UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection	)))	Docket No. RM 21-17-000

REQUEST FOR REHEARING OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Pursuant to Section 313 of the Federal Power Act ("FPA")[1] and Rules 212 and 713 of the Federal Energy Regulatory Commission ("FERC" or "Commission") Rules of Practice and Procedure,[2] the National Association of Regulatory Utility Commissioners ("NARUC") respectfully requests rehearing of the Commission's May 13, 2024 Order *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection* in the above-captioned proceeding, Order No. 1920.[3]

I. INTRODUCTION

Pursuant to 16 U.S.C. §824e,[4] the Commission, in an April 21, 2022, Notice of Proposed Rulemaking ("*NOPR*"), proposed revisions that were "intended to

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1 16 U.S.C. § 8251.

2 18 C.F.R. §§ 385.212 and 385.713 (2018).

3 *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,* Docket No. RM21-17-000, Order No.1920, 187 FERC ¶ 61,068 (2024) ("*Order 1920*").

4 16 U.S.C.§824e (2012).

remedy deficiencies in the Commission's existing regional transmission planning and cost allocation requirements to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential."[5] The Commission began this process with an Advance Notice of Proposed Rulemaking ("*ANOPR*")[6]. NARUC filed comments responding to both the *ANOPR* and the April 21, 2022 *NOPR*.[7] FERC also established a Joint Federal-State Task Force on Electric Transmission ("*Task Force*") specifically to provide a forum to confer with NARUC's state commission members on many transmission-related topics.[8]

Order 1920 reforms regional transmission planning by requiring transmission operators to: (1) to engage in 20-year long-term planning processes, (2) evaluate transmission needs driven by changing resources and demands; (3) file an *ex ante* "backstop" cost allocation method whether or not an agreement with state entities is

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[5] *Building for the Future through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,028 at P 1 (2022).

[6] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,* Advanced Notice of Proposed Rulemaking, 176 FERC ¶ 61,024 (2021).

[7] *See* the August 17, 2022 Comments of the National Association of Regulatory Utility Commissioners on the Notice of Proposed Rulemaking on Electric Transmission (RM21-17) ("*NARUC NOPR Comments*") and the October 12, 2021 Motion to Intervene and Comments of the National Association of Regulatory Utility Commissioners (RM21-17).

[8] *Joint Federal-State Task Force on Electric Transmission*, 175 FERC ¶ 61,224 (2021).

reached during the single prescribed engagement period;[9] (4) evaluate regional transmission facilities to address interconnection-related transmission needs; (5) consider whether selecting transmission facilities that incorporate dynamic line ratings and advanced power flow control devices would be more efficient than facilities that do not incorporate such technologies; and (6) promote enhanced transparency and coordination requirements within and between regional and local transmission planning processes to "right-size" replacement facilities.

NARUC genuinely appreciates the Commission's extensive outreach in both the NOPR processes and through the Task Force meetings. NARUC also appreciates the Commission's efforts to consider and implement reforms that may facilitate more efficient and effective transmission planning, while attempting to recognize and

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[9] *Order 1920* at P 5 ("Further, this final rule requires transmission providers to file one or more *ex ante* Long-Term Regional Transmission Cost Allocation Methods to allocate the costs of Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) that are selected. This final rule further permits, but does not require, transmission providers to adopt a State Agreement Process.") at P 1359 ("[T]he ultimate decision as to whether to file a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process to which Relevant State Entities have agreed will continue to lie with the transmission providers."); P 1429 ("[A]fter the required Engagement Period, transmission providers in each transmission planning region will decide what Long-Term Regional Transmission Cost Allocation Method(s) and any State Agreement Process to file as part of their compliance filings. Therefore, transmission providers in a transmission planning region could elect to propose on compliance a Long-Term Regional Transmission Cost Allocation Method *and not file a State Agreement Process or other ex ante cost allocation method to which Relevant State Entities agreed*. In addition*, we do not impose any obligation on transmission providers to file a cost allocation method for Long-Term Regional Transmission Facilities with which they disagree*, even if such a method were proposed to the transmission providers pursuant to a Commission-approved State Agreement Process, unless the transmission providers have clearly indicated their assent to do so as part of a Commission-approved State Agreement Process in their OATTs.") (emphases added; footnote omitted).

elevate the critical and key role of the states while preserving jurisdictional authorities.

