UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

REQUEST FOR REHEARING AND CLARIFICATION OF THE AMERICAN PUBLIC POWER ASSOCIATION

Order No. 1920[1] grants Relevant State Entities—defined as exclusively state regulators—the opportunity to participate in an Engagement Period to negotiate a cost allocation methodology for Long-Term Regional Transmission Facilities.[2] But, without meaningful rationale, the order denies the same privilege to self-regulated public power utilities. As a result, tens of millions of customers served by public power will have no representation during the Engagement Period. Order No. 1920 is therefore arbitrary, capricious, and contrary to the Federal Power Act.

The American Public Power Association (APPA) urges the Commission to broaden the definition of Relevant State Entities to include any state *or municipal* entity responsible for electric utility regulation or siting electric transmission facilities.[3] The Commission should, at minimum, grant clarification that public utility transmission

[1] *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, Order No. 1920, 187 FERC ¶ 61,068 (2024). Capitalized terms used in this pleading refer to the terms as defined in Order No. 1920.

[2] Order No. 1920, P 1354.

[3] APPA seeks rehearing and clarification of Order No. 1920 pursuant to section 313 of the Federal Power Act, 16 U.S.C. § 825*l*, and Rules 212 and 713 of the Commission's Rules of Practice and Procedures, 18 C.F.R. §§ 385.212, 385.713.

providers have an obligation to consult with stakeholders, including public power entities, in developing their Order No. 1920 compliance filings.

APPA also acknowledges and supports the requests for rehearing and clarification of the Large Public Power Council (LPPC) and the Transmission Access Policy Study Group (TAPS). In particular, the Commission should grant LPPC's request to clarify that non-public utilities may satisfy the reciprocity requirement of Order No. 888 through one of three means: (1) providing service to a public utility transmission provider under a safe harbor tariff; (2) providing service under a bilateral agreement; or (3) seeking waiver.[4]

I. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

1. The Commission erred by excluding municipal electric utility regulatory bodies from the definition of Relevant State Entities. 16 U.S.C. § 824e(a); *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538 (D.C. Cir. 2010); *FERC v. Elec. Power Supply Ass'n,* 136 S. Ct. 760 (2016); *Baltimore Gas & Elec. Co. v. FERC*, 954 F.3d 279 (D.C. Cir. 2020).

II. REQUEST FOR REHEARING AND CLARIFICATION

A. The Commission erred by excluding municipal electric utility regulatory bodies from the definition of Relevant State Entities.

Order No. 1920 defines Relevant State Entities as "any state entity responsible for electric utility regulation or siting electric transmission facilities within the state or portion of a state located in the transmission planning region, including any state entity as may be designated for that purpose by the law of such state."[5] Order No. 1920 grants Relevant State Entities many privileges, most notably the opportunity to participate in an

[4] Order No. 1920 states that "transmission providers that are not public utilities must adopt the requirements of this final rule as a condition of maintaining the status of their safe harbor tariff or otherwise satisfying the reciprocity requirement of Order No. 888." *Id.*, P 1771. Although the order does not explicitly recite the alternative means of satisfying the reciprocity requirement, the Commission gives no indication of any intent to modify its longstanding precedent.

[5] Order No. 1920, P 1355.

Engagement Period to negotiate a cost allocation methodology for Long-Term Regional Transmission Facilities.[6] This is "a central role" and an "unprecedented opportunit[y] to engage with transmission providers."[7]

Unfortunately, Order No. 1920 explicitly excludes "self-regulated public power utilities" and "local regulatory bodies" from the definition of Relevant State Entities, thus denying them the opportunity to participate in the Engagement Period.[8] In most cases, public power utilities are state entities or political subdivisions of states that are not subject to state public service commission regulation, but are instead regulated by a city council or county commissioners, or an independent board or commission whose members may be elected or appointed by local officials.[9] Thus, in most states, the Relevant State Entities (i.e., "state entities responsible for electric utility regulation") have jurisdiction over the rates charged to customers of investor-owned utilities, but do not have jurisdiction over, or represent the interests of, public power utilities and their customers.[10]

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[6] *Id.*, P 1354. The order also requires transmission providers to consult with *and seek the support of* Relevant State Entities regarding: (1) the evaluation process, including selection criteria, that the transmission providers propose to include in their compliance filings, *id.*, P 994; and (2) developing a process to provide Relevant State Entities and interconnection customers with the opportunity to voluntarily fund the cost of a Long-Term Regional Transmission Facility, *id.*, P 1012.

[7] Order No. 1920, Joint Concurrence, PP 20, 21.

[8] *Id.*, P 1364. The order also excludes Native American Tribes, cooperatives, non-jurisdictional transmission providers, consumer interests, state utility consumer advocates, and non-traditional state agencies. *Id.*

[9] *See* Initial Comments of the American Public Power Association, at 41, Docket No. RM21-17-000, eLibrary No. 20220817-5214 (Aug. 17, 2022) ("APPA Initial Comments").

[10] We note that, in most cases, state public utility commissions also lack jurisdiction over cooperative utilities.

Excluding public power utilities and the municipal governing bodies that regulate them from the definition of Relevant State Entities is arbitrary, capricious, and contrary to the Federal Power Act for three reasons.

First, the definition of Relevant State Entities is unduly discriminatory.[11] Customers served by investor-owned utilities will be represented during the Engagement Period by their state entities, but (in most states) customers served by municipal utilities will have no representation during the Engagement Period.[12] In some states where public power entities serve a significant portion—or even all—of the state's electricity consumers, the problem is even more acute. Public power utilities serve 25 million customers, 15% of all customers in the United States. The Commission does not—and could not—offer any justification for excluding such a significant portion of electric ratepayers from being represented during the Engagement Period.

