

UNITED STATES OF AMERICA
BEFORE THE
GRID DEPLOYMENT OFFICE
DEPARTMENT OF ENERGY

Notice of Intent and Request for
Information: Designation of National
Interest Electric Transmission
Corridors

Docket ID: DOE-HQ-2023-0039

**COMMENTS OF
TRANSMISSION ACCESS POLICY STUDY GROUP**

The Transmission Access Policy Study Group (“TAPS”) welcomes the opportunity to comment on the Grid Deployment Office’s May 9, 2023 Notice of Intent and Request for Information on National Interest Electric Transmission Corridors.¹ The NOI proposes to use an “applicant-driven, route-specific” approach to designating National Interest Electric Transmission Corridors (“NIETCs” or “Corridors”) pursuant to section 216(a)(2)² of the Federal Power Act (“FPA”).³

As transmission dependent utilities (“TDUs”), TAPS members recognize the importance of a robust transmission grid and have long been outspoken on the need for improved transmission and ways to get needed transmission built at reasonable cost. We recognize the value an NIETC designation can provide in terms of funding opportunities,

¹ Dep’t of Energy, Notice of Intent and Request for Information: Designation of National Interest Electric Transmission Corridors, 88 Fed. Reg. 30,956 (May 15, 2023) (“NOI”).

² 16 U.S.C. § 824p(a)(2).

³ NOI at 30,956.

and serving as the basis for the exercise of the Federal Energy Regulatory Commission's ("FERC") backstop siting authority under FPA section 216(b).⁴

At the same time, many TAPS members have faced steep transmission rate increases in recent years—costs that are ultimately borne by consumers. Thus, as DOE considers whether and how to proceed with its proposed NIETC designation process, TAPS urges it to do so in a manner that achieves efficient and cost-effective transmission development and minimizes consumer costs.

Specifically, as described in more detail below, TAPS urges DOE to consider the following:

- Given their demonstrated value in facilitating siting and cost-reducing impacts, inclusive joint ownership arrangements should be considered and factored into the proposed applicant-driven, route-specific NIETC designation process, and otherwise promoted through that process. DOE should also ensure that the NIETC designation process facilitates, and creates no barriers to, applications that feature such joint ownership. *See* Part I.
- To provide DOE with the information needed to focus on designating Corridors for major projects that serve the statutory objectives of its authority under FPA section 216(a),⁵ DOE should clarify and expand its proposal to require an applicant to provide information on whether its project is included in a local or regional plan. Specifically, disclosure of the project's participation and evaluation in a local or regional transmission planning process or any FERC-required inter-regional coordination or planning process should be required and considered as a factor in NIETC designation. *See* Part II.
- DOE's proposed applicant-driven, route-specific NIETC designation process should be structured to avoid drawing Corridors so narrow that they preclude competition from lower cost, more efficient projects, or consideration of projects that provide the substantial benefits of inclusive joint ownership. *See* Part III.

⁴ 16 U.S.C. § 824p(b).

⁵ 16 U.S.C. § 824p(a).

INTEREST OF TAPS

TAPS is an association of TDUs in thirty-five states promoting open and non-discriminatory transmission access.⁶ As entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS members have long recognized the importance of getting the transmission needed for a robust grid built at reasonable cost.⁷ In particular, we recognize the consumer cost of congestion and the value of significantly reducing that congestion. As municipal, cooperative, and investor-owned LSEs, TAPS members are responsible for providing reliable and affordable service to the consumers and businesses that rely on them and their members.

TAPS also recognizes the critical roles played by an open, inclusive, and transparent planning process, in achieving more efficient and cost-effective transmission expansion. It vigorously supported the objective of FERC's Order 1000, to ensure selection of more efficient and cost-effective alternatives in transmission plans; and it is actively participating in FERC's *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection* proceeding, responding to

⁶ See TAPS, <https://www.tapsgroup.org> (last visited June 27, 2023). Jane Cirrincione, Northern California Power Agency, is the TAPS Chair; Dave Osburn, Oklahoma Municipal Power Authority, is the Vice Chair. Terry Huval is TAPS's Executive Director.

⁷ See, e.g., our most recent white paper on this subject, attached as Appendix A to these comments. TAPS, *Inclusive Joint Transmission Ownership Arrangements: An Effective Means to Site and Build Transmission Need to Support Our Changing Resource Mix* (June 25, 2021), <https://www.tapsgroup.org/wp-content/uploads/2021/09/TAPS-Inclusive-Joint-Ownership-White-Paper.pdf> ("TAPS 2021 White Paper").

both the Advance Notice of Proposed Rulemaking,⁸ and the Notice of Proposed Rulemaking.⁹

TAPS therefore has a strong interest in the NIETC designation process achieving its statutory objectives in a manner that delivers significant savings, while minimizing the costs borne by consumers.

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⁸ *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, 176 FERC ¶ 61,024 (2021) ("FERC ANOPR"). See Comments of Transmission Access Policy Study Group at 6-7 & nn.6-7, *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, Docket No. RM21-17 (Oct. 12, 2021), eLibrary No. 20211012-5388 ("TAPS FERC ANOPR Comments").

⁹ *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, 179 FERC ¶ 61,028 (2022) ("FERC NOPR"). See Initial Comments of Transmission Access Policy Study Group, *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, Docket No. RM21-17 (Aug. 17, 2022), eLibrary No. 20220817-5183 ("TAPS Initial FERC NOPR Comments"); Reply Comments of Transmission Access Policy Study Group, *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, Docket No. RM21-17 (Sept. 19, 2022), eLibrary No. 20220919-5104 ("TAPS Reply FERC NOPR Comments") (collectively, "TAPS FERC NOPR Comments").

COMMENTS

I. INCLUSIVE JOINT OWNERSHIP CAN AND SHOULD PLAY AN IMPORTANT ROLE IN COST-EFFECTIVELY AND EXPEDITIOUSLY ACHIEVING THE OBJECTIVES OF NIETC DESIGNATION

A. Promoting Inclusive Joint Ownership Will Better Enable DOE to Achieve the Policy Objectives of NIETC Designation

TAPS has long advocated for “inclusive joint ownership arrangements”—which invite meaningful ownership participation on reasonable terms to all LSEs in the relevant footprint—as crucial to getting needed transmission built at reasonable cost. TAPS’s 2021 White Paper¹⁰ highlights many benefits such joint ownership arrangements can provide, which are consistent with key objectives of DOE’s NIETC designation process: getting transmission built to achieve statutory policy goals, including reducing the delivered cost of power to consumers, and doing so expeditiously. TAPS therefore urges DOE to include inclusive joint ownership as a factor in the NIETC designation process.