However, in the final order, FERC both rejected key *NOPR* provisions and adopted others that will cause inefficiencies and undermine the Commission's goals. FERC set out to remedy deficiencies in regional and local transmission planning and cost allocation requirements. Nevertheless, in its current state, certain provisions in *Order 1920* risk resulting in unjust, unreasonable, or unduly discriminatory rates in violation of the Federal Power Act ("FPA"), and/or being found beyond the Commission's authority, unsupported by reasoned decision-making, arbitrary and capricious, or unsupported by, or counter to, the record in this proceeding.[10]

On rehearing, NARUC respectfully requests FERC address the necessary deference to and importance of the state agreement and consensus on planning and cost allocation issues outlined in the *NOPR*. The suggested changes will necessarily improve outcomes, reduce potential litigation, and facilitate subsequent state siting proceedings associated with transmission projects. The *NOPR* also suggested eliminating the Construction Work in Progress ("CWIP") incentive. *Order 1920* did not act on that proposal. However, there is substantial unrebutted evidence in the

[10] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983) ("The agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."). *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

record that the proposed CWIP Incentive for Long-Term Regional Transmission Facilities arbitrarily shifts acknowledged and excessive risk to consumers due to the long lead-times and a higher risk that such facilities will be built. On rehearing, the Commission should eliminate the CWIP incentive.

II. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

Pursuant to Rule 713(c)(2)[11], NARUC respectfully submits that *Order 1920* is arbitrary, capricious, an abuse of discretion, insufficiently supported, contrary to law, and beyond the Commission's authority in the following respects:

[A] CONSTRUCTION WORK IN PROGRESS

Order 1920 arbitrarily shifts acknowledged and excessive risk to consumers by not eliminating the Construction Work in Progress ("CWIP") Incentive for Long-Term Regional Transmission Facilities as proposed in the NOPR. The CWIP Incentive requires consumers to pay for costs incurred during the long lead times associated with transmission projects, projects that may never be constructed. There was, at best, insufficient evidence and record support and no rationale provided for retaining this requirement that ratepayers bear the financial risks of transmission construction. 16 U.S.C. § 824d and 824e. Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); City of Cleveland v. FERC, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

[11] 18 C.F.R. § 385.713(c)(2) (2018).

[B] COST ALLOCATION

Order 1920 adopts a cost allocation process that is unjust, unreasonable, and arbitrary and capricious in the following particulars:

[1] *Order 1920 arbitrarily and without adequate explanation removes protections proposed in the NOPR for states and their ratepayers by not requiring Transmission Providers to incorporate state consensus to cost allocation methods for filing as part of the OATT. It potentially undermines the opportunity provided for negotiations on state cost allocation methods by mandating a default ex ante cost allocation. 5 U.S.C. § 706(2)(A); Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983). If a State Agreement process is adopted by the appropriate states, that agreement should be binding and subject only to FERC approval. 16 U.S.C. § 824d and 824e.*

[2] *Order 1920 fails to specify that in making the required compliance filing to amend the OATT, Transmission Providers should, at a minimum, be required to detail the required state outreach activities and describe their results – including the details of any cost allocation agreements (whether rejected or not) – to ensure the Commission has all the evidence needed to make a reasonable decision.*

[3] *Order 1920 fails to provide adequate time for Transmission Providers to fully develop proposals to comply with this final rule and for all stakeholders, including Relevant State Entities, to meaningfully engage in the process of developing such proposals. 5 U.S.C. § 706(2)(A); Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983).*

[4] *Order 1920 arbitrarily leaves it to a Transmission Provider's sole discretion whether, when, or if to "hold future engagement periods if they believe such period would be beneficial." 5 U.S.C. § 706(2)(A); Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983).*

[C] TRANSMISSION PLANNING/SELECTION CRITERIA:

Order 1920 is in error by not requiring public utility Transmission Providers to include in the transmission evaluation process selection criteria promulgated and supported by Relevant State Entities.

