

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

**Building the Future Through Electric                    )       Docket No. RM21-17-000**  
**Regional Transmission Planning and Cost            )**  
**Allocation and Generator Interconnection         )**

**REPLY COMMENTS OF THE INSTITUTE FOR POLICY  
INTEGRITY AT NEW YORK UNIVERSITY SCHOOL OF LAW**

Pursuant to the Federal Energy Regulatory Commission’s (FERC or the Commission) April 21, 2022 Notice of Proposed Rulemaking (NOPR),<sup>1</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, the Institute for Policy Integrity at New York University School of Law (Policy Integrity) respectfully submits these comments.<sup>2</sup> Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity’s staff has deep expertise in cost-benefit analysis and regulatory economics, and has participated in numerous proceedings before the Commission, regional transmission organizations and independent system operators (RTOs/ISOs), and state public utility commissions regarding the socially efficient pricing of energy resources—including transmission resources.

---

<sup>1</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (2022) [hereinafter NOPR]; see also Notice on Requests for Extension of Time, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (May 25, 2022) (extending deadline for comments).

<sup>2</sup> These comments do not necessarily reflect the views of NYU School of Law, if any.

## I. Future Uncertainty Should Be Addressed Through Long-Term Planning

A common concern with the Commission’s proposal has been uncertainty about the future. Objectors posit that long-term regional planning could be a mistake given the level of uncertainty around transmission needs, laws and policy goals, and generation and demand levels over the next 20 years.<sup>3</sup>

Contrary to their objections, future uncertainty is exactly why long-term regional scenario planning is necessary to ensure just and reasonable rates. Today’s retroactive transmission planning process uses deterministic modeling that generally assumes the future looks much like the past and assumes “average” future system conditions.<sup>4</sup> This posture prevents planners from adequately accounting for the changing world—a warming climate, more frequent and severe extreme weather, more ambitious state and federal policies, increased but more flexible electricity demand, and a transitioning resource fleet. Assuming a static context for transmission planning and disregarding these changes is inappropriate and will not lead to the development of efficient and cost-effective transmission solutions. The Commission’s proposal for long-term regional scenario planning will help planners better prepare for and react to change, ensuring a reliable and resilient grid in the face of uncertainty.

---

<sup>3</sup> See, e.g., Comments of Potomac Economics at 2–3, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (explaining that congestion will be increasingly uncertain in the future making it difficult to estimate the benefits of transmission upgrades); Comments of the Large Public Power Council at 8, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (noting “substantial level of uncertainty regarding generation mix and infrastructure needs”); Comments in Opposition from the Utah Pub. Serv. Comm’n at 15, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (objecting to factors included in NOPR as “insufficiently reliable” and “too speculative,” including anticipated technological trends and aspirational commitments and goals of companies and federal and state governments).

<sup>4</sup> Mohamed Awad et al., *The California ISO Transmission Economic Assessment Methodology (TEAM): Principles and Applications to Path 26*, 2006 IEEE POWER ENG’G SOC’Y GENERAL MEETING, at 3–4.

The proposal does this by requiring planners to build multiple reasonable potential future scenarios to better understand what transmission needs could or are most likely to arise over the next twenty years and how to build today in anticipation of those needs. The Commission does not ask that planning entities assume a single future and then develop one path forward to meet needs in Year 20. As Policy Integrity explained in its initial comments, the goal of the planning process is to understand potential needs in various long-term futures, consider what is needed in the short- and medium- term, and formulate a set of solutions that can most cost-effectively and efficiently satisfy those needs.<sup>5</sup> Recourse options can and should be built into models to allow flexibility, provide option-value, and address uncertainty. Flexibility can also balance the risk of stranded assets or unnecessary development with the benefits that can come from investment based on economies of scale.<sup>6</sup>

Commenters contend that certain factors or benefits discussed in the NOPR are uncertain or speculative,<sup>7</sup> but the fact is that all benefits are inherently uncertain. Any forward-looking

---

<sup>5</sup> See Comments of the Inst. for Pol’y Integrity at N.Y.U. School of Law at 5–6, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022).