1. Expeditiously constructing transmission to reduce delivered energy costs to consumers is a key policy goal of NIETCs

As FPA section 216(a)(2) makes clear, the key focus of NIETC designation is to advance the development of transmission facilities necessary to relieve current and expected capacity constraints and congestion that adversely affect consumers. This core cost-saving mission is buttressed by factors the Secretary is directed to consider in making NIETC designations, including whether “the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity,” and whether “the designation would result in a reduction

¹⁰ See App. A (TAPS 2021 White Paper).

in the cost to purchase electric energy for consumers.”¹¹ The cost to purchase energy necessarily includes the cost of the transmission service enabling those purchases. The NOI itself states that the purpose of designating NIETCs is to “reduce[] the cost of *delivered power* for consumers.”¹²

NIETC designation is “one of many tools that DOE has available to facilitate timely development of transmission infrastructure.”¹³ FPA section 216 is structured to facilitate the construction of transmission facilities, by enabling FERC to approve the siting of facilities within an NIETC if a state in which the facilities would be located fails to do so within the allowed time.¹⁴

2. Inclusive joint ownership enhances the ability to achieve the objectives of NIETC designation

Achievement of the statutory goals of NIETC designation would be advanced by DOE considering and promoting inclusive joint ownership arrangements through its NIETC process. Such arrangements invite ownership participation, on reasonable and comparable terms, to all LSEs in the relevant footprint. And as explained in TAPS’s 2021 White Paper, these arrangements—whether structured as an inclusive transco,¹⁵ a shared

¹¹ FPA section 216(a)(4)(A) and (H), 16 U.S.C. §§ 824p(a)(4)(A), (H).

¹² NOI at 30,958 (emphasis added).

¹³ *Id.*

¹⁴ FPA section 216(b)(1)(B), 16 U.S.C. § 824p(b)(1)(B).

¹⁵ The American Transmission Company LLC (“ATC”) is a transco jointly owned by twenty-six utilities: four investor-owned utilities and twenty-two public power and cooperative utilities, including TDUs, in Wisconsin, Michigan, Minnesota, and Illinois. ATC has grown from \$550 million in assets in 2001 to \$5.5 billion, with more than 710 miles of new line. See TAPS 2021 White Paper at 2, describing Vermont Electric Power Company (“VELCO”), a long-standing inclusive transco.

system,¹⁶ or joint ownership of new transmission facilities¹⁷—have proven highly effective in getting transmission built in a manner that benefits consumers.

For example, *inclusive joint ownership arrangements can improve the transmission planning process* by making joint planning real. Although FERC requires open, coordinated, and transparent planning, there is a big practical difference when all LSEs are at the table as owners, aligning the ownership structure with the reality of the way the network operates and should be planned. For instance, existing barriers to TDU participation in local transmission planning processes leave TDUs' reliability and grid access subject to their host utility (often a competitor) and too often result in uneven, discriminatory service and long-standing weaknesses in portions of the grid serving TDUs. In TAPS members' experience, joint ownership with diverse parties has been crucial to empowering transmission customers in planning processes, getting local grid weaknesses addressed, and obtaining fair and equitable service.

¹⁶ In shared system arrangements (including those long in place in Georgia, Indiana, Minnesota, North Dakota and South Dakota), transmission facilities of two or more utilities are planned and operated jointly, as a single system, pursuant to a long-term agreement. Ownership is generally in proportion to each participant's load ratio share of connected customer load, which can be achieved in a variety of ways, e.g., owning an undivided share of the entire joint system; owning discrete facilities; owning new facilities. *See* TAPS 2021 White Paper at 3 (describing the more recent MidAmerican Energy Company/Midwest Municipal Transmission Group shared system arrangement).

¹⁷ For example, CapX2020 (now Grid North Partners), a joint transmission-planning process in the northern Midwest, is a recent joint ownership success story. The CapX utilities—investor-owned, municipal, and rural cooperative utilities in Minnesota, North Dakota, South Dakota, and Wisconsin—jointly planned needed transmission upgrades and had opportunities to jointly own them. Each project is jointly owned by a subgroup of CapX2020 utilities, with a lead entity that serves as construction manager on behalf of the owners. *See* TAPS 2021 White Paper at 3-4 for two recent joint ownership examples. The first, involving TAPS member Kansas Power Pool, the City of Winfield, and GridLiance High Plains LLC, facilitated timely completion of facilities necessary to preserve and enhance service reliability for Winfield and the surrounding SPP area. The second, involving TAPS member Missouri Joint Municipal Electric Utility Commission (now referred to as the Missouri Electric Commission) and Ameren, will result in construction of a \$30 million project in Northeast Missouri that strengthens the Midcontinent Independent System Operator, Inc. ("MISO") transmission system and enhances reliability for MJMEUC member Hannibal, Missouri, and Ameren.

Facilitating siting is one of the key benefits provided by inclusive joint ownership.

By meeting the needs of multiple utilities, a jointly owned project is able to demonstrate multiple benefits. And although joint ownership participation by TDUs may be relatively small percentage-wise, these utilities bring a wealth of political support to permitting processes. Participation by all utilities in the affected footprint can help address local concerns and reduce controversy. This broad-based support is particularly important for the types of projects needed to support the nation's changing resource mix—large, integrated regional and interregional projects that run through multiple states and may have very different benefits and costs in different locations.

While the discussion of the siting benefits of joint ownership in TAPS's 2021 White Paper focused on state permitting processes, those benefits also apply to projects that receive an NIETC designation, and thus would be eligible for FERC's backstop siting authority under FPA section 216(b). The better-designed projects, reduced controversy, and broad-based support that inclusive joint ownership arrangements deliver can help expedite FERC siting processes and associated approvals, and potentially decrease litigation.

Even where backstop siting is available, facilitating state siting accords with DOE's objective of expediting needed transmission construction. By giving recognition to the value of inclusive joint ownership arrangements in its NIETC process, DOE would encourage potential route-specific Corridor applicants to incorporate joint ownership into their projects. And as the experiences discussed in TAPS's 2021 White Paper illustrate, such projects would have a better chance of successfully obtaining state siting approvals within the one-year period before FERC's backstop siting process can be formally initiated.

Such an outcome would not only substantially expedite transmission development; it would also save significant federal administrative resources.