Second, Order No. 1920 lacks any meaningful rationale for excluding self-regulated public utilities from the definition of Relevant State Entities.[13] The Commission's rationale for requiring an Engagement Period for state regulators applies with equal force to municipal regulators. The Commission offers two reasons for privileging state regulators above all other stakeholders: (1) providing state regulators with a formal opportunity to develop a cost allocation method "could help increase

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[11] 16 U.S.C. § 824e(a) (prohibiting unduly discriminatory rates); *see also Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 549 (D.C. Cir. 2010).

[12] As the Commission correctly acknowledges, determining which entities in a state qualify as the Relevant State Entities "will be a function of state law." Order No. 1920, P 1365. But by explicitly and unnecessarily excluding self-regulated public power utilities and local regulatory bodies from the Relevant State Entities definition, the Commission ignores that in most states, state law grants responsibility for electricity utility regulation to municipal entities or other political subdivisions within the state.

[13] *FERC v. Elec. Power Supply Ass'n,* 136 S. Ct. 760, 782 (2016) ("The Commission must "examine[] the relevant [considerations] and articulate[] a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made.")

stakeholder – and state – support for those facilities" and (2) ensuring that "certain stakeholders – in particular, a state regulator responsible for permitting transmission facilities" perceive value in a regional transmission facility will reduce uncertainty and risk for transmission development.[14]

Providing municipal governing bodies of public power utilities—who are politically accountable to their customers—the same opportunity as their state peers to develop a cost allocation methodology will provide the same benefits of increasing local support for those regional transmission facilities and reducing uncertainty and risk for transmission development.

Third, the Relevant State Entities definition conflicts with the Federal Power Act's definition of a "state commission" as "the regulatory body of the State or *municipality* having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or *municipality*."[15] Congress recognized regulation of electric utilities occurs at both the state and municipal level. And the Commission has repeatedly done so in its major rulemakings. For example, Order No. 719 defined the term "relevant electric retail regulatory authority" to treat municipal regulatory authorities on par with state public utility commissions and cooperative governing boards.[16] The Commission continued to use that definition in Order No. 841 and Order No. 2222.

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[14] Order No. 1920, P 1364.

[15] 16 U.S.C. § 796(15) (emphasis added). The FPA, in turn, defines "municipality" broadly to encompass "a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power." 16 U.S.C. § 796(7). *See also* APPA Initial Comments, at 43 (discussing the statutory language).

[16] Order No. 719 defined a relevant electric retail regulatory authority as "the entity that establishes the retail electric prices and any retail competition policies for customers, such as the city council for a

Given that the Federal Power Act itself recognizes the role of municipalities with jurisdiction to regulate their own electric utilities, and given that the Commission has long recognized that same role, the Order No. 1920 cannot now ignore the vital role that self-regulating public power utilities have in ensuring reasonable rates for millions of customers.[17]

For those three reasons, the Order No. 1920's exclusion of self-regulating public power entities from the definition of Relevant State entity is arbitrary, capricious, and contrary to law. On rehearing, the Commission should broaden the definition of Relevant State Entities to include any state *or municipal* entity responsible for electric utility regulation.

B. The Commission should, at minimum, clarify transmission providers' obligation to consult with stakeholders in developing compliance filing.

The Commission expressly considers a role for stakeholders to participate in the development of public utility transmission providers' Order No. 1920 compliance filings. The Commission granted an extended time for compliance to "allow stakeholders, including Relevant State Entities, to meaningfully engage in the process of developing proposals."[18] And throughout the rule the Commission states that transmission providers must consult with stakeholders when developing particular aspects of their compliance

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municipal utility, the governing board of a cooperative utility, or the state public utility commission." *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281, at P 158 (2008), 125 FERC 61,071, *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

[17] *Baltimore Gas & Elec. Co. v. FERC*, 954 F.3d 279, 286 (D.C. Cir. 2020) (When an agency seeks to change policy, it must "display awareness that it is changing position," show "the new policy is permissible under the statute," and "show that there are good reasons for the new policy.")

[18] Order No. 1920, P 1768.

filing.[19] But Order No. 1920 does not consistently, for each aspect of the compliance filing, repeat the express obligation to consult with stakeholders.[20]

The Commission should clarify that transmission providers have obligation to consult with stakeholders—including public power entities and load-serving entities—in developing compliance filings applies to the development of Order No. 1920 compliance filings, including, but not limited to, with respect to calculation of benefits, selection of additional benefits, and all other parts of the evaluation and selection process.

Granting this clarification would be consistent with Order No. 1000's requirement that compliance filings must be developed in consultation with stakeholders.[21] Granting clarification would also facilitate quicker approval of compliance filings and conserve Commission resources: requiring meaningful consultation with stakeholders during the ten-month compliance period will reduce the likelihood of compliance filings being broadly protested before the Commission.

III. CONCLUSION

For the reasons stated above, the Commission should grant rehearing of Order No. 1920 to modify the definition of Relevant State Entity to include state *or municipal* entity responsible for electric utility regulation in a state or within a portion of a state. The Commission should, at minimum, clarify that Order No. 1920 requires transmission providers to consult with stakeholders in the development of their compliance filings.

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[19] *See, e.g., id.*, P 562 (requiring consultation on long-term scenarios); *id.*, P 924 (requiring consultation on evaluation process); *id.*, P 1421 (allowing consultation after the Engagement Period on any State Agreement Process).

[20] *E.g. id.*, PP 667-903 (not making any explicit statements requiring consultation before proposing methods for calculating the seven required benefits or adding additional benefits).

[21] Order No. 1000, P 151.

Respectfully submitted,

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