitive solicitation process with no ROFR for

incumbent transmission owners may result in substantial savings to New Jersey ratepayers.” (page 31)

- “As competitive solicitation of transmission solutions can save ratepayers billions of dollars, it necessarily follows that artificially preventing such competition by granting ROFRs to incumbent transmission owners costs ratepayers billions of dollars.” (page 31)
- “...indeed the evidence the Board has seen suggests that non-incumbent solutions tend to innovatively provide the same or even greater benefits at lower costs than incumbent solutions.” (page 31)
- “Consequently, the Board strenuously opposes any proposal that would expand the current scope of ROFRs or otherwise limit opportunities for competition in transmission planning and development.” (page 31)
- “Rather, the Board believes that the probable outcome of implementing the Commission’s proposal will be a network of incumbent-transmission-owner duopolies enveloping the country that will result in virtually the same rate impacts as granting unconditional ROFRs would... Indeed, the rate impacts would likely be materially indistinguishable from simply reinstating an unconditional ROFR” (page 33-32)
- “The Commission’s ‘conditional’ ROFR proposal would thus end virtually all competition in transmission planning and development.” (page 33)
- “Lastly, the Board notes that enabling the maximum amount of competition in transmission development is currently the policy of both New Jersey and many other states. Moreover, the Commission should not expect states like New Jersey to take threats to such policies lightly. This is because our ratepayers will likely save billions of dollars on their electricity bills due to the Board’s decision to competitively procure transmission solutions to support State’s offshore wind goals.” (page 37)
- “Indeed, based on this experience, the Board is highly concerned that federal ROFRs that preclude competitive solicitations will needlessly inflate the costs of future LTRT portfolios designed to meet the needs of the PJM region.” (page 37)
- “To illustrate, assume PJM plans a LTRT portfolio along the lines of MISO’s MVP or LRTP portfolios, and that if built by incumbent utilities exercising ROFR rights, it will cost \$15 billion. Based on Brattle’s findings, it is reasonable to assume that transmission competition could reduce that cost by 20% to 30%-which in this case would amount to ratepayer savings of \$3 to \$4.5 billion. In other words, allowing incumbent transmission owners to exercise ROFRs would increase the portfolio’s cost to ratepayer by \$3 to \$4.5 billion. If New Jersey was allocated 20% of the cost of this portfolio, such ROFRs would unjustly and unreasonably increase our ratepayers’ electricity costs by \$600 to \$900 million. In the Board’s view, such federal interference with state pro-competition policies - interference that may significantly increase electricity costs for our citizens - is unacceptable.” (page 37)

#### **New York Independent System Operator**

- “The NYISO has enjoyed significant success in expanding transmission in New York through its Public Policy Process... First in 2015, the NYPSC identified a need for transmission in western New York to obtain the full output of the Niagara hydroelectric project and imports of renewable resources from Ontario without fossil-fueled generation... The NYISO received 12 proposed transmission projects and determined that 10 were viable and sufficient to meet the need. The transmission line has entered into service in June 2022. Second, in December 2015, the NYPSC identified a Public Policy Transmission Need... The NYISO received seven viable and sufficient transmission proposals for Segment A and six viable and sufficient transmission proposals for Segment B. Both projects



commenced construction in 2021 and are expected to enter service in 2023. Lastly, the NYISO is addressing a Public Policy Transmission Need identified by the NYPSC in 2021 to deliver at least 3,000 MW of offshore wind from Long Island to New York City and the rest of the New York Control Area through a new tie line and associated transmission upgrades on Long Island (“Long Island PPTN”). After soliciting solutions to the Long Island PPTN, the NYISO received 19 proposals from four developers. The NYISO identified 16 viable and sufficient transmission projects from three developers... The NYISO is currently evaluating the proposed solutions...The selected Public Policy Transmission Projects represent the largest additional of transmission in New York in the over 30 years.” (page 11-13)

- “The Commission should consider the potential for complications, disputes, and delays in the transmission planning process due the addition of procedural steps to identify the incumbent transmission owner(s) that are eligible to exercise a conditional ROFR and identify transmission projects that fit the requirements of the conditional ROFR in planning regions using the sponsorship model.” (page 55)
- “...the [conditional ROFR in the] NOPR does not appear to address a situation that could arise in a sponsorship model in which two or more incumbent transmission owners could separately propose jointly owned regional transmission projects to be located in their separate service territories that could fully address the same transmission need.” (page 55)
- “... the voltage threshold for transmission facility replacements of 230 kV and above is too limiting... Although most New York State Bulk Power Transmission Facilities (“BPTFs”) operate at or above 230 kV, certain 115 kV and 138 kV function at or in parallel to the BPTFs. In addition, the 115 kV systems in the upstate New York and the 138 kV system in downstate New York feed resources interconnected at those levels to the BPTFs.” (page 59)
- “The proposed treatment of a ROFR for transmission replacements and the allocation of cost of only the incremental costs of right-sizing the transmission facilities create additional, complex new requirements that could bog down transmission proposals in disputes over the ROFR and cost allocation.” (page 60)