And, importantly, inclusive joint ownership arrangements inherently benefit consumers by reducing transmission rates, and thus the purchased cost of energy. Where public power and cooperative utility ownership is direct, consumers receive several rate-reducing benefits:

- Public power and cooperative entities use their net transmission project earnings to offset the costs of serving their end-use customers, thus reducing the electric bills of those customers.
- Their non-profit and tax-exempt status otherwise reduces costs to consumers that bear the cost of the project. Specifically, public power and cooperative utilities are not subject to income taxes, and they flow their tax savings through to ratepayers. In addition, their lower debt cost further reduces rates to all consumers bearing the project's cost. Even when set on a hypothetical basis, public power utilities' capital structures commonly include less equity than investor-owned utilities' actual capital structures.¹⁸

Since one of the main objectives of NIETCs is to lower the delivered cost of power and energy to consumers,¹⁹ inclusive joint ownership arrangements' rate-reducing benefits should not be ignored in the NIETC designation process.

In light of these and other substantial benefits of inclusive joint ownership described in TAPS's 2021 White Paper, it is not surprising that FERC has repeatedly encouraged such arrangements. In Order 1000, it highlighted their value in "increasing

¹⁸ To demonstrate the latter point, we gathered data from several TAPS members that have participated in various forms of inclusive joint ownership. Analysis of that information provides a consistent picture of reliable, quantifiable savings to all transmission customers in the TO's footprint (as well as others that are allocated the costs of the facilities). See TAPS Initial FERC NOPR Comments at 39-45 and App. A. While not all these rate-reducing attributes apply to inclusive transcos, some may, depending on the corporate structure. For example, as shown in TAPS' analysis, the lack of tax allowance for ATC's public power owners reduces ATC's rates.

¹⁹ NOI at 30,958.

opportunities for investment in the transmission grid, as well as ensuring nondiscriminatory access to the transmission grid by transmission customers.”²⁰ FERC has recognized that TDU participation in joint ownership is consistent with “encouraging a deep pool of participants,”²¹ as well as the benefit to consumers and to TDUs that can use revenues from transmission ownership to offset increasing transmission rates.²² FERC’s 2012 policy statement on transmission incentives expressed the expectation that return on equity (“ROE”) incentive applicants demonstrate that they are minimizing their risks during project development, and it identified joint ownership arrangements as a risk-reducing measure to be considered in deciding whether an applicant had done so.²³

²⁰ *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051, P 776 (2011) (“Order 1000”), *reh’g denied*, Order No. 1000-A, 139 FERC ¶ 61,132 (“Order 1000-A”), *on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (per curiam). (citing *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, P 593 (2007)). *See also* Order 1000-A, P 81.

²¹ *Promoting Transmission Inv. Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, PP 354, 357 (“Order 679”), *on reh’g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006) (“Order 679-A”), *clarified*, 119 FERC ¶ 61,062 (2007); *see also* Order 679-A, P 102.

²² *See Cent. Minn. Mun. Power Agency*, 134 FERC ¶ 61,115, P 19 n.23 (2011). It also stated: “[A]llowing Central Minnesota to receive a revenue requirement . . . that reflects the higher capital costs of the investor-owned utilities’ will offset the Midwest ISO transmission rates that its members pay, which largely reflect those investor-owned utilities’ higher capital costs, thereby allowing Central Minnesota and its members to effectively reduce their future transmission rates to reflect their lower capital costs to mitigate their investment risks associated with the project.” *Id.* P 31.

²³ *Promoting Transmission Inv. Through Pricing Reform*, 141 FERC ¶ 61,129, P 24 & n.33 (2012):

[A]pplicants may take measures to mitigate risks associated with siting and environmental impacts by pursuing joint ownership arrangements. The Commission encourages incentives applicants to participate in joint ownership arrangements and agrees with commenters to the NOI that such arrangements can be beneficial by diversifying financial risk across multiple owners and minimizing siting risks.³³

³³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 354, 357; Order No. 679-A FERC Stats. & Regs. ¶ 31,236, at P 102. *See also* Central Maine Power Company, 125 FERC ¶ 61,182, at P 61 (2008); Xcel Energy, 121 FERC ¶ 61,284 at P 55 (2007). Evidence regarding whether an applicant for incentives considered joint ownership arrangements may be relevant in assessing whether the applicant took appropriate steps to minimize its risks during project development.

Nevertheless, inclusive joint ownership arrangements remain the exception. Investor-owned utilities continue to be reluctant to share transmission ownership with TDUs, preferring to keep transmission investments at FERC-approved ROEs to themselves.²⁴ Thus, DOE action to promote inclusive joint ownership is needed.

3. Steps DOE should take to promote inclusive joint ownership through its NIETC process

For the reasons discussed above, TAPS urges DOE to adopt several measures to promote inclusive joint ownership arrangements:

- Make them a subject of the information to be provided by applicants for a route-specific NIETC designation;
- Consider such arrangements as a factor in its applicant-driven, route-specific NIETC designation process; and
- Eliminate any barriers to participation of projects with inclusive joint ownership.

First, responding to Request for Information 3,²⁵ TAPS urges DOE to add to the information it is proposing to seek from applicants, by including questions about their efforts to offer participation in the project on reasonable and comparable terms to all LSEs in the relevant footprint. Just spotlighting inclusive joint ownership could encourage potential NIETC applicants to incorporate it into their project structure—along with joint ownership’s many important benefits that advance the NIETC goals.

²⁴ Relying heavily on inclusive joint ownership arrangement benefits identified in the TAPS 2021 White Paper and TAPS FERC ANOPR Comments, FERC’s *Building for the Future* NOPR proposed expanding the federal right of first refusal (“ROFR”) conditioned on a project’s including much more broadly defined joint ownership arrangements. *See* FERC NOPR at PP 360-365. TAPS has suggested a narrowed approach that is tailored to promote inclusive joint ownership arrangements that deliver the benefits to which FERC pointed, while leaving room for competition. *See* overview provided in TAPS FERC NOPR Comments at 29-33. While TAPS’s proposal drew only limited reply comments, the broader question of whether to expand or contract the existing federal ROFR is a controversial issue.

²⁵ NOI at 30,962.

Second, responding to Requests for Information 6 and 8,²⁶ DOE should include inclusive joint ownership arrangements among the factors it considers when evaluating route-specific NIETC applications. Doing so would further encourage potential applicants to consider and include such arrangements. And because the benefits of inclusive joint ownership arrangements align well with the objectives of NIETCs, DOE would be well within its authority to include joint ownership as a criterion in an applicant-driven, route-specific NIETC process. Simply put, as compared with an alternative project that does not include such ownership structure, an application that features inclusive joint ownership would be more likely to get through siting processes promptly and to provide a greater reduction in the delivered cost of energy to consumers.

