



FEDERAL ENERGY REGULATORY COMMISSION
Commissioner Mark C. Christie

March 22, 2024

The Honorable Andrew R. Garbarino
The Honorable Anthony D’Esposito
The Honorable Nicholas A. Langworthy
The Honorable Brandon Williams
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressmen Garbarino, D’Esposito, Langworthy and Williams:

Thank you for your February 9, 2024 letter to Chairman Willie L. Phillips of the Federal Energy Regulatory Commission (“FERC” or “Commission”). As another member of FERC, I am taking the opportunity to respond to your letter.

Your letter asks the Commission to “finalize the Commission’s pending regional transmission planning and cost allocation rule as soon as possible. . . .” You also write, *inter alia*: “FERC’s final rule should . . . *incorporate state input regarding cost allocation. This should include a means of resolving disagreements and allocating costs to customers* in a way that is ‘roughly commensurate’ with benefits. . . .” (emphases added).

As you may know, the State of New York, which you represent along with Senator Schumer, who also wrote to FERC urging the adoption of similar provisions in a final transmission rule,¹ is part of a single-state transmission planning organization, the New York Independent System Operator, Inc. (“NYISO”). While NYISO is federally regulated by this Commission, NYISO can – and in my view, *should* – plan transmission that reflects the State of New York’s public policies, such as, for example, New York’s policies mandating certain types of generation. Since I have been on FERC, this Commission has regularly approved transmission-related filings

¹ See, e.g., Sen. Charles E. Schumer July 20, 2023 Letter to FERC, Docket No. RM22-14-000, *et al.* (“[A]ny final rule must . . . *prescribe a set of benefits* [to be used in transmission planning] While I applaud FERC’s proposal to increase state involvement in cost allocation decisions, I also recognize that there is a role for the Commission to provide guidance on [cost allocation] when agreement cannot be reached. . . . [I]t will be necessary that [either the RTO, non-RTO transmission provider or FERC shall impose cost allocation when agreement among states on a cost allocation method cannot be reached]”). (emphasis added)



originating in New York that serve to implement New York’s state energy policies.² Whether the pending transmission rule you write about³ is ever enacted or not, I have advocated specifically that NYISO implement New York policies related to transmission as long as the costs of those policies are not allocated to consumers in states other than New York.⁴ Which brings me to a critically important point about how any transmission planning mandate from FERC must apply in regional transmission organizations (“RTOs”) or non-RTO planning entities that cover *multiple* states, not single states such as NYISO.⁵

In multi-state RTOs and non-RTO planning entities, it is not enough simply to, as your letter states, “*incorporate state input* regarding cost allocation.” The proposed transmission planning rule you write about – and which Senator Schumer wrote to FERC about – is at its core about promoting a specific type of transmission project,

² See, e.g., *Consol. Edison Co. of N.Y., Inc.*, 180 FERC ¶ 61,106 (2022); *N.Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,059 (2023).

³ See *Bldg. for the Future Through Elec. Reg’l Transmission Plan. & Cost Allocation & Generator Interconnection*, 179 FERC ¶ 61,028 (2022) (Transmission Planning and Cost Allocation NOPR).

⁴ See, e.g., *Consol. Edison Co. of N.Y., Inc.*, 180 FERC ¶ 61,106 (Christie, Comm’r, concurring at PP 2-3) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-concerning-nytos-cost-sharing-er22-2152-et-al>) (“NYISO is a single-state ISO and, as such, it is expected that transmission planning in NYISO would be consistent with the public policies of the State of New York, as well as meeting the requirements of the Federal Power Act. . . . [T]here is nothing in the record in this matter to indicate that any of the costs of the transmission projects that will be built to implement New York’s public policies under the terms described in this proposal will be forced on consumers in other states. . . . And claiming that such consumers were somehow ‘beneficiaries’ of New York’s public policies, when out-of-state consumers had no say in electing the New York politicians adopting such policies, would not cure the fundamental unjustness and unreasonableness of such cost allocation.”) (footnotes omitted); *N.Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,059 (Christie, Comm’r, concurring at P 3) (citation omitted) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-new-york-transmission-cost-allocation-case-er23>) (“I am aware of no evidence in the record before us that indicates that the matters addressed in this order will cause citizens of other states to be forced to pay for a New York state public policy project: this is vital to my decision to vote for this order.”); see also *N.Y. Indep. Sys. Operator, Inc.*, 186 FERC ¶ 61,184 (2024) (Christie, Comm’r, concurring at P 2).