As detailed below, *Order 1920* contains factual findings that are not supported by substantial evidence and draws legal conclusions that are not the product of reasoned decision making and/or are an abuse of discretion. If these problems are not corrected on rehearing, they will produce outcomes that are unjust, unreasonable, unduly discriminatory, and in violation of the Federal Power Act.

II. REQUEST FOR REHEARING

Order 1920 erred in a number of key respects. A Commission order will be reversed on review if it is arbitrary or capricious, reflects an abuse of discretion, is not otherwise in accordance with law, or is not supported by substantial evidence.[12] To satisfy its obligation to engage in reasoned decision-making, the Commission must examine the relevant data and articulate a rational connection between the facts found and the choices made.[13] The Commission must reach its conclusion through

[12] *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 54 (D.C. Cir. 2014*); Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 528 (D.C. Cir. 2010) (*Sacramento*).

[13] *Sacramento*, 616 F.3d at 528; *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004).

decision-making that is "reasoned, principled, and based upon the record."[14]

[A] CONSTRUCTION WORK IN PROGRESS

> *Order 1920 arbitrarily shifts acknowledged and excessive risk to consumers by not eliminating the Construction Work in Progress ("CWIP") Incentive for Long-Term Regional Transmission Facilities as proposed in the NOPR. The CWIP Incentive requires consumers to pay for costs incurred during the long lead times associated with transmission projects, projects that may never be constructed. There was, at best, insufficient evidence and record support and no rationale provided for retaining this requirement that ratepayers bear the financial risks of transmission construction. 16 U.S.C. § 824d and 824e. Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); City of Cleveland v. FERC, 773 F.2d 1368, 1376 (D.C. Cir. 1985).*

The *NOPR* proposed to eliminate the existing CWIP Incentive for Long-Term Regional Transmission Facilities.[15] This policy allows Transmission Providers to recover 100% of their CWIP in rate base before a facility is placed into service. NARUC, numerous states, and consumer advocate comments highlight the obvious: applying the CWIP Incentive to Long-Term Regional Transmission Facilities shifts excessive risk to consumers due to the long lead-times associated with these projects

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[14] *ExxonMobil Oil v. FERC*, 487 F.3d 945, 953 (D.C. Cir. 2007); *see New York v. FERC*, 535 U.S. 1, 36 (2002); *see* also *Transmission Access Policy Group v. FERC*, 225 F.3d 667, 705, 716 (D.C. Cir 2000) (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1021 (D.C. Cir. 1987).

[15] *NOPR,* 179 FERC ¶ 61,028 at 61,205, P 331.

and the high level of uncertainty that they will be built.[16]

The Final Rule declined to take any action regarding the CWIP Incentive as applied to Long-Term Regional Transmission Facilities. Yet, in the *NOPR* at PP 331-332, FERC acknowledged that:

> . . . during the construction of the regional transmission facilities, ratepayers do not receive benefits from the regional transmission facilities, while simultaneously ratepayers directly finance the construction under the CWIP Incentive. Should the regional transmission facilities not be placed in service, then ratepayers will have financed the construction of such facilities that were not used and useful, while ultimately receiving no benefits from such facilities. []. Given the Long-Term Regional Transmission Planning reforms proposed … and the incremental uncertainty and risk that Long-Term Regional Transmission Facilities may not become "used and useful," we are concerned that the CWIP Incentive, if made available for Long-Term Regional Transmission Facilities, may shift too much risk to consumers to the benefit of public utility transmission providers in a manner that renders Commission-jurisdictional rates unjust and unreasonable.
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> *Building. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, 179 FERC ¶ 61,028, 61,205 (2022) (Footnotes omitted)