Third, DOE should design its process to eliminate any barriers to inclusive joint ownership arrangements. For example, the NOI seeks comment on the definition of “eligible applicant” for the proposed applicant-driven, route-specific NIETC designation process.²⁷ The NOI states: “DOE is also considering opening the pool of potential applicants to additional entities” beyond transmission developers, including “non-transmission-owning utilities (including transmission dependent utilities)” as well as “other entities with an interest in seeking designation of a NIETC.”²⁸ To avoid creating a barrier to inclusive joint ownership arrangements, DOE should include transmission-dependent utilities within the definition of “eligible applicant.” And it should define “transmission-dependent utility” broadly, so that it does not inadvertently exclude TDUs

²⁶ *Id.*

²⁷ *Id.* at 30,960 (NOI III.A.i).

²⁸ *Id.*

that own some transmission facilities, but are still dependent on transmission facilities owned by others to reliably serve their customers.

II. DOE SHOULD CONSIDER PARTICIPATION IN THE REGIONAL AND INTERREGIONAL PLANNING AND COORDINATION PROCESSES AS A FACTOR IN CORRIDOR DESIGNATION

DOE proposes to require that, to the extent the applicant is proposing a route for NIETC designation in association with a specific project, the applicant's description of the status of the project's development include "discussion of [the] project[s] inclusion in any local or regional transmission plans."²⁹ While information on whether a project is included in local and regional transmission plans is relevant to NIETC designation, it is insufficient. TAPS therefore urges DOE to clarify and expand the requirement to include information on: (1) whether the project was *considered* in any local or regional transmission planning process, or any FERC-required inter-regional coordination or planning process; (2) the *results of such consideration*; and (3) any *associated evaluations* of the project and its alternatives. This additional information is crucial to crafting an NIETC process that appropriately focuses on projects of national importance, and that does not invite transmission developers to evade FERC-established planning processes which are critical to ensuring that consumers are not burdened with the cost of projects that are neither cost-efficient nor effective.

By itself, inclusion in a transmission plan does not establish that the project has attributes meriting NIETC designation. In many cases, the project may simply have been included in a local or regional plan by default—i.e., by consolidating or “rolling up”

²⁹ *Id.* at 30,961.

individual transmission owner projects developed to meet the owner’s reliability criteria. Such projects—which may not have been subject to even a local planning process that complies with FERC’s Order 890—will lack regional review, except to test that the project will not harm reliability.³⁰ Thus, mere inclusion in a local or regional plan provides no clue as to whether the proposed facility meets a regional need, let alone whether it is a major project that will deliver the congestion-eliminating savings that merit NIETC designation.³¹ If any and all projects included in local or regional plans are eligible to apply for NIETC designation, the DOE process could be swamped by minor projects—distracting, and diverting administrative resources, from major projects that truly are in the national interest.³²

Where a project is *not* included in a local or regional transmission plan, there is also important information for DOE to learn that should bear heavily on its NIETC determination. Specifically, DOE should require applicants to provide information about whether the project was considered in any local or regional transmission planning process or any FERC-required inter-regional coordination or planning process; and if so, the outcome of that consideration. For example, was the project rejected in favor of an alternative project that was found more cost-effective and efficient in that planning

³⁰ See FERC NOPR P 17 (describing how “rolled up” projects may be included in a regional plan without regional review or selection for regional cost allocation).

³¹ See *id.* P 16 (noting that only the transmission facilities “selected in a regional transmission plan for purposes of cost allocation” have been determined to be a “more efficient or cost-effective transmission facility needed to meet regional transmission needs”); NOI at 30,958 (noting that the Secretary “may ‘designate as a national interest electric transmission corridor any geographic area that—(i) is experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers; or (ii) is expected to experience such energy transmission capacity constraints or congestion’”).

³² See NOI at 30,962 (NOI.IV (Accompanying Request for Information), Question 8).

process? Planning process evaluations of the project—and of its alternatives—could bear on whether the project merits a route-specific Corridor designation. Such information is especially important given DOE’s proposal to consider applications to designate route-specific Corridors based on an applicant’s own evaluation (in addition to, or in lieu of, DOE’s Need Study);³³ as a general matter, DOE should set a higher bar for such applications.

Finally, it is important that DOE be informed as to whether the applicant for a route-specific Corridor chose not to participate and submit its project for consideration in any local or regional planning process or any FERC-required inter-regional coordination or planning process. Failure to do so should weigh heavily against NIETC designation, absent a demonstration that the project could not be considered, in whole or part, in any such process. DOE should not design its applicant-driven, route-specific NIETC process in a manner that incents applicants to end-run the open and transparent transmission planning processes established by FERC that assure open access to all planned facilities, and through which projects can be evaluated against alternatives, so that the most cost-effective and efficient project is selected.

III. DOE SHOULD AVOID DESIGNATING CORRIDORS SO NARROW AS TO PRECLUDE COMPETITION

The NOI expresses an intent to designate as NIETCs potential routes where one or more projects could be located within a geographic area.³⁴ Although TAPS appreciates the

³³ NOI at 30,980.

³⁴ *Id.* at 30,957. See also *id.* at 30,960 (NOI III.A.ii) (defining the scope of Route-Specific NIETCs as allowing for the construction and safe operation of “one or more transmission projects”) and *id.* (NOI III.A,iii.(i)) (proposing to require applicants to supply geographic boundary information to accommodate routine route changes that that often occur when siting and permitting infrastructure).

potential for administrative efficiency of combining FERC's transmission project review with DOE's Corridor designation process, we urge DOE to avoid defining its corridors so narrowly as to preclude siting of alternative projects that better achieve the objectives of FPA section 216(a).

For example, overly narrow corridor boundaries could preclude competition among multiple applications for the FERC construction permit, and disable FERC from siting a more efficient and cost-effective alternative that relieves congestion and reduces delivered energy and power costs to consumers, or was selected in regional or interregional planning and coordination processes. In a siting and permitting process where rights of first refusal have less impact, the ability of competition to discipline project cost should not be hamstrung by unduly narrow corridors.

Nor should corridors be drawn so tightly as to preclude consideration or siting of projects that feature inclusive joint ownership, and the many benefits that structure provides, as discussed in Part I above.

Finally, a process that results in DOE designating many narrow corridors for competing projects could create its own inefficiencies.

CONCLUSION

DOE should take these comments into account as it designs its NIETC designation process.

Respectfully submitted,

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Appendix A



*Representing community and customer-owned utilities.
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issues before FERC, NERC and Congress.*

Inclusive Joint Transmission Ownership Arrangements: An Effective Means to Site and Build Transmission Needed to Support our Changing Resource Mix

To support the nation's growing reliance on location-constrained renewable energy resources, while maintaining electric reliability and promoting robust wholesale electric competition, we must expand the U.S. transmission grid. A key challenge is to accomplish this expansion in a way that is smart and fair. Consumers are already paying sharply higher transmission rates due to recent dramatic increases in transmission investment. The required grid build-out will be far more expensive. We need policies that support the right projects in the right locations that will enable the nation to cost-effectively achieve its energy goals.