### **New York Power Authority**

- “By limiting those eligible to exercise a CROFR to a service territory, transmission entities that do not have a service territory but do own substantial transmission facilities, like NYPA, would be arbitrarily excluded. In the interest of competition and encouraging diversity among projects, eligibility of transmission entities should be based on a variety of relevant considerations, like ownership of the impacted property or ability of the developer to meet that specific public need. Whether a transmission owner has a state-granted franchise territory should be irrelevant to a federally established CROFR.” (page 3)
- “But the existing competitive transmission processes under the NYISO OATT for public policy transmission needs assessment and competition in proposing and building solutions has been successful since the Commission required public utilities to remove certain ROFR provision from transmission tariffs. The absence of a CROFR for new high-voltage transmission facilities under the Order No. 1000 process has not prevented transmission developers from proposing, or the NYISO from selecting, more innovative, competitive, and cost-effective solutions to meet the transmission needs identified by the NYPSC.” (page 6)
- “Competition among infrastructure and transmission providers in New York has benefitted the market and encouraged developers to propose new cost-efficient, innovative projects to address specific transmission needs.” (page 7)

- “The Transmission NOPR is unclear as to how a CROFR would apply when multiple service territories are involved without causing an inefficient segmentation of the identified transmission need or the development of multiple, inconsistent proposals by the multiple affected transmission owners (and the Transmission NOPR provides no guidance on how a single project would be selected from among the potential multiple proposals). Additional concerns arise if an identified need could be serviced by competing service territories.” (page 8)
- “As currently proposed, the CROFR is vaguely conditioned on the incumbent transmission provider establishing joint ownership of the transmission facilities. The Transmission NOPR does not explain with specificity the nature of the joint ownership required, how partners would be selected, what partners would be eligible, what contractual arrangements must be included and whether those arrangements would be subject to public disclosure, regulatory review, or competitive solicitations. Joint ownership, of course, does not ensure equality or protect against uneven bargaining power that could produce inefficient terms and conditions. Would there be protections for minority partners? Would there be a cap on how much equity the incumbent party could own? Would there be requirements for partners to be selected through a competitive RFP process? The Transmission NOPR is silent on these and other mechanisms necessary to appropriately implement the joint development requirements.” (page 9)

#### **New York Public Service Commission and NYSEDA**

- “The NY State Agencies oppose the imposition in New York of the conditional right of first refusal (ROFR) proposed in the NOPR. New York currently has only a limited ROFR that affords the state's transmission owners priority rights to construct "upgrades" to their own facilities. We do not support any further expansion of those rights, which could be a significant departure from the pro-competition policy announced in Order No. 1000. At least when it concerns New York, there is no basis for change.” (page 15)
- “The NOPR suggests that the conditional ROFR is needed to encourage incumbent providers to build large, regional facilities. As detailed above, the State has been successful in developing (at times through competitive solicitations) new and needed facilities without an expanded ROFR. In these circumstances, there is little to no additional benefit that would result from enlarging the scope of incumbent transmission owner priority rights, which would likely have a detrimental impact on competition. To the extent the FERC seeks to promote joint ownership, we see no reason to believe that a conditional ROFR is a prerequisite to doing so. Competition and diversification of ownership are not mutually exclusive.” (page 16)
- “Even more importantly, there is no showing in the NOPR that joint ownership is a substitute for the benefits of competition. The most likely outcome of the adoption of a conditional ROFR is to limit competition. We are concerned that doing so would leave consumers exposed to higher costs. Our experience has been that the use of competitive solicitations leads to proposals that include cost-containment measures. We believe that the same would not be true where an incumbent transmission owner proposal is the only game in town. In addition, competition offers the possibility of greater innovation, as there may be a multitude of proposals offered to meet any particular system need. An incumbent who faces no competition would have little incentive to search for the "fix" to a particular need that is either the most cost-efficient or the most forward-looking.” (page 16)

#### **New York State Department of State – Utility Intervention Unit**

- “The Commission's reasoning is concerning. The Commission should do all in its power to encourage the participation of non-incumbent transmission developers in the market.” (page 16)

- “In New York, incumbent transmission owners, 3rd party developers, and joint ventures have proposed projects into the public policy solicitations run pursuant to NYISO's tariff under Order 1000... It may be the case that in some parts of the country the observed fact pattern governs, however I am concerned that it is not the universal situation and that applying the conditional ROFR reform uniformly across the country may not be uniformly beneficial.” (page 17)