Further, *Order 1920* at PP 1525 -1531, contains unrebutted comments by the California Public Utilities Commission and others, *inter alia*, that (i) "there is no evidence that . . . the CWIP Incentive, ha[s] spurred investment in transmission

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[16] *Order 1920* at PP 1525-1531 (Note - even if the CWIP Incentive is eliminated, Transmission Providers could still accrue carrying costs incurred during the pre-construction or construction phase as Allowance for Funds Used During Construction. AFUDC are recovered from customers after the project is placed into service).

infrastructure," (ii) "the CWIP Incentive could substantially increase the risk of customers paying for transmission facilities that are never built," (iii) [Eliminating CWIP] "better aligns risk and reward between shareholders and customers with respect to Long-Term Regional Transmission Facilities" (iv) "the longer the transmission planning horizon, the higher the risk that resulting transmission facilities will not be needed," (v) "shifting the risk for long-term transmission projects to transmission providers will help ensure that only those long-term projects that are "confidently needed" will be developed." Finally, "Kentucky Commission Chair Chandler, NASUCA, and the California Commission express concern that today's ratepayers are forced to pay for tomorrow's transmission projects, which they refer to as intergenerational inequity, and they are especially concerned if a project will not provide service until a much later date." [17]

The order cites a number of comments that endorse the retention of the CWIP incentive at PP 1532-1544. Most if not all, as New England Systems pointed out, "gain financially from the incentive."[18]

But none of those commenters rebuts the basic concern espoused by State Commissions and State consumer advocates that was the basis for the *NOPR's* original proposal: that ratepayers unquestionably bear the risks that with CWIP;

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17 *Compare*, *NARUC NOPR Comments* at pp. 54-56.

18 *Order 1920* at P 1526.

they will have to pay in advance for facilities that may not ever be used.[19] Significantly, *Order 1920* did not rebut or critique this basic fact. Nor did it specify that any of the opposing commentors provided an adequate rebuttal.

Instead, *Order 1920* simply declines to "finalize the *NOPR* proposal to limit the availability of the CWIP incentive for Long-Term Regional Transmission Facilities."[20] The record indicates that CWIP should be eliminated. FERC just defers action on CWIP until it can address *other* potentially inappropriate transmission incentives at the same time – incentives that do not require consumers to pay "in advance."[21] This is not reasoned decision making. The record supports elimination of the CWIP now. There is no reason to delay.

[B] COST ALLOCATION:

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[19] *See, NOPR,* 179 FERC ¶ 61,028 at 61,205, P 331. ("In light of the incremental uncertainty associated with the proposed Long-Term Regional Transmission Planning, we preliminarily find that additional protection for ratepayers may be necessary to reasonably balance consumers' interest in just and reasonable rates against investors' interest in earning a return on their investments and reduce the risk to ratepayers of potentially financing over-investment in regional transmission facilities.")

[20] *Order 1920* at P. 1547.

[21] *Order 1920* at P 1546, also notes, accurately, that the Commission "Abandoned Plant incentive" also needs to be addressed to comprehensively address consumer risks associated with Long Term Regional Transmission Facilities." But unlike CWIP, those costs are not recovered in advance but only accrue upon FERC approval of prudently incurred costs for abandoned plant. Plus, addressing Abandoned Plant is a knottier problem – investors are entitled to recover prudent expenditures in both cases, but with CWIP – they still recover prudently incurred expenditures – but there is no reason to let them recover it before the plant is put in service.

Order 1920 adopts a cost allocation process that is unjust, unreasonable and arbitrary and capricious in the following particulars:

[1] *Order 1920 arbitrarily and without adequate explanation removes protections proposed in the NOPR for states and their ratepayers by not requiring Transmission Operators to incorporate state consensus to cost allocation methods for filing as part of the OATT. It potentially undermines the opportunity provided for negotiations on state cost allocation methods by mandating a default ex ante cost allocation. 5 U.S.C. § 706(2)(A); Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983). If a State Agreement process is adopted by the appropriate states, that agreement should be binding and subject only to FERC approval. 16 U.S.C. § 824d and 824e.*

The *NOPR*, the *ANOPR* and *Order 1920*[22] all emphasize the need for state input to facilitate the transmission and cost allocation process.