<sup>6</sup> Ioannis Konstantelos et al., *Coordination and Uncertainty in Strategic Network Investment: Case on the North Seas Grid*, 64 ENERGY ECON. 131, 147 (2017). Several commenters raise the concern that proactive long-term transmission planning will lead to unnecessary development. See, e.g., Comments of the U.S. Chamber of Commerce at 8, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (raising concern about an “irrational transmission buildout”); Comments in Opposition of the La. Pub. Serv. Comm’n at 31, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (arguing proposed process carries “an enormous risk of building the wrong projects in the wrong locations at the wrong time”); Comments of the Penn. Pub. Serv. Comm’n at 2, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (“Reliance on such uncertain long-term projections could result in excessive grid build-out (gold-plating) at considerable unneeded costs for consumers.”). However, proper long-term planning that accounts for uncertainty and builds in flexibility can mitigate this risk.

<sup>7</sup> See, e.g., Comments of the Ala. Pub. Serv. Comm’n at 5, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022); Comments of Utah PSC, *supra* note 3, at 15; Comments of Entergy at 4, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (raising concern that planning will rely on “overstated benefits or speculative inputs”); Comments of

decision will have a degree of uncertainty. The risk posed by uncertainty can be mitigated and managed, although not eliminated, including by using a portfolio evaluation of costs and benefits.<sup>8</sup>

Finally, the failure to adequately acknowledge and address uncertainty carries its own risks. While it may be difficult to assess what the future will look like, particularly with the Inflation Reduction Act's passage, it is clear that the future will be different than today. Ignoring the energy transition runs its own risk of failing to build transmission that can be useful to meet needs in the short, medium, and long term.

In sum, the argument that the future is too uncertain for long-term planning is a red herring. All models are wrong, but long-term scenario planning will still be useful even if the future can be estimated only imprecisely. As the comments of several state agencies explain, "planning is never precise, and uncertainties can be appropriately managed to facilitate longer ranged planning."<sup>9</sup> There will always be uncertainty and a need to periodically adjust regional plans to account for new information. However, long-term scenario planning is a useful tool that will improve transmission planning and protect customers from paying for a system not built for a changing future.

---

Potomac Economics, *supra* note 3, at 2 (the NOPR's "requirements will require RTOs plan and commit to sizable transmission investment costs based on highly uncertain factors and unreasonable speculation").

<sup>8</sup> Comments of the United States Dep't of Energy to Notice of Proposed Rulemaking at 34, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) ("Evaluating a portfolio of potential transmission facilities would reduce the uncertainty of estimating system-level benefits and the interactions between them, ultimately making it easier to assess whether planning multiple objectives can be achieved.").

<sup>9</sup> Comments of the State Agencies at 15, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022).

## II. The Commission Should Use a Standardized Cost-Benefit Analysis That Properly Accounts for Emissions, Equity and Other Societal Benefits, and Uses a Net-Benefits Test

In line with the recommendation of other commenters,<sup>10</sup> the Commission should require planners to use a standardized cost-benefit analysis that ensures a proper accounting of the many societal benefits that new transmission can provide. That analysis should preferably be one that uses a net-benefits test.

In previous comments, Policy Integrity explained why it is imperative that the Commission implement a standardized cost-benefit analysis.<sup>11</sup> Requiring planning entities to calculate the costs and benefits of a project using a standard framework will better facilitate compliance with the principles of Orders 890 and 1000.<sup>12</sup> A standardized cost-benefit analysis can also help address many of the issues that FERC has identified in the NOPR regarding the development of high-voltage, long-distance regional transmission projects—for example, by facilitating coordination of transmission development.<sup>13</sup> And, greater standardization will facilitate necessary interregional planning and development that should be required by a future rulemaking.<sup>14</sup> While the Commission has provided a list of benefits that should be considered,

---

<sup>10</sup> See, e.g., Comments of the Michigan Attorney General & Citizens Utility Board at 5–9, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (explaining the benefits of a standardized cost-benefit analysis for assessing projects).