#### **New York Transco, LLC**

- “As can be seen from the number of PPTN determinations and, importantly, the developer participation numbers, the NYISO PPTPP and competitive solicitation process has accomplished precisely what the Commission was hoping in issuing Order No. 1000: competition, innovation, and more efficient and cost effective development of new transmission assets.” (page 8)
- “As referenced above, NYISO has had significant success in conducting competitive solicitations for the development of new transmission facilities needed to address public policy requirements. The Commission should not mandate policy initiatives that could thwart or otherwise limit competition in New York. As discussed below, the Commission's limitation on the right of an incumbent to exercise its federal right-of-first-refusal could inadvertently limit opportunities for an entity like NY Transco to compete for new transmission development.” (page 9)

#### **NextEra Energy**

- “Specifically, the NOPR proposes: (1) to allow federal ROFRs for regionally planned facilities “conditioned on the incumbent transmission provider with the federal [ROFR] for such regional transmission facilities establishing joint ownership of the transmission facilities,” and (2) to mandate a new federal ROFR for regionally planned facilities that result from the “right-sizing” of in-kind replacements. Bestowing these monopoly transmission development rights on incumbent transmission owners is irreconcilable with the Commission’s prior holdings, which have been affirmed by the courts of appeal, that federal ROFRs for regionally planned transmission facilities are unlawful under Section 206 of the Federal Power Act (the “FPA”), and are also irreconcilable with the findings of fact and law underpinning those holdings.” (page 4)
- “As a practical matter, the NOPR’s federal ROFR proposals would all but eliminate competitive transmission development and thereby deprive consumers of the cost discipline, cost containment, innovation, and schedule guarantees that competition provides – and would do so at the very time when the Commission is proposing to significantly increase the amount of regional transmission project development. There is no rational basis for assuming that these ROFR proposals would do anything to increase investment in regional transmission facilities or that the proposed limitations on these ROFRs would do anything to protect consumers from higher costs. Nor is there any evidence supporting such an irrational theory. In fact, the results of competitive solicitations run to date under Order No. 1000 show substantial savings, cost containment and innovative solutions in just a decade of competitive transmission experience.” (page 4)
- “Accordingly, the Commission should move the sensible, long-term planning reforms proposed in the NOPR forward in the final rule without permitting or requiring any new, anti-competitive ROFRs.” (page 8)

#### **Northwest & Intermountain Power Producers Coalition**

- “NIPPC is opposed to the Commission's proposal to restore a federal right of first refusal. Restoring the federal right of first refusal would harm competition because it would eliminate any incentive for incumbent transmission providers to reduce costs or delays. NJPPC recommends the Commission wait to see how these reforms to the regional transmission planning process play out

before considering restoring a federal right of first refusal. The Commission should allow an opportunity for its original Order 1000 mechanisms for competitive solicitations for the construction and ownership of regional transmission facilities to be implemented through these reforms before restoring the federal right of first refusal.” (page 9)

- “NIPPC is opposed to the Commission's proposal to restore even a limited federal right of first refusal. In the non-RTO West, the lack of competitive solicitation is more a factor of the failure of the Order 1000 regional planning process to identify any regional transmission facilities that would have qualified.” (page 19)
- “Accordingly, NIPPC believes the proposal to restore even a limited right of first refusal is premature. The reforms proposed here significantly expand the opportunities for stakeholders to participate in the planning process and enhance state oversight over the regional transmission planning process. NIPPC anticipates that these reforms will result in more transmission projects being identified for regional cost allocation. The Commission should allow its original Order 1000 mechanism for competitive solicitations for the construction and ownership of regional transmission facilities an opportunity to be implemented.” (page 20)
- “The Commission should require a competitive solicitation for any “rightsized” projects that meet regional transmission needs.” (page 22)

#### **NRG Energy**

- “Meanwhile, NRG opposes the Commission's proposal to abolish competition in one of the few spaces in electric transmission that exists. The Commission has negligently allowed electricity transmission rates to go effectively unregulated, even while the space remains largely monopolized. In its instant proposal the Commission now complains that the attractive nuisance it has built induces capital investment to the many unregulated-but-monopolized opportunities in the electric-transmission industry, rather than to the solitary corner of the industry reserved for competition. This sorry outcome was foreseen even as the Commission issued its last major reform in transmission planning, and the Commission's proposal here is not a remedy but a capitulation. The Commission's proposal on the federal right of first refusal should be withdrawn, and the Commission should begin to take steps to enforce competition and to actively regulate electric-transmission rates for which it has jurisdiction.” (page 4-5)
- “In its current proposal, the Commission has it backwards, for it is the lack of either competition or meaningful rate regulation in transmission generally-and not the presence of competition in one small part of the electric-transmission sector-that is the problem that causes "perverse investment incentives that do not adequately encourage" incumbents to compete for regional projects. (page 27-28)
- “But the "perverse investment incentives" at issue here are created wholly or in largest part by the Commission's decisions to regulate transmission service subject to its jurisdiction in a particular way. The Commission cannot reasonably conclude that it bears no responsibility for cleaning up this attractive nuisance, and instead conclude that the monopoly fence-line should once again be built up around the one part of the electric-transmission sector the Commission has sought to clean up through Order 1000's elimination of the tariffed federal ROFR.” (page 30)
- “Channeling regional transmission planning into a more and more limited set of potential projects and owners-which is the inevitable end-state of the cartelization that the Commission proposes to set in motion -will not yield a competition between differing proposals. This was a rationale of Order 1000's reform-"the presence of multiple transmission developers would lower costs to consumers and it was reiterated by the Seventh Circuit in affirming Order 1000's removal of the federal ROFR.” (page 32)