As the nation embarks on a new round of major transmission investments to transform the grid, the Federal Energy Regulatory Commission (FERC) should assure that the efficiency and equity benefits of joint ownership are an integral part of the path forward. FERC has repeatedly recognized the benefits of joint ownership arrangements and encouraged them. *In crafting new rules and policies to accommodate the nation's changing resource mix, FERC should seize upon opportunities to make such encouragement of joint ownership arrangements real. These actions include:*

- *Tying transmission incentives to the applicant's willingness to offer all transmission dependent utilities (TDUs) in the relevant footprint a meaningful opportunity to participate in the project on reasonable and comparable terms;*
- *Making inclusive joint ownership arrangements a factor in selection of regional and interregional projects for inclusion in transmission plans;*
- *Providing opportunities for TDU planning and joint ownership as a feature of the local planning process;*
- *Providing for bidding out the cost of construction and associated capital requirements of regional and interregional projects selected for inclusion in transmission plans, with bidding structured to provide an opportunity for all TDUs in the footprint to participate in supplying their fair share of the required capital; and*
- *Including inclusive joint ownership arrangements as a factor in selecting projects for which federal backstop siting authority will be exercised.*

This white paper explores each of these individual actions and why they should be taken to protect customers, prevent snowballing rates, and encourage smart and efficient transmission planning and investment. This white paper also explores FERC's past support for joint ownership and why it needs to be bolstered now.

a. *Inclusive Joint Ownership Arrangements Have a Strong Track Record of Getting Needed Transmission Built*

Inclusive joint ownership arrangements for transmission—which invite participation on reasonable and comparable terms to all load-serving entities (LSEs) in the relevant footprint—have been shown effective in getting needed transmission built in a manner that benefits consumers. Such ownership structures lead to a collaborative and inclusive process for the planning, development, and financing of new transmission that results in a more efficient and equitable grid. Experience has shown that inclusive joint ownership can eliminate weak spots, make it easier to garner support for transmission projects, and lay an important foundation for the prompt siting of new transmission lines. It may be the single most important factor in determining the success of a transmission project.

Such arrangements have taken a variety of different forms:

Inclusive transcos: Vermont Electric Power Company (VELCO), formed in 1956, is an early example of an inclusive transmission-only company. Initially excluded, municipal and cooperative utilities won the right to participate in VELCO in the 1970s through conditions placed on nuclear plant licenses to address situations “inconsistent with the antitrust laws.”¹ In 2006, VELCO sold all of its transmission assets to Vermont Transco LLC and became the management company for the LLC. All of the Vermont utilities, including municipal and cooperative utilities, now own membership units in Vermont Transco LLC roughly equal to their load-ratio share. Municipal and cooperative participation has been and remains an integral part of VELCO’s mechanism for planning and financing transmission investment, including for projects of regional importance like the Vermont portion of the Phase I Québec–New England HVDC Interconnection, a high-voltage direct current transmission line transmitting power from Canada to Vermont and other New England states.²

The American Transmission Company LLC (ATC) is a more recent inclusive transco. Located in Wisconsin, Michigan, Minnesota, and Illinois, ATC is jointly owned by twenty-six utilities: four investor-owned utilities (which contributed their transmission systems)³ and twenty-two public power and cooperative utilities (which contributed their transmission facilities or, if TDUs, cash to buy in at net book value up to their load-ratio share). All of the joint owners received equity stakes in ATC with limited governance rights; ATC’s board includes both independent members and representatives of the owners. All owners fund their share of improvements over time through pro-rata capital calls and/or the use of transco retained earnings and debt offering proceeds. Since its 2001 formation, ATC has grown from \$550 million in transmission system assets to \$5.5 billion, building more than 710 miles of new transmission and connecting 6,220 MW of new generation.⁴

¹ Atomic Energy Act of 1954, 42 U.S.C. § 2135(c)(5).

² *About Vermont Electric Power Company*, VELCO (last visited June 3, 2021), <https://www.velco.com/about>.

³ Five investor-owned utilities contributed their facilities to ATC when it was formed; two of them subsequently merged.

⁴ *What we do*, ATC (last visited June 3, 2021), <https://www.atcllc.com/about-us/what-we-do/>.

Inclusive shared system arrangements: In shared system arrangements, the transmission facilities of two or more utilities in an area are planned and operated jointly, as a single system, pursuant to a long-term agreement. Ownership in the joint system generally is in proportion to each participant's load-ratio share of the connected customer load, although there are a variety of ways this ownership share can be achieved, e.g., through owning an undivided share of the entire joint system; owning discrete facilities; ownership of new facilities. A joint planning process ensures that the shared system is built to efficiently meet the needs of all those who rely on it.

Shared system arrangements in Georgia, Indiana, Minnesota, North Dakota, and South Dakota have had a long history of success.⁵ More recently, under a 2005 Agreement and Memorandum of Understanding between Midwest Municipal Transmission Group and MidAmerican Energy Company,⁶ sixteen municipal utilities—fifteen from Iowa and one from Illinois—have made investments in two MidAmerican Energy Company transmission projects, thereby securing the benefits of transmission ownership to offset the transmission charges they must pay.

Inclusive arrangements for new facilities: CapX2020 (now called Grid North Partners), a joint transmission-planning process in the northern Midwest, is a recent joint ownership success story. Formed in 2004 by eleven investor-owned, municipal, and rural cooperative utilities in Minnesota, North Dakota, South Dakota, and Wisconsin, these utilities jointly planned transmission upgrades needed to support the changing generation mix, and had opportunities to jointly own those upgrades.⁷ The CapX2020 effort has produced 800 miles of new transmission including four 345 kV lines and a 230 kV line—an investment of nearly \$2 billion—making it the largest new transmission development in the upper Midwest in 40 years.⁸ Each upgrade is jointly owned by a project-specific subgroup of participants, with a lead entity for each project that served as construction manager on behalf of the owners. In 2020, CapX utilities released their plan to study the Upper Midwest transmission system to identify infrastructure upgrades that may be needed to achieve the ambitious carbon reduction goals established or proposed by utilities and policymakers.⁹

Recently, two inclusive joint ownership arrangements for new facilities involving TAPS members have come to fruition. Under the co-development agreement with TAPS member Kansas Power Pool, the City of Winfield partnered with GridLiance High Plains LLC to meet the City's Southwest Power Pool, Inc. (SPP) reliability upgrade obligations, address local reliability issues at a river crossing due to flooding-caused erosion, and provide the City an opportunity to invest in the new upgrades. Through this arrangement, GridLiance acquired a 65% undivided

⁵ For more details, see TAPS, *Effective Solutions for Getting Needed Transmission Built at Reasonable Cost*, 12 (June 2004), available at <https://www.tapsgroup.org/wp-content/uploads/2013/01/effectivesolutions.pdf>

⁶ The June 23, 2005 Agreement and Memorandum of Understanding is filed in *MidAmerican Energy Co.*, Docket Nos. EL05-59-000 & ER96-719-006 (Aug. 1, 2005), eLibrary No. 20050804-0205 (Attach. A to Filing Letter).