While *Order 1920,* at PP 254, 259, rejects numerous and credible arguments that the specific transmission planning requirements adopted constituted a "Commission-regulated integrated resource planning/request for a proposal process" or "infringe[d] on the authority reserved to the states by FPA section 201," the order, in P 272 acknowledges, as it must, that "that Long-Term Regional Transmission Planning will affect matters that are within the states' jurisdiction. As stated, this is inevitable."

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[22] *Order 1920* at P 22 ("Given that federal and state regulators each have authority over transmission-related issues and given the impact of transmission infrastructure development on numerous different priorities of federal and state regulators, the Commission determined that the topic was ripe for greater federal-state coordination and cooperation."); P 120 ("[S]tate laws, utility integrated resource plans and resource procurements, and other regulatory actions necessarily affect Long-Term Transmission Needs for Commission-jurisdictional transmission services.").

Later, in P 124, the order concedes that:

> . . . experience with Order No. 1000 has reinforced the critical role that states play in the development of new transmission infrastructure, particularly at the regional level, where transmission projects may physically span, and their costs may be allocated across, multiple states. As the Commission discussed in the *NOPR* and we continue to find in this final rule, facilitating state regulatory involvement in the cost allocation process could minimize delays and additional costs associated with state and local siting proceedings.

State approval is especially important in a multi-state region, where different states have different policies, particularly in light of the mandated planning criteria to be used in the planning of Long-Term Regional Transmission Facilities. These include, *inter alia* (i) "state and local laws and regulations affecting the resource mix and demand," (ii) state and local laws and regulations on decarbonization and electrification," (iii) "state-approved integrated resource plans and expected supply obligations for load-serving entities," (iv) "generator interconnection requests and withdrawals" and (iv) "utility and corporate [clean power purchase] commitments and federal, federally-recognized Tribal, state, and local policy goals."[23] .

[23] *Order 1920* at P 409. *See also* P 474 detailing Factor Category Seven and discussing "public policies and corporate renewable procurement goals," and "clean or renewable energy targets." P 481 ("We agree with commenters that argue that corporate demand for clean energy resources, as demonstrated by the volume of bilateral corporate contracts with renewable energy resources, is already a major driver of changes in the resource mix and demand and that corporate and industrial customer demand for clean energy is projected to increase. We believe that it is necessary for transmission providers to incorporate publicly announced utility commitments in the development of Long-Term Scenarios")

These *Order 1920* requirements to integrate state energy policies and goals into the planning process directly impact state-jurisdictional polices.[24]

The *NARUC Initial Comments* largely supported the *NOPR,* because it included the explicit principle of state agreement to planning and selection criteria and cost allocation.[25] In particular, the *NOPR* proposed to require transmission providers "to seek the agreement of Relevant State Entities within the transmission planning region regarding the Long-Term Regional Transmission Cost Allocation Method, State Agreement Process, or combination thereof."[26]

In its *NOPR* Comments at 45, NARUC explicitly rejected:

> [A] requirement that public utility transmission providers include a Long-Term Regional Transmission Cost Allocation method in their OATTs without being obligated to seek agreement from Relevant State Entities.

Unfortunately, in *Order 1920*, the Commission diverged from the *NOPR* cost allocation proposal significantly. It also rejected California's logical proposal to "require Transmission Providers to indicate in their compliance filings whether

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[24] The record below presents differing evidence on the level and degree of intrusiveness this new transmission level regime will have on state policy and state jurisdictional activities. But there is no question that State jurisdictional activities will be impacted, including directly though siting proceedings and indirectly on in -state planning and policy. *Compare Order 1920* at PP 190-201.

[25] *See* note 7, *supra.*

[26] *Order 1920* at P 1306.