- “It is not at all clear how joint ownership in and of itself will serve to discipline costs.” (page 32)
- “To the degree that a cartelization of transmission is undertaken merely to remove an incumbent's political blockade of transmission by entities other than itself, that approach is likely to increase costs, not minimize them. That is contrary to the Commission's statutory mandate to ensure just and reasonable rates.” (page 33)
- “Or, if incumbency is seen as a necessary expedient for transmission projects deemed local or for more urgent reliability purposes, the Commission could eliminate the presumption of prudence and the formula ratemaking that these projects enjoy and reinstitute its classical tradition of rate cases where multiple parties and FERC trial staff scrutinize periodic filings.” (page 33)
- “As a corollary of this return to classical principles of utility regulation, the Commission should consider an approach proposed by Ari Peskoe. that in addition to reversing .. its longstanding adoption of a presumption that all transmission expenses are prudent" that the Commission should replace it with a presumption that only capital expenditures committed pursuant to an independently administered planning process are prudent.” (page 34)

### **Office of Ohio’s Consumer Counsel**

- “The Federal Energy Regulatory Commission (“FERC”) should continue to promote competition for the provision of transmission services.” (page 1)
- “FERC's proposal contains inadequate consumer protection. FERC should broaden its proposal. FERC should assume oversight of not just facilities rated at 230 kV and above but should review facilities down to the 69 kV level. Many of the end-of-life transmission facilities in the PJM transmission planning process are expensive rebuilds of transmission facilities reaching the end of their useful lives that are rated below 230 kV.” (page 23)
- “FERC gives too much deference in the NOPR to state authority over cost and siting decisions. However, oversight does not occur in every state and is particularly absent in Ohio. Without action by FERC, these local transmission projects will continue to evade regulatory review... In *New York vs. FERC*, the United States Supreme Court found that FERC may properly exercise authority over transmission planning and the rates charged for transmission service in retail states like Ohio.” (page 26)
- “FERC provides no evidence that allowing a federal right of first refusal to public utility transmission providers that undertake joint ownership initiatives would save consumers money.” (page 27)
- “To protect Ohio consumers from excessive rates and charges, FERC must safeguard the competitiveness of both the local and regional transmission planning processes. Eliminating the federal right of first refusal and requiring competitive solicitation of local as well as all regional facilities would better facilitate FERC’s energy market objectives.” (page 28-29)

### **Public Utilities Commission of Ohio**

- “Unfortunately, the Ohio FEA envisions that the proposed condition of joint ownership will prove to be an illusory remedy. A duopolist faces the same perverse incentive structure as that of a monopolist. Such a market structure produces little incentive for cost containment, nor does it reward efficiency.” (page 18)
- “The Ohio FEA does not believe it is in the public interest for FERC to establish a federal right of first refusal for transmission facilities selected in a regional transmission plan for purposes of cost allocation, conditioned on the incumbent transmission provider establishing joint ownership of the transmission facilities. The proposal improperly rolls back the promises of competition envisioned by FERC Order No. 1000, while proposing a remedy of joint ownership that is unlikely to yield any

commensurate benefit to ratepayers. Expanding the federal right of first refusal will produce transmission rates that are unjust and unreasonable. FERC should abandon this proposal.” (page 19)

- “The Commission's proposal to amend the federal right of first refusal to enable joint ownership groups to have preferential treatment also raises concerns about whether costs can be deemed just and reasonable if they are caused by developers that do not have to compete to get the business.” (page 23)

### **Organization of PJM States**

- “OPSI therefore urges the Commission not to allow any TO or RTO to impose any federal ROFR that would undermine states' pro-competition policies or within states that do not explicitly support a ROFR.” (page 14)
- “At the very least, the Commission should not allow both parties to a joint ownership arrangement that qualifies for a conditional federal ROFR to be incumbent TOs. OPSI is concerned that the conditional ROFR as proposed by the Commission would allow incumbent TOs to effectively prevent any nonincumbent from participating in any transmission development in its territory. Specifically, it appears that an incumbent TO could satisfy the joint ownership requirements by entering into a permanent agreement with another incumbent TO to be the exclusive co-owner of any transmission project in the other's territory. If so, TOs then always exercise their ROFR rights, they could create transmission duopolies that permanently block all competition from non incumbent developers. This feature would likely destroy the ability of the joint ownership requirement to replicate any of the benefits of full transmission competition that many states seek to achieve.” (page 14)
- “Rather, OPSI is simply concerned that any reinstatement of federal ROFRs will necessarily undermine the policy choices that many of its members have made and should be allowed to make without federal interference. For that reason the majority of OPSI opposes both reinstating a federal ROFR in full and the Commission's proposed conditional federal ROFR.” (page 14)