<sup>11</sup> Comments of the Inst. for Pol’y Integrity at N.Y.U. School of Law at 41–49, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Oct. 12, 2021) [hereinafter Policy Integrity ANOPR Comments].

<sup>12</sup> *Id.* at 41–42 (“Cost-benefit analysis is a well-understood embodiment of several of those principles—openness, transparency, comparability, and regional participation—and is a source of support for the others—coordination, information exchange, dispute resolution, economic planning studies (that identify significant and recurring congestion), and cost allocation for new projects.”).

<sup>13</sup> NOPR, *supra* note 1, at P 32; see also Policy Integrity ANOPR Comments, *supra* note 11, at 42 (describing persistent barriers to regional transmission development that a standardized cost benefit analysis could address).

<sup>14</sup> Numerous commenters noted that the Commission should have included provisions for interregional transmission planning, such as a minimum interregional transfer capability rule, in this NOPR. See, e.g., Comments of Evergreen Action at 5–6, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022); Initial Comments of the Kan. Corp. Comm’n at 6–10, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 23, 2022); Comments of State Agencies, *supra* note 9, at 22–23; Initial

Policy Integrity agrees with other commenters<sup>15</sup> that the Commission should also build of a core list of benefits that must be considered by all planning entities.

However, such a core list must include societal benefits like those associated with a reduction in both global and local pollutants, as well as other equity benefits from transmission development. The Commission inappropriately chose not to include such benefits even in its non-mandatory list of benefits.<sup>16</sup> Policy Integrity agrees with other commenters that these are important benefits that must be included in any calculation of the costs and benefits of new regional transmission projects.<sup>17</sup> Such benefits are economic benefits to ratepayers, utilities, and

---

Comments of PJM Interconnection, L.L.C. at 66, 123–25, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022). We agree and reaffirm that the Commission should swiftly move forward with interregional planning reform.

<sup>15</sup> *E.g.*, Comments of DOE, *supra* note 8, at 31–32; Comments of PJM, *supra* note 14, at 92–96 (suggesting a set of core benefits to be considered nationwide); Comments of the N.J. Bd. of Pub. Utils. at 11–14, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (listing six minimum benefits to be considered by all planners); Comments of the Cal. Pub. Utils. Comm’n at 28–35, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (asking FERC to require a minimum set of benefit categories); Comments of the US Climate Alliance at 2, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (“It would be a missed opportunity to not establish a minimum set of benefit categories, from which each region could determine values for categories as well as selecting additional categories most relevant to their circumstances.”); Initial Joint Comments of the Minn. Pub. Utils. Comm’n & the Minn. Dep’t of Commerce at 6, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (“Although we are not commenting on specific metrics, we do agree that a minimum list of benefit metrics required to evaluate transmission projects would facilitate interstate and inter-regional analysis by providing a uniform starting point. Individual RTOs or other planning regions could include additional metrics to reflect different goals and objectives.”).

<sup>16</sup> See NOPR, *supra* note 1, at P 185.

<sup>17</sup> See, *e.g.*, Comments of WE ACT for Environmental Justice at 5, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (“[T]hese equity considerations, and other non-energy benefits like pollution reductions, health, jobs and local economic development should be among the list of benefits that the proposed rule specifies utility transmission providers could, and we recommend, should be required to utilize in identifying and evaluating transmission need, project selection, and cost allocation.”); Comments of Evergreen Action, *supra* note 14, at 5 (“Environmental and public health benefits are economic benefits. If transmission expansion allows uneconomic and highly-polluting resources to retire, large reductions in air pollution are likely, thus avoiding significant and costly externalities. These changes can be readily modeled (and would likely already be known after calculating benefit 3, ‘production cost savings,’ and benefit 10, ‘access to lower cost generation’). . . . These benefits must be included”); Comments of State Agencies, *supra* note 9, at 25–26 (explaining need to ensure appropriate evaluation of impacts to underserved and overburdened communities); Comments of DOE, *supra* note 8, at 33 (“[A] wide range of public or societal benefits can accrue from transmission, including but not limited to facilitating clean energy and associated reductions in climate and criteria air pollutants. Additionally, transmission can impact – sometimes negatively –

society, and they should, like any other economic benefit that a planning entity might consider in assessing transmission projects, be weighed in the project planning and selection process.