Relevant State Entities support the proposal or explain any points of disagreement that they may have with Relevant State Entities."[27]

To sum up. First, *Order 1920* creates a process that integrates individual state energy policies and goals into transmission planning, creates extensive procedures for "consultation" with states, and acknowledges how state input will facilitate the planning process. But then the order establishes conditions that permit the Transmission Providers to completely ignore and not even report upon state input.

This is the very definition of arbitrary and capricious action and unreasonable decision making.

Even if states in a planning region agree, a "State Agreement Process" *cannot* be the sole chosen method for allocating costs of these projects. The Transmission Provider's own *ex ante* formula *must* be the default method, regardless of whether

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[27] *Order 1920* at P 1359.

states have agreed to a different process or method.[28]

Even if states agreed on an alternative *ex ante* cost allocation method, or if they agree on a cost allocation method under the State Agreement Process, the Transmission Provider could choose to file it but also *could ignore it*.[29]

The Order also undermines the very consulting mechanisms it adopts. Telling the states to negotiate for an alternative cost allocation process when the Transmission Provider's *ex ante* formula has already been designated as the default is no real negotiation at all. This process turns the state negotiations into merely a "check the box" exercise. The existence of a required default procedure and the fact that the Transmission Provider does not have to adopt or even explain its

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[28] *Id.* P 1359 ("[T]he ultimate decision as to whether to file a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process to which Relevant State Entities have agreed will continue to lie with the transmission providers."); P 1429 ("[A]fter the required Engagement Period, transmission providers in each transmission planning region will decide what Long-Term Regional Transmission Cost Allocation Method(s) and any State Agreement Process to file as part of their compliance filings. Therefore, transmission providers in a transmission planning region could elect to propose on compliance a Long-Term Regional Transmission Cost Allocation Method *and not file a State Agreement Process or other ex ante cost allocation method to which Relevant State Entities agreed*. In addition*, we do not impose any obligation on transmission providers to file a cost allocation method for Long-Term Regional Transmission Facilities with which they disagree*, even if such a method were proposed to the transmission providers pursuant to a Commission-approved State Agreement Process, unless the transmission providers have clearly indicated their assent to do so as part of a Commission-approved State Agreement Process in their OATTs.") (emphases added; footnote omitted); *see also id.* P 1356 n.2895 (citing *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002) (*Atlantic City*)).

[29] *Id.*

disagreement with a state consensus on a cost allocation procedure significantly affects both the content of the negotiations and the incentive to participate.

At a minimum, on rehearing, FERC should require Transmission Providers to include "any selection criteria promulgated and supported by relevant state entities."

> [2] *Order 1920 fails to specify that in making the required compliance filing to amend the OATT, Transmission Providers should, at a minimum, be required to detail the required state outreach activities and describe their results – including the details of any state cost allocation agreements (whether rejected or not) – to assure the Commission has all evidence needed to make a reasonable decision.*

As discussed in B [1], *supra,* FERC should amend *Order 1920* to require Transmission Providers to seek agreement from relevant state entities on any Long-Term Regional Transmission Cost Allocation method filed in their OATTs.

But however the Commission addresses that that issue, FERC still should clarify exactly what information Transmission Providers must include in their cost allocation compliance filings describing how they meet the Rule's requirements to incorporate Relevant State Entity input. Specifically, a Transmission Provider's cost allocation compliance filing should include, at a minimum, the setting and communication of deadlines, the general description of discussions, including their outreach to state entities, the extent to which states agreed or disagreed with the filed cost allocation, whether states put forward an alternate cost allocation method by the applicable deadline(s), and, if applicable, the states' alternate proposal, as well as, if applicable, justifications for why the Transmission Provider did not file the states'

agreed-to alternate cost allocation proposal. These minimum filing requirements will demonstrate the extent to which Transmission Providers engaged with states and will provide the Commission with all the evidence needed to make its determination as to whether the compliance filing is just and reasonable. This clarification provides incentives for Transmission Providers that disagree with a cost allocation method agreed to by the states to provide objective reasons why they chose not to accept the state offering. The Commission benefits, because the compliance filings will provide much of the information needed to decide if modifications are required. Overall, such a process will increase the likelihood that the Final Rule meets the Commission's goal of more efficiently and effectively planning long-term transmission.