### **Pennsylvania Public Utility Commission**

- “The PAPUC opposes FERC's proposal to amend Order No. 1000's reforms in order to permit the exercise of a federal right of first refusal (“ROFR”) for transmission facilities selected in LTRT planning for purposes of cost allocation, even where the transmission provider with the ROFR for such regional transmission facilities establishes joint ownership of the transmission facilities. The PAPUC maintains its opposition to implementing a ROFR or any other limits on competition in the regional transmission planning process, consistent with its stance during the Order No. 1000 proceeding.” (page 18)
- “Given FERC's articulated desire to increase the number of regional transmission projects to meet future needs, it is counterproductive to increase or reinstate barriers that would thereby disadvantage competitive transmission developers who may propose more cost-effective solutions.” (page 19)
- “To the extent that FERC determines that the elimination of the ROFR by Order No. 1000 resulted in transmission providers focusing on local projects rather than regional projects, the solution is not to appease incumbent transmission owners' reluctance to engage in competition from nonincumbent transmission developers, by restoring the ROFR. To take advantage of the ROFR in FERC's joint-ownership proposal, incumbent transmission providers would be permitted to establish joint-ownership with another incumbent transmission provider- an arrangement which could effectively extend the exclusion of competitive transmission developers to include both local and regional transmission projects. Such a mechanism clearly grants preferential treatment to the incumbent transmission providers and discriminates against competitive transmission developers, in violation

of the principle of an 'open' transmission planning process, as articulated in Order No. 890." (pages 19-20)

- "The PAPUC supports competition in transmission development. Order No. 1000 failed to engage the levels of competition to build out the transmission system that its supporters, including the PAPUC, would have hoped, but the solution is not to abandon competition in favor of rights of first refusal. As explained above, FERC should not give transmission owners' an incentive to choose local projects by granting them new rights of first refusal. The consequence of granting a ROFR for right-sized projects might not just be to displace small local projects, but incumbent transmission owners may use this as a powerful new tool to avoid regional competition. FERC goes so far as recognizing this possibility, noting that proposed right-sizing may displace other regional transmission needs (which may have been competitively procured)." (page 21-22)
- "Moreover, projects built by incumbent transmission owners are demonstrably more expensive in almost every case. By mile and by peak load served, over the last decade, PJM baseline projects, which are mostly subject to competition, are less expensive than transmission owner-driven local "supplemental" projects." (page 22)
- "While the PAPUC supports the concept of right-sizing to increase efficiencies in planning, the ROFR for right-sized transmission projects proposed by FERC will not result in costs savings or more efficient transmission. The result is more likely to merely allow more avoidance of competitive processes." (page 23)

#### **Independent Market Monitor for PJM**

- "The Market Monitor opposes this provision because it weakens rather than strengthens competition to build transmission. Extending the prohibition on the right of first refusal rather than weakening it would support the Commission's other transmission planning goals. The goals of Order No. 1000 continue to be an essential guide for transmission policy." (page 6)
- "The Commission fails to draw the self evident conclusion that the observed facts are a result of incumbent transmission owners successfully avoiding the requirement to compete by reclassifying transmission projects as project types not subject to competition. The solution would be to extend the Order 1000 prohibition of the federal right of first refusal to additional categories of transmission projects in order to ensure that competition really occurs. Instead, the Commission blames the competition requirement and proposes to further limit competition." (page 7)
- "The proposal to require joint ownership as defined in the NOPR is antithetical to competition. Allowing the incumbent transmission owner to pick its partner, allowing the incumbent transmission owner to pick a fellow incumbent transmission owner as its partner, and allowing the incumbent transmission owner to define the level of ownership that qualifies are simply extending the incumbent transmission owners' monopoly position. The proposal substantially weakens competition rather than strengthening it." (page 7)

#### **Public Interest Organizations ("PIOs")**

- "PIOs support the goals of competition for transmission development." (page 83)
- "While the Commission has preliminarily chosen to reinstate a limited federal ROFR, we note that the Commission has a variety of tools available to address unintended consequences of Order No. 1000's removal of the federal ROFR to incentivize local projects over regional projects. Rather than reduce competition, the Commission could, as many commentators have suggested previously, attempt to fix the misaligned incentives by expanding rather than retracting competition requirements." (page 83)