Finally, while the NOPR provides that planners may use either a benefit-cost ratio (BCR) or net-benefits calculation in estimating project benefits,<sup>18</sup> the Commission should, consistent with guidance from the Office of Management and Budget,<sup>19</sup> encourage use of a net-benefits test. As detailed in Policy Integrity’s comments on the ANOPR and in comments regarding transmission incentives, a net-benefits test better ensures that investment is directed toward projects that provide the highest net benefits to society than relying on a BCR threshold.<sup>20</sup> Use of a BCR is problematic because: (1) comparing projects using BCR is only useful if the projects have similar costs, but may otherwise lead to selection of projects with a higher BCR that are not more economically efficient; and (2) use of the BCR will bias development toward smaller projects with a lower cost, which will generally have a higher BCR, and away from large transmission projects that (although more cost-effective) will cost more and likely have a lower BCR.<sup>21</sup> A net-benefits test, on the other hand, would correctly direct investments to projects that,

---

local communities and ecosystems. For transparency purposes, the Department recommends that the Commission also require reporting of these societal factors.”); Comments of Clean Energy States Alliance at 5–7, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 16, 2022) (“[W]e urge FERC to require equity considerations in regional transmission planning.”); Comments of the Off. of the People’s Counsel for the District of Columbia and the Md. Off. of People’s counsel Regarding the Notice of Proposed Rulemaking at 30–33, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (“... Joint PCs also urge the Commission to allow for (and not preclude) the addition of the additional benefit category of grid decarbonization to those proposed by the NOPR.”); Initial Comments of the Vt. Pub. Util. Comm’n & the Vt. Dep’t of Pub. Servs. at 8, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022) (suggesting use of minimum set of benefits including environmental benefits).

<sup>18</sup> NOPR, *supra* note 1, at P 243.

<sup>19</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, CIRCULAR A-4: REGULATORY ANALYSIS 10 (2003) (stating that BCR “is not a meaningful indicator of net benefits” and should not be used to determine whether one project is more efficient than another).

<sup>20</sup> Policy Integrity ANOPR Comments, *supra* note 11, at 44–46; Comments of the Institute for Policy Integrity at New York University School of Law at 15–17, *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Docket No. RM20-10 (July 1, 2020).

<sup>21</sup> Policy Integrity ANOPR Comments, *supra* note 11, at 44–46.

regardless of cost, provide the greatest return. Consistent with the Commission’s goal of ensuring that planners consider and select more economically efficient and cost-effective projects, the final rule should affirmatively endorse the use of a net-benefits test.

Respectfully submitted,

/s/ Christoph Graf

Christoph Graf, Ph.D.  
Senior Economist  
Institute for Policy Integrity at  
NYU School of Law  
139 MacDougal Street, 3<sup>rd</sup> Fl.  
New York, NY 10012  
[christoph.graf@nyu.edu](mailto:christoph.graf@nyu.edu)

/s/ Sarah Ladin

Sarah Ladin  
Senior Attorney  
Institute for Policy Integrity at  
NYU School of Law  
139 MacDougal Street, 3<sup>rd</sup> Fl.  
New York, NY 10012  
[sarah.ladin@nyu.edu](mailto:sarah.ladin@nyu.edu)

/s/ Burçin Ünel

Burçin Ünel, Ph.D.  
Interim Co-Executive Director  
Institute for Policy Integrity at  
NYU School of Law  
139 MacDougal Street, 3<sup>rd</sup> Fl.  
New York, NY 10012  
[burcin.unel@nyu.edu](mailto:burcin.unel@nyu.edu)

Dated: September 19, 2022