⁷ *CapX2050 Transmission Vision Report*, CapX2020, 8 (Mar. 2020), https://gridnorthpartners.com/wp-content/uploads/2021/02/CapX2050_TransmissionVisionReport_FINAL.pdf (*CapX2050 Vision Report*). Grid North Partners currently has ten participants rather than eleven.

⁸ *Id.*

⁹ *CapX2050 Vision Report*.

interest in Winfield’s transmission assets, with Winfield retaining a 35% interest in those existing facilities and gaining a 35% interest in the new facilities constructed by GridLiance. Joint ownership facilitated timely completion of facilities necessary to preserve and enhance service reliability for Winfield and the surrounding area.¹⁰

And through a recent joint ownership agreement with Ameren, TAPS member Missouri Joint Municipal Electric Utility Commission (MJMEUC) is planning the construction of a \$30 million project in Northeast Missouri that will strengthen the Midcontinent Independent System Operator transmission system and provide additional reliability to MJMEUC member Hannibal, Missouri. Both MJMEUC and Ameren customers will realize benefits from this project, illustrating how joint ownership can benefit all involved parties.

b. Benefits of Inclusive Joint Ownership Arrangements

Experience has shown that inclusive joint ownership arrangements—whether structured as a transco, a shared system, or joint ownership of new transmission facilities—lead to a collaborative and inclusive process for planning, developing, financing, and siting transmission. These processes have proven to be highly effective in getting transmission built that accommodates all needs, while benefiting consumers and minimizing costs. Benefits of inclusive joint ownership include:

1. *Improving the transmission planning process by making joint planning real.* Although FERC has issued rules requiring open, coordinated, and transparent planning, there is a big practical difference when all LSEs are at the table as owners, aligning the ownership structure with the reality of the way the network operates and should be planned. For example, particularly given existing barriers to TDU participation in local transmission planning processes, leaving TDUs’ reliability and grid access subject to their host utility (often a competitor) has too often resulted in uneven, discriminatory service and long-standing weaknesses in portions of the grid serving TDUs. In TAPS members’ experience, joint ownership has been crucial to empowering transmission customers in planning processes, getting local grid weaknesses addressed, and obtaining fair and equitable service. When diverse parties are owners, openness, transparency, and more balanced decision-making flow automatically. Now is the time to leverage this attribute to ensure that the major transmission investments needed to transform the grid are equitably planned and reduce, rather than exacerbate, discrimination.
2. *Facilitating a more efficient build-out of the transmission system.* This has been the experience of TAPS members in Wisconsin, where combining five systems into one jointly-owned transco has led to a more rationally-developed system than had balkanized planning and construction. We also saw it in the CapX2020 process, which proactively planned and constructed major upgrades needed to support the changing generation mix, rather than reactively designing and building piecemeal additions in response to individual transmission or interconnection service requests. The transformation of the nation’s grid would be greatly

¹⁰ See Rebecca McCutcheon, *Electric Project to Improve Winfield Power*, CT Courier Traveler (Nov. 8, 2020), https://www.ctnewsonline.com/news/article_c5fa72c2-1f0d-11eb-8393-3f6c889964b2.html (“Winfield City Manager Taggart Wall said one of Winfield’s focuses with entering the partnership was to invest in the system, to make it more robust and improve the response to any disasters.”).

facilitated by a broadly shared vision of future needs and buy-in from a wide range of LSEs, transmission owners (TOs), and stakeholders. Inclusive joint ownership arrangements have proven they can deliver those crucial ingredients.

3. *Facilitating siting.* By meeting the needs of multiple utilities, a joint project is able to demonstrate multiple benefits. And although joint ownership participation by transmission-dependent municipals and cooperatives may be relatively small percentage-wise, these utilities bring a wealth of political support to the state approval process. This diverse support can make all the difference in speeding up permitting and addressing local concerns. And it is particularly important for the types of projects needed to support the nation's changing resource mix—large, integrated regional and interregional projects that run through multiple states and may have very different benefits and costs in different locations.
4. *Facilitating approval by state retail rate regulators.* When state commissions are presented with projects that are least-cost because they meet multiple needs, when they see unity among the utilities on need, and when they are faced with a broad base of support from diverse stakeholders, it is far easier for them to grant requested authorizations.
5. *Making it easier for consumers to accept the cost increases associated with new transmission projects, easing cost allocation issues.* Joint ownership can provide LSEs with a level of comfort that transmission expansions have been equitably planned and will have broad benefits for all consumers, not just for existing TOs. It can also mitigate the adverse competitive impacts from increasing transmission costs—an important consideration given the scale of new investment that will be needed to transform the grid. For transmission-owning LSEs, new projects represent an earnings opportunity, not just an obligation to pay. Joint ownership arrangements can provide TDUs a comparable opportunity to hedge the cost increases associated with the anticipated transmission build-out. For instance, although transmission rates paid by ATC customers have materially increased because of ATC's construction program, joint ownership has enabled ATC's municipal and cooperative owners to partially offset that increase. This ability has made it much easier for them to support ATC's build-out. And it makes cost allocation issues easier to resolve, although that still remains a thorny issue.
6. *Spreading the risk of major projects broadly and providing a variety of sources of capital for projects.* The financial diversity and strength achieved through joint ownership arrangements are valuable, particularly given the magnitude of the investments likely to be necessary going forward. Rating agencies have recognized that ATC's inclusiveness is a significant benefit.
7. *Obtaining the broad base of support that can be essential to securing state legislative action required to better align retail rate recovery with the need for supporting major transmission investment,* as has occurred in Minnesota with the full support of the CapX2020 group.
8. *Benefitting consumers by reducing transmission rates.* Where public power ownership is direct, consumers receive several rate-reducing benefits. Public power utilities are not subject to income taxes, and they flow their tax savings through to ratepayers. Their lower debt cost further reduces rates. Even when set on a hypothetical basis, public power utilities' capital structures commonly include less equity than investor-owned utilities' actual capital

structures. While not all these rate-reducing attributes apply to inclusive transcos, some may, depending on the corporate structure. For example, the lack of tax allowance for ATC's public power owners reduces ATC's rates. Given the large transmission investments that will be needed to fund the anticipated grid transformation, timely FERC action that takes advantage of these types of rate-reducing benefits is needed to decrease the burden on consumers to the extent possible.