- “FERC should be cognizant of the unintended consequences of any re-introduction of the federal ROFR. For example, the adoption of a limited federal ROFR could unintentionally incentivize utilities to propose transmission wholly within their own service territories to take advantage of the ROFR, even when the most efficient and cost-effective transmission solution, and one that would provide multiple regional benefits would span multiple utility territories. As discussed throughout these comments, regional lines-and especially portfolios of regional lines-are crucial for the buildout of much needed transmission infrastructure. If incumbent utilities have an incentive to keep lines solely within their service territories, this could have the unintended consequence of continuing to balkanize the transmission system through piecemeal development, resulting in higher costs for customers.” (page 84)
- “Similarly, the Commission should not impose a limited federal ROFR on states that prefer competition.” (page 85)
- “As PIOs stated in our Initial ANOPR Comments. the Commission should give great weight to independent evaluation of transmission projects such as a review carried out by an independent regional planning body, an RTO/ISO, or a hypothetical Independent Transmission Monitor. Conversely, the Commission should take a dim view of approving cost recovery for investments that are not susceptible to review.<sup>229</sup> This is particularly true for any project that is selected pursuant to a ROFR given that such projects, by definition, do not go through any independent review.” (page 85-86)

### **R Street Institute**

- “ With this in mind, the NOPR overall is a mixed bag.” (page 2)
- “Exercise of a Federal Right of First Refusal. The Achilles' heel of the NOPR are anti-competitive right-sizing and conditional federal right of first refusal (ROFR) provisions. Based on incentive structure, a conditional ROFR would be employed unconditionally, thus signaling the death knell for transmission competition. Substantively, the justification provided would reinterpret "undue discrimination" in a manner that contradicts all precedent to promote "closed access" by institutionalizing discrimination. This is at odds with the Commission's statutory duty to combat anti-competitive behavior and promote "open access;" it would also reverse course on the basis of the entire history of the Commission's landmark rulings. Procedurally, the NOPR ignores the evidence on the record of the benefits of competition-and thus the damages federal ROFR would inflict-and seeks to use an obscure legal tool (Section 309 of the Federal Power Act) which creates massive legal risk that may not be severable from the rule. Worst of all, a federal ROFR may exacerbate the very problem the Commission seeks to address, by empowering incumbent TPs whose incentives are to pursue less efficient transmission development and stifle regional transmission development in a manner that insulates their generation. This behavior is the historic norm from well before competition was introduced into transmission-a federal ROFR would revert the industry back to the dark ages. Based on competition's cost savings alone and the potential for trillions of dollars in future transmission expenditures, **reinstating federal ROFR could easily prove to be a \$100 billion mistake.** RSI implores the Commission to:
  - o Remove federal ROFR considerations from the final rule;
  - o Pursue the complementary merits of expanding competition and independent planning through separate proceedings in a proper Section 206 manner; and
  - o Adopt the recommendations of the Electricity Transmission Competition Coalition (ETCC) on this manner, whose comments RSI has contributed to and formally endorses in this proceeding.” (page 3-4)



- “Any "problem" with competition is that it has been used too little because incumbent TPs took advantage of competitive carve-outs in Order 1000 and the dearth of oversight over local projects. Rather than close these loopholes, the NOPR proposes to exacerbate them.” (page 13)
- “Reinstating a federal ROFR would mark a radical shift in Commission policy toward appeasing incumbents after decades of progress making them more accountable, transparent and subjected to competitive discipline.” (page 13)
- “The legal and policy mechanisms used to pursue ROFR are deeply problematic. Using Section 309 of the Federal Power Act in this manner carries major legal risk that may not be severable from the rest of the final rule, which makes ROFR the Achilles' heel of the NOPR.” (page 13)
- “The ANOPR record already reflects comments by dozens of consumer interests-including those in the ETCC-who want to see the right transmission projects get built at the lowest reasonable costs. The ETCC recommended an ITP in all Order 1000 regions and minimizing exemptions from competitive processes to accomplish this. The NOPR has failed to acknowledge not only the benefits of competition submitted by such parties on the ANOPR record, which ignores the economic damages ROFR would impose, but it ignores the solution set these parties presented to get to the root cause of the problem.” (page 17)
- “As such, there are elevated odds of successful litigation against conditional ROFR via Section 309. Further, there is a significant limitation on the severability of this provision, meaning the entire final rule would be made vulnerable. Merits aside, the Commission must recognize that federal ROFR is a legal liability that jeopardizes all the productive reforms that will come in a final rule.” (page 19)
- “The case for expanding-not eliminating-competition is overwhelming for ensuring just and reasonable rates. However, the Commission is highly unlikely to pursue any action in the final rule that it did not mention in the ANOPR. As such, the Commission should remove federal ROFR considerations from the final rule and pursue the merits of competition and independent planning through separate proceedings in a proper Section 206 manner.” (page 21)