[3] *Order 1920 fails to provide adequate time for Transmission Providers to fully develop proposals to comply with this final rule and allow stakeholders, including Relevant State Entities, to meaningfully engage in the process of developing such proposals. 5 U.S.C. § 706(2)(A); Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983).*

Order 1920 requires each Transmission Provider to submit a compliance filing within ten months of the order's effective date, revising its OATT and providing documentation demonstrating it meets all of the order's requirements.[30]

30 *Order 1920* at P 1768.

In response to comments from NARUC, Idaho Power, ISO-NE, and MISO, the Commission extended the compliance period to ten-months instead of the eight-month compliance period proposed in the *NOPR*. *Id.* According to the Order, this

> "will allow transmission providers to fully develop proposals to comply with this final rule and allow stakeholders, including Relevant State Entities, to meaningfully engage in the process of developing such proposals." *Id.*

NARUC appreciates the FERC's extension of the original eight-month period. However, adding just two months is unlikely to allow state entities to meaningfully engage. NARUC and others submitted comments indicating that states would need anywhere from a year to eighteen months.

There are real world examples in the record indicating this is likely the case. For example, NARUC pointed out in its original comments that after MISO filed a cost allocation method that divided postage stamp rates between MISO Midwest and MISO South in February of 2022, discussions by the MISO cost allocation committee of a replacement cost allocation method have already well exceeded twelve months.[31] Idaho Power and ISO NE suggested that the Commission provide Transmission Providers at least a year to comply with the final rule due to the

[31] MISO and its stakeholders have undertaken a Long-Range Transmission Plan for a time period that has exceeded two years. *See Miso Initial Comments* at p. 91.

complexity of the proposals and the need to work with stakeholders,[32] and MISO for the same reasons requested a compliance period for eighteen months.[33]

For planning regions outside of RTOs/ISOs, state commissions may not be conversant with various cost allocation methods and will face a learning curve on substantive issues in cost allocation. Further, state entities likely will have internal legal and procedural issues to sort through regarding a number of issues, including delegating negotiating authority, receiving stakeholder input at the state level, ensuring that their involvement in federal tariffs is not deemed to be prejudging the outcomes of state proceedings, and coordinating with legislative and executive branch entities to ensure that the state regulatory entities have authority to negotiate on behalf of their states and retail ratepayers.

Given existing state retail regulatory duties, ten months is insufficient to allow the Relevant State Entities to effectively coordinate internally and externally.

The Commission should grant rehearing of its decision to require Transmission Providers to submit a compliance filing within ten months of the effective date of the final rule revising its OATT. That decision arbitrarily and capriciously denies state entities adequate time to meaningfully engage in the cost

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[32] *Order 1920* at P 1763 (Citing *Idaho Power Initial Comments* at 14, *ISO-NE Initial Comments* at 41).

[33] *Id.*

allocation process for Long-Term Regional Transmission Facilities. The record suggests a fourteen-month time would be reasonable.

[4] *Order 1920 arbitrarily leaves it to Transmission Provider's sole discretion of whether, when or if to "hold future engagement periods if they believe such period would be beneficial." 5 U.S.C. § 706(2)(A); Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983).*

NARUC requests that FERC create a mechanism to assure regular re-examination of the default and any other cost allocation included in the Transmission Provider's OATT.[34]

Order 1920 only *requires* one Engagement Period for states to negotiate a different cost allocation from the Transmission Provider's *ex ante* cost allocation before that *ex ante* cost allocation becomes the default.**[35]** This locks in each Transmission Provider's preferred *ex ante* formula and blocks any avenue for states to challenge it. As described P 1368, *Order 1920* leaves it to the Transmission Provider's sole discretion whether, when, or even if to "hold future engagement periods if they believe such period would be beneficial."