9. *Reducing the need for FERC to referee rate and other disputes*, because decisions about project need and the prudence of expenditures are vetted through the joint ownership arrangement.

Despite these important benefits, inclusive joint ownership arrangements remain the exception, rather than the rule. Offers by TAPS members to invest in the grid have too often been rebuffed.¹¹ And local reliability has suffered. For example, for more than a decade, TAPS member Oklahoma Municipal Power Authority (OMPA) has struggled to improve reliability for two member municipal utilities, Duncan (50 MW) and Marlow (11.5 MW). Each is connected to AEP's Public Service of Oklahoma (PSO) 138 kV transmission system via a single radial, leaving them vulnerable to lengthy outages from ice storms, tornadoes, and other events. Duncan previously had a second interconnection to PSO's transmission system, but a 2007 state road project required its relocation, and it has not been replaced. After unsuccessful efforts to address the situation with AEP, OMPA (partnering with GridLiance) proposed a new 138 kV line that

¹¹ For example, in response to the Notice of Inquiry leading up to Order 890, TAPS describes and attaches correspondence from two TAPS members offering to invest in Entergy's system after Hurricane Katrina, and Entergy's response to one of them (the other received no response); no investment was allowed. TAPS Comments 14 & n.25, 104 & n.200, Attach. 1, *Preventing Undue Discrimination & Preference in Transmission Servs.*, Docket No. RM05-25 (Nov. 22, 2005), eLibrary No. 20051122-5133. TAPS member Alabama Municipal Energy Authority has fared no better with its joint transmission ownership proposal (originally extended on September 7, 2005, and renewed periodically thereafter) to Alabama Power Company.

While several TAPS members have sought to achieve joint ownership by partnering with GridLiance to propose either non-incumbent projects through the Order 1000 competitive process, or investments to improve service reliability for TDU communities, only the one project involving the City of Winfield, Kansas (described above), has moved forward.

Even where TDUs secured state commission approval of an investor-owned utility's stipulation and agreement that it "agrees to co-ownership," contracts to implement that stipulation have been stalled for over a decade. *See In the Matter of the Application of Sw. Power Pool, Inc. for a Certificate of Convenience and Auth. For the Limited Purpose of Managing & Coordinating the Use of Certain Transmission Facilities Located Within the State of Kan.*, No. 06-SPPE-202-COC, Order Adopting Stipulation and Agreement and Granting Applications PP 62-63 & Ordering Paragraph D (State Corp. Comm'n of Kan. Sept. 19, 2006), <https://estar.kcc.ks.gov/estar/ViewFile.aspx/20060919090818.pdf?Id=c7e09bc4-6d81-46d1-98ff-d501bc6c3ec5> (approving TDU participation in ownership of transmission facilities). *See also In the Matter of the Application of Sw. Power Pool, Inc. for a Certificate of Convenience and Auth. for the Limited Purpose of Managing & Coordinating the Use of Certain Transmission Facilities Located Within the State of Kan.*, No. 06-SPPE-202-COC, Stipulation and Agreement § 15 (State Corp. Comm'n of Kan. July 14, 2006), <http://estar.kcc.ks.gov/estar/ViewFile.aspx/20060714163903.pdf?Id=a06a90d9-0957-4763-ae7b-4b9377b09eeb> ("Westar agrees with co-ownership with Kansas Municipals and/or Kansas municipal energy agencies in projects [for certain purposes] within the service territories of Westar Energy, Inc. and Kansas Gas and Electric Company . . . and that the cities and/or municipal energy agencies can invest in new transmission projects and/or upgrades within the service territories of Westar Energy, Inc. and Kansas Gas and Electric Company for such purposes," and further describing the Memorandum of Understanding to be entered to implement the joint ownership rights).

would loop through Duncan; significantly reduce the length of the radial feed to Marlow; improve reliability to a nearby city served by PSO; and connect to a recently constructed AEP/PSO switching station. AEP instead offered to install automated switches, leaving Duncan and Marlow each with a single radial connection. These reliability issues have yet to be solved.¹²

c. FERC Has Recognized the Benefits of and Encouraged Inclusive Joint Ownership Arrangements; It Should Take Additional Steps Now to Make That Encouragement Real

Given these tangible benefits, it is not surprising that FERC has repeatedly encouraged inclusive joint ownership arrangements, highlighting the value of “increasing opportunities for investment in the transmission grid, as well as ensuring nondiscriminatory access to the transmission grid by transmission customers.”¹³ FERC has recognized that TDU participation is consistent with Federal Power Act Section 219’s goal of “encouraging a deep pool of participants,”¹⁴ and that these arrangements benefit consumers as well as TDUs that can use revenues from transmission ownership to offset increasing transmission rates.¹⁵

In its 2012 Policy Statement, FERC made that encouragement more concrete,¹⁶ by expressing its expectation that ROE incentive applicants demonstrate that they are minimizing their risks during project development, and by identifying joint ownership arrangements as a risk-reducing measure to be considered:¹⁷

[A]pplicants may take measures to mitigate risks associated with siting and environmental impacts by pursuing joint ownership arrangements. The Commission encourages incentives applicants to participate in joint ownership arrangements and agrees with

¹² The rejection of GridLiance’s proposal to expand its local transmission planning process to enable it to plan and recover the cost of projects like this, *GridLiance High Plains LLC*, 174 FERC ¶ 61,078 (2021) (*GridLiance*), has further delayed improving reliability for the two cities. See note 19, below, for additional discussion.

¹³ *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051, P 776 (2011) (Order 1000) (citing *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, P 593 (2007)), *reh’g denied*, Order No. 1000-A, 139 FERC ¶ 61,132 (Order 1000-A), *on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (per curiam). See also Order 1000-A, P 81.

¹⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, PP 354, 357, *on reh’g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006) (Order 679-A), *clarified*, 119 FERC ¶ 61,062 (2007). See also Order 679-A, P 102.

¹⁵ For example, in granting municipal joint owners the ability to utilize hypothetical capital structures, FERC stated: “[A]llowing Central Minnesota to receive a revenue requirement . . . that reflects the higher capital costs of the investor-owned utilities’ will offset the Midwest ISO transmission rates that its members pay, which largely reflect those investor-owned utilities’ higher capital costs, thereby allowing Central Minnesota and its members to effectively reduce their future transmission rates to reflect their lower capital costs to mitigate their investment risks associated with the project.” *Cent. Minn. Mun. Power Agency*, 134 FERC ¶ 61,115, P 31 (2011). It also “noted that encouraging public power participation in such projects is consistent with the goals of section 219 of the FPA by encouraging a deep pool of participants.” *Id.* P 19 n.23.