#### **Rail Electrification Council**

- “Although the Commission's proposal was probably not drafted with railroad ROWs in mind, the Council points out that railroads, particularly those with useable ROWs, could figure prominently as third parties in grid-related partnerships for the construction and operation of energy and communications infrastructure. In the future, new market entrants and incumbent transmission providers could partner with railroads to develop new transmission along railroad rights of way. S00 Green is a notable example of such a partnership to co-locate and install 350 miles of underground HVDC transmission within Canadian Pacific Railway's ROW. 22 We urge the Commission to take care administering the limited ROFR in this specialized context to treat all railroad-related partnerships similarly as would be the case under Order No. 1000's "sound theoretical approach." (P353) The Council shares the Commission's desire to achieve more "efficient and cost-effective regional transmission development." Our goal is to encourage utilization of railroad ROWs in pursuit of that goal. No class of transmission developers should be disadvantaged in successfully making such arrangements. The Council supports both traditional transmission-owning utilities and new entrants having the same 'not unduly discriminatory' opportunity to partner with railroads for LTRTP and other transmission expansions along the network of railroad ROWs stands the best chance of success.” (page 15)

#### **Resale Power Group of Iowa**

- “RPGI is a member of the Electricity Transmission Competition Coalition ("ETCC") and joins in ETCC's comments filed in this proceeding. Competition for constructing new transmission infrastructure, if

implemented as ETCC recommends, will produce the innovation, cost discipline, and accountability that are the foundation of just and reasonable transmission rates in the 21st Century. RPGI is concerned that the NOPR's proposed reforms represent the Commission's reimposition of the impediments to competition that it removed for regionally planned transmission projects in Order No. 1000. RPGI strongly urges the Commission reconsider the NOPR's approach. More, not less, competition is required, for reasons addressed in the ETCC's comments and hereinafter." (page 1-2)

- "Joint ownership" is not the same as an active partnership. While the NOPR contemplates "a meaningful level of participation and investment in proposed transmission facilities," it does not require critical design, material selection, and other cost-related decisions to be made jointly." (page 5)
- "The NOPR's joint ownership proposal also does not take into account the particular context in which an incumbent operates. In Iowa and other states with such laws, an incumbent will have no impetus to seek joint ownership of new transmission projects. Why should an incumbent be incentivized to enter into a joint ownership arrangement under a federal ROFR when it could develop regional projects by itself pursuant to a state ROFR and earn a return on all, not just a portion, of the facilities' full value? An incumbent whose monopoly status is protected by state law has no need for a federal ROFR." (page 5-6)
- "Mandating competition for all projects to the greatest extent possible is a better approach to regional transmission project development that correctly connects the Commission's desired outcomes with the incentive to achieve them. RPGI recognizes the Commission's concern that given a choice, transmission utilities will choose local projects over regional projects that may be subject to competition. The answer, however, is not prohibiting competition, but rather following, and expanding upon, Order No. 1000's competition mandate. All transmission projects with a capacity above 100 kV should be competed if that is possible. All projects that could be competed, but are not, should be subject to prudence review before they are included in rate base for recovery through rates." (page 6)
- "RPGI does not doubt that incumbent transmission providers will balk at being required to compete and for a time, they may lose regional and local projects to nonincumbent developers. **But in a market economy, losing is the most effective teacher.** Rather than reinforcing the utilities' aversion to competition or trying to mitigate the ill effects of a monopoly mindset by creating a "conditional" ROFR, the Commission should require incumbents to learn how to compete, i.e., how to appropriately identify, and accurately price, risk; how to use value engineering to achieve reliability at the lowest cost; and how to innovate within a fixed price." (page 6)
- "Translating theory into practice, however, is extremely difficult and RPGI is deeply concerned with the practicalities right-sizing currently poses. RPGI agrees with the ETCC about the potential for overbuilding transmission infrastructure and consequently strongly disagrees with creating a federal right of first refusal in this context. Shielding a monopoly from competition is the surest path to excessive, unjust, and unreasonable pricing." (page 8)
- "The answer, however, is not to restrict competition, but require transmission providers to learn how to compete by opening local projects above 100 kV to competition." (page 9)

#### **Six Cities (California)**

- "The Six Cities have reviewed the comments on the Commission's NOPR by CMUA, of which each of the Six Cities is a member, and they agree with the positions taken in the CMUA comments regarding the joint ownership of transmission facilities and the existing cost containment measures that have been applied within the CAISO region as a consequence of the CAISO's competitive solicitation procedures. ...Today, assets under the CAISO's operational control reflect diverse

ownership structures, including investor-owned utilities, independent transmission developers, municipal, cooperative, and tribal participants, a non-profit entity, and a federal entity. And, as the CMUA comments describe, the competitive solicitation processes have attracted multiple participants, some of which have been selected in part on the basis of their cost containment proposals. The Six Cities support continued use of these processes within the CAISO region as an alternative to a uniform ROFR.” (page 12)