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[34] *Order 1920* at P 1255 ("NARUC requests that the Commission provide a mechanism for future review of cost allocation methods for Long-Term Regional Facilities." (citing *NARUC Initial Comments* at 49-50).

[35] *Id.* P 1368; *see also id.* P 1291.

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NARUC pointed out the flaws in this approach in its initial comments.[36] These transmission facilities will be planned over a longer period than projects built for reliability or economic reasons. States that do not currently have public policies requiring extensive transmission investments may forego an opportunity to participate in discussions regarding cost allocation, but their public policies may evolve over time. For the reforms proposed in this *NOPR* to be successful, the positions of relevant state entities should not be frozen in time. This is even more important because even the extended compliance period required by *Order 1920* may not be sufficient to allow states to engage in the arduous task of reaching agreement over cost allocation methodologies.

The order does not engage or rebut NARUC's contentions at any level.

On rehearing, FERC should provide a mechanism for ensuring that Transmission Providers remain in compliance with the requirement to include relevant state entities in cost allocation for Long-Term Regional Transmission Facilities. FERC should either require the Transmission Provider to open a new negotiation period with the relevant state entities periodically. or require them to file a modification to their OATT if states reach the requisite agreement on a different cost allocation methodology than that reflected in the OATT then on file.

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36 *NARUC NOPR Comments* at pp. 49-50.

[C] TRANSMISSION PLANNING/SELECTION CRITERIA:

Order 1920 is in error by not requiring public utility Transmission Providers to include in the transmission evaluation process selection criteria promulgated and supported by relevant state utilities.

Order 1920 adopts the NARUC-supported *NOPR* proposal with modifications, requiring Transmission Providers to consult with and seek, *but not necessarily obtain*, support from Relevant State Entities regarding the evaluation process, including the selection criteria to be used to identify and evaluate Long-Term Regional Transmission Facilities for selection. It also requires Transmission Providers to demonstrate their "good faith efforts" to consult.[37]

FERC has acknowledged,[38] and NARUC has explained in its comments on the *NOPR,*[39] why state input is crucial to any transmission planning procedure. This includes selection criteria. As pointed out earlier, even to the casual observer, *Order 1920's* requirements for providers to use a series of state policy-centric factors in long term scenarios emphasizes the need for state commission expertise and input into all aspects of the transmission planning process.[40]

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37 *Order 1920* at PP 972, 994, 996.

38 *NOPR* at P 56,244,300, 301.

39 *NARUC NOPR Comments* at pp 42-44.

40 See discussion and footnotes under III. B. [1], *supra.*

In P 996, the Order clarifies that Transmission Providers are required "to seek support from Relevant State Entities, but [not] to obtain their support, before proposing an evaluation process and selection criteria." In the same paragraph, the Order indicated that it will not provide states with "veto authority over transmission providers' proposed selection criteria" and in P 997 "disagrees with NARUC "that, in the absence of a requirement that transmission providers obtain the support of Relevant State Entities, transmission providers will be empowered to ignore the input of Relevant State Entities."

But NARUC's comments did not seek veto authority, nor did NARUC seek state endorsement of all criteria raised. Rather NARUC said, at p 45 of its *NOPR* Comments:

> Given the Commission's stated goal of accommodating individual states' energy policies and goals into Long-Term Regional Transmission Planning, NARUC opposes any resolution that permits public utility transmission providers to override or ignore any selection criteria promulgated and supported by relevant state entities.

Including state supported selection criteria is efficient and likely to result in better outcomes for the planning process; it also reduces the likelihood of inefficient litigation. The record in this proceeding, including *Order 1920*'s requirements for State consultations, supports inclusion of such state-supported criteria. The Order nowhere specifically responds to this NARUC request for treatment of state supported criteria.

IV. CONCLUSION

For the foregoing reasons, NARUC respectfully requests that the Commission grant rehearing of the May 2024 Order to address the errors specified herein.

Respectfully submitted,

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Date: June 12, 2024

CERTIFICATE OF SERVICE

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

Respectfully Submitted

/s/ *Robert C. Cain II*

Date: June 12, 2024