¹⁶ *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Policy Statement).

¹⁷ 2012 Policy Statement P 24 & n.33.

commenters to the NOI that such arrangements can be beneficial by diversifying financial risk across multiple owners and minimizing siting risks.³³

³³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 354, 357; Order No. 679-A FERC Stats. & Regs. ¶ 31,236, at P 102. *See also Central Maine Power Company*, 125 FERC ¶ 61,182, at P 61 (2008); *Xcel Energy*, 121 FERC ¶ 61,284 at P 55 (2007). Evidence regarding whether an applicant for incentives considered joint ownership arrangements may be relevant in assessing whether the applicant took appropriate steps to minimize its risks during project development.

The 2012 Policy Statement's inducement to inclusive joint ownership, however, is at risk in the pending Transmission Incentives Notice of Proposed Rulemaking (NOPR), which proposes to move from a risks-and-challenges approach to benefits-based incentives. While proposing to maintain risk-reducing non-ROE *incentives* because they "remain vital in facilitating the investment in and the development of transmission projects as they remove regulatory barriers and other impediments to investment,"¹⁸ that NOPR does not mention any obligation by applicants to take risk-reducing *measures*, including joint ownership.

How the nation plans, develops, and funds the major transmission investments required to transform the grid and support the changing resource mix will shape the industry for decades. It's time for FERC to use its full range of tools to reinforce the inducement for inclusive joint ownership arrangements.

d. Steps FERC Should Take to Spur Inclusive Joint Ownership Arrangements

FERC should build upon the 2012 Policy Statement and promptly take additional actions to make real its stated intent to encourage inclusive joint ownership arrangements, including the following non-exclusive alternatives:

1. ***Tie transmission incentives to the applicant's willingness to offer TDUs in the relevant footprint the opportunity to participate in the project on reasonable and comparable terms.*** A TO's willingness to offer inclusive joint ownership opportunities should be taken into account in granting incentives—e.g., as a prerequisite to obtaining the incentive, or as evidence that the incentive is warranted. To qualify, such offers must be meaningful; the TO should be required to demonstrate that it has offered joint investment on reasonable and comparable terms to TDUs located in the relevant footprint. For example, a joint ownership offer of less than a load-ratio share for facilities within a pricing zone should raise questions, particularly if the TO cannot show that the offer has been accepted by a sufficient number of TDUs to make TDU participation more than mere window dressing.

¹⁸ *Elec. Transmission Incentives Pol'y Under Section 219 of the Fed. Power Act*, 170 FERC ¶ 61,204, P 38 (2020), Glick, Comm'r, dissenting in part (Mar. 25, 2020), eLibrary No. 20200325-3084, *corrected*, 171 FERC ¶ 61,072 (2020).

2. ***Make inclusive joint ownership arrangements a factor in selecting regional and interregional projects for inclusion in transmission plans.*** Projects with inclusive joint ownership have significant advantages in the often-challenging siting process. To serve FERC's goal of getting efficient and cost-effective projects actually built, processes for selecting regional and interregional projects for inclusion in transmission plans should favor such projects.
3. ***Provide opportunities for TDU planning and joint ownership as a feature of the local planning process.*** To ensure that TDUs and the consumers that rely on them have comparable and reliable service, the Commission should empower TDUs (including third-party planning, construction, and financing capabilities they enlist) to conduct local transmission planning in coordination with the regional transmission planning process. Subject to approval of TDU-planned projects through a comparable planning process that applies comparable planning criteria and considers impacts on neighboring interconnected facilities or systems (e.g., by the RTO), TDUs (with third parties they enlist) should be allowed to implement approved plans with cost recovery of the resulting facilities on a comparable basis to their host utility. FERC should facilitate such efforts, harnessing joint ownership as a mechanism to prevent discrimination and enhance reliability.¹⁹
4. ***Provide for bidding out the cost of construction and associated capital requirements when selecting projects for regional cost allocation in a manner that promotes inclusive joint ownership.*** As highlighted by the contentiousness of the right of first refusal (ROFR) issue in Order 1000 processes and by controversies before FERC as to which utility has the right to build a given project, there is no scarcity of willing constructors. If, despite TAPS' urging, FERC chooses not to take steps requested above to promote inclusive joint ownership arrangements, it should provide for competitive bidding of the cost of construction and associated capital requirements (currently an option available to planning regions), to yield the lowest cost to consumers, while advancing such arrangements. FERC should do more to promote competitive bidding, structured to provide opportunities for TDUs in the footprint to participate in supplying their fair share of the required capital. Inclusive joint ownership should be treated as a positive factor in evaluating bids.
5. ***Make inclusive joint ownership arrangements a factor in selecting projects for which federal backstop siting authority will be exercised.*** While judicial interpretations of FPA Section 216 have rendered the provision ineffective, it may be revived through legislation or otherwise. Doing so would provide another avenue for promoting inclusive joint ownership arrangements. For example, in

¹⁹ Because of the limits on Order 890's transmission planning reforms, FERC recently rejected a proposal by GridLiance High Plains LLC to enable GridLiance to provide local transmission planning services for certain TDUs in the SPP region that are located outside of GridLiance's service territory. *GridLiance*. Commissioner Clements recognized that the case "illustrate[s] the need for more effective local transmission planning, including mechanisms to address barriers to participation by [transmission-dependent non-public utilities] and other stakeholders in local transmission planning processes." *Id.* P 1 (Clements, Comm'r, concurring).

deciding whether to exercise backstop siting authority, FERC and/or the Department of Energy should favor projects with inclusive joint ownership arrangements which are supported by both TOs and TDU customers in the relevant footprint.

6. ***Seize upon other opportunities to promote inclusive joint ownership arrangements in crafting new rules and policies to accommodate the ongoing resource mix transformation.*** As these initiatives take shape, TAPS will do its best to identify and advocate for ways to do so. For example, should FERC impose a new restriction on TO ROFRs that still exist (e.g., requiring waiver of such ROFRs as a prerequisite for incentives), it could recognize TO offers of inclusive joint ownership as an alternative way of satisfying that requirement.

FERC has many tools available to encourage inclusive joint ownership arrangements. Given the expected accelerated buildout of the transmission grid that will be needed to support the rapidly changing energy landscape, inclusive joint ownership and the tools that support its use must be at the forefront of the policy conversation.

June 25, 2021