⁵ The California Independent System Operator (“CAISO”) is also a single-state federally regulated transmission planner, which I have also supported in planning transmission to implement California’s state policies.



commonly referred to as “public policy projects.”⁶ These are projects designed to implement one or more states’ public policies, typically policies that mandate a preferred mix of generation resources such as wind or solar. It would be grossly unfair for FERC to force consumers in other states to pay for projects implementing the policies of politicians they never got the chance to vote for, when their own states’ policy-makers have not agreed to pay for those projects. Such an imposition is contrary to American principles of democracy, a core principle of which is that the people have the right to elect the policy-makers who impose costs on them, so the people can hold them accountable.

While I absolutely support the people of New York or any other state in their right to choose any energy policies they want regarding preferred power resources, it would be wrong both as a matter of policy, as well as law, for FERC to use a transmission planning rule to force the costs, for example, of New Jersey’s policy-driven offshore wind projects onto consumers in Pennsylvania, Ohio, or other states without the explicit consent of those states. So “incorporating state input” is not nearly sufficient to protect consumers. In multi-state RTOs, for this specific category of transmission projects – projects designed to implement one or more states’ public policies – before costs can be allocated to consumers in other states, those states *must* give their voluntary consent. They can consent to bear the costs of such projects either through a formula agreed in advance, or through a voluntary agreement process applicable to specific projects,⁷ such as the process already being used in PJM for the New Jersey offshore wind projects referenced above. Or states could agree to some combination of both, such as, for example, a predetermined formula applicable to smaller

⁶ Order No. 1000 described these types of projects as those that address “transmission needs driven by Public Policy Requirements.” *E.g., Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051, at PP 2, 6 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); *see also id.* PP 11, 47. The Transmission Planning and Cost Allocation NOPR has proposed folding public policy requirements into “long-term transmission projects,” but the type of projects contemplated is the same as Order No. 1000’s public policy projects. Indeed, the proposed rule specifically states that it does *not* apply to reliability or economic projects. Transmission Planning and Cost Allocation NOPR, 179 FERC ¶ 61,028 at PP 3, 89, 314.

⁷ PJM, a 13-state RTO, uses such a voluntary cost-allocation mechanism known as the “State Agreement Approach.” *Any final rule on transmission planning must preserve the use of such voluntary state agreements.*



transmission projects with cost allocation for larger, more costly, projects determined individually.

What FERC must *not* do, nor should RTOs with FERC’s assent, is force a cost allocation on states that have not consented for their consumers to bear the costs of another state’s public policy projects. Should the Commission attempt to force cost allocation along these lines, FERC will likely face years of protracted litigation, jeopardizing transmission investment in long-term projects that could serve consumers. The proposed rule already contains other highly controversial provisions likely to attract litigation; loading it up with even more legally dubious provisions will only increase the risks in the uncertain future it faces.

Moving forward, a far better option for FERC (and consumers) is to adopt the principle of *voluntary* state agreement for transmission cost allocation, which I not only have already supported, but the Commission has too.⁸ Such an approach will produce a far more legally durable and lasting cost allocation framework, one which could actually help get needed transmission built. Everyone agrees that necessary

⁸ See Transmission Planning and Cost Allocation NOPR, 179 FERC ¶ 61,028 (Christie, Comm’r, concurring at P 11), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-e-1-regional-transmission-planning-and-cost>; see, e.g., *State Voluntary Agreements to Plan & Pay for Transmission Facilities*, 175 FERC ¶ 61,225 (2021). I would add that a FERC-mandated list of purported benefits that must be used in transmission planning, is simply a way to “pre-cook” the outcomes of planning and then impose cost allocation on as many consumers as possible. See n.1 above. That is equally unacceptable.



transmission should be planned and built and long-term planning that is consistent with FERC's legal authority can help facilitate that goal, but action on FERC's part that is grossly unfair to consumers will not achieve that shared goal.

I am more than happy to discuss this matter further with you, Senator Schumer or any other member of the Congress, at your convenience.

Sincerely,

/s/ Mark C. Christie

Commissioner Mark C. Christie

Cc: Senator Charles E. Schumer