**State Agencies (CT DEEP, CTAG, CT Office of Consumer Counsel, CT PURA, California Energy Commission, Delaware Division of Public Advocate, DC Attorney General, Maine Office of the Public Advocate, Attorney General of Maryland, MA AG, Attorney General of Michigan, Pennsylvania Office of Consumer Advocate, RI AG)**

- “The State Agencies generally have long supported competition in transmission development.” (page 9)
- “The U.S. Department of Energy (DOE) agrees. DOE has noted that “[regional transmission planning and commissioning will ... facilitate competition for transmission project development, yielding potential transmission cost savings.” DOE repeatedly has pointed to the Texas CREZ model and stated that, with this mode “two factor - good natural resources and competition - ensure that ... customers will be able to get wind and solar at the lowest reasonable cost.” (page 10-11)
- “Despite the many demonstrated benefits of competition, the NOPR proposes to permit incumbent transmission owners to block competition if they partner with a non-affiliate. This proposal is wholly unjustified and would harm consumers. We urge the Commission to keep regional transmission development open to full competition.” (page 11)
- “The proposal to reinstate a conditional ROFR would significantly impact consumers and is sufficiently distinct from the regional transmission planning reforms set forth in the NOPR. The State Agencies, therefore, believe that the ROFR proposal should be separated from the present NOPR rulemaking and considered in its own docketed proceeding under section 206. This would allow development of an appropriate record in a fully transparent manner with review by relevant experts and consideration by all stakeholders. Such a procedure would also enable the Commission and stakeholders to explore competition reform more generally, including consideration of proposals to improve implementation of competitive processes.” (page 11)
- “The State Agencies broadly support the proposed changes to incorporate right-sizing considerations into Long Term Regional Planning but do not support the Commission's proposed federal ROFR for right-sized projects. In addition, the State Agencies urge the Commission to reconsider its proposed voltage threshold.” (page 21)
- “However, the proposed 230 kV threshold seems arbitrary and would exclude potentially important projects from the planning requirement simply on the basis of voltage. In addition, limiting the proposed reforms to lines at or above 230 kV would undercut consideration of dynamic line ratings, which are often effective at voltages below 230 kV.” (page 21)
- “Finally, the State Agencies fully recognize that some states have state laws providing for a utility right of first refusal but object to the Commission's proposal for a federal right of refusal for right-sized projects for many of the same reasons they oppose the conditional ROFR proposal. This ROFR is not conditional but absolute, offering no benefits to ratepayers and directly conflicting with the Commission's findings in Order 1000 on the adverse effects of federal ROFRs. Further, the State Agencies are concerned that if right-sizing is routinely used or overused for long term regional projects, competition, and the attendant ratepayer benefits will effectively be eliminated.” (page 21-22)

### **Transmission Access Policy Group (TAPS)**

- “TAPS also questions whether the NOPR's proposed 230 kV cut-off for in-kind replacement projects may be too high with the unintended consequence of encouraging TOs to simply replace 161 kV facilities that, from an individual TO or regional perspective, merit upgrading to 230 kV. While not every 161 kV facility that is estimated to need replacement in a ten-year period should be upgraded, excluding such facilities from the TO reporting process prevents regions from even considering more efficient and cost-effective alternatives from a regional perspective.” (page 68)
- “Second, with the widespread need for replacement of our aging infrastructure, TAPS is concerned that expanding the federal ROFR to encompass right-sized alternative projects could substantially reduce opportunities for competitive transmission development. TAPS suggest that the Commission consider developing a more tailored approach (as TAPS has urged with respect to the conditional joint ownership ROFR) to leave room for competitive transmission development.” (page 68)

### **Vermont Public Utility Commission and Vermont Department of Public Service (also a member of NESCOE)**

- “The opportunity for right-sizing is important to Vermont (and the rest of New England) ratepayers because asset-condition projects, which are primarily directed to aging, damaged, or otherwise obsolete equipment, are becoming an increasingly material component of the overall regional network service charge but receive less visibility than other project types in the ISO New England planning process. Asset-condition projects are a separate category of projects that are not part of the regional planning process that ISO New England uses to select reliability projects for inclusion in the Regional System Plan to solve issues identified in Needs Assessments. Nonetheless, the costs of asset-condition projects are allocated to consumers in the same way as reliability projects that ISO New England selects – i.e., on a pro rata or postage stamp basis across regional network monthly loads.” (page 12-13)
- “The NOPR proposes limiting local projects eligible for right-sizing to those operating at or above 230-kV. The VPUC and VDPS are concerned that this threshold would exclude a significant portion of opportunities to right-size replacement transmission facilities. The ISO New England region, Vermont in particular, has many 115 kV lines, and the proposed 230 kV threshold would impede ability to consider right-sizing many transmission projects in ISO-New England. The VPUC and VDPS—recommend that the Commission not establish a fixed voltage level for the final rule and allow regional flexibility to establish a threshold level for right-sizing.” (page 13)