

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

International Transmission Co. d/b/a ITC)	
Transmission, <i>et al.</i>)	
)	
Complainants,)	
v.)	
)	Docket No. EL26-58-000
Midcontinent Independent System Operator,)	
Inc. and Southwest Power Pool, Inc.,)	
)	
Respondents)	

**PROTEST OF
THE INDUSTRIAL ENERGY CONSUMERS OF AMERICA,
THE ELECTRICITY TRANSMISSION COMPETITION COALITION,
THE COALITION OF MISO TRANSMISSION CUSTOMERS,
THE MIDWEST LARGE ENERGY CONSUMERS,
THE WISCONSIN INDUSTRIAL ENERGY GROUP, THE ASSOCIATION OF
BUSINESSES ADVOCATING FOR TARIFF EQUITY, AND THE MARYLAND
OFFICE OF PEOPLE’S COUNSEL**

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On April 7, 2026, the above-referenced Complainants, who are incumbent utilities in the Midcontinent Independent System Operator, Inc. (“MISO”) and Southwest Power Pool, Inc. (“SPP”) transmission grids, filed a complaint (“Complaint” or “Filing”) against MISO and SPP requesting that the Federal Energy Regulatory Commission (“FERC” or “Commission”) find that MISO and SPP Tariff provisions relating to competitive solicitations for regional electric transmission projects under the Commission’s jurisdiction are unjust and unreasonable.¹ Pursuant to Rules 211 and 214 of the Commission’s Rules of Practice and Procedures² and the Commission’s April 16, 2026 Notice Granting Extension of Time, the Industrial Energy Consumers of America (“IECA”), the Electricity

¹ See *International Transmission Co. et al. v. Midcontinent Independent System Operator, Inc. and Southwest Power Pool, Inc.*, Docket No. EL26-58-000 (filed Apr. 7, 2026) (“Complaint”).

² 18 C.F.R. §§ 385.211, 385.214.

Transmission Competition Coalition (“ETCC”), the Coalition of MISO Transmission Customers (“CMTC”), the Midwest Large Energy Consumers, the Wisconsin Industrial Energy Group, the Association of Businesses Advocating for Tariff Equity (“ABATE”), and the Maryland Office of People’s Counsel (collectively, “Protesters”) protest the Complaint and ask that the Commission reject the Complaint with prejudice because Complainants have not demonstrated under Section 206 of the Federal Power Act (“FPA”) that the current tariff provisions of MISO and SPP are unjust and unreasonable.

I. INTRODUCTION AND EXECUTIVE SUMMARY

“Competition is the lifeblood of the American economy, spurring innovation, expanding output and employment, lowering prices, improving quality and increasing access to goods and service.”³

Contrary to the principles of free enterprise and competition on which this Nation was founded,⁴ Complainants ask this Commission to gift them an unearned and unnecessary monopoly over transmission development. Advancing unsubstantiated and self-interested claims that only they can meet the moment, Complainants present the Commission with a false choice between the cost discipline provided by competition and expeditious transmission development. But we can have both affordability and speed-to-power, with both incumbent and non-incumbent developers at the table. FERC must

³ Federal Trade Commission Letter to Supreme Court of Tennessee re: Potential Regulatory Reforms to Increase Access to Quality Legal Representation (Apr. 30, 2026). Available at https://www.ftc.gov/system/files/ftc_gov/pdf/FTCDOJLettertoTennesseeSupremeCourt.pdf (last accessed May 27, 2026) (emphasis added); see also Letter from Abigail Slater, Asst. Atty. Gen., to Jesse Green, Iowa State Senator (Mar. 24, 2025) (“Competition is a core organizing principle of the American economy, and vigorous competition in an open marketplace gives consumers the benefits of lower prices, increased access to higher quality goods and services, and greater innovation.”) available at <https://www.justice.gov/atr/media/1394696/dl?inline> (last accessed May 27, 2026).

⁴ See generally Wealth of Nations, Adam Smith; The Federalist Papers (J. Madison and A. Hamilton).

dismiss the Complaint with prejudice because it asks the Commission to remove a vital consumer protection – competition – during the midst of an electricity affordability crisis. Even if the Commission were to find that Complainants have shown the existing tariffs to be unjust and unreasonable (and they have not), the solution would not be to give up this consumer protection just when it is needed most. Instead, the Commission could simply direct MISO and SPP to accelerate their competitive transmission processes and accelerate in-service dates for projects.

As an initial matter, the Commission can and should dismiss the Complaint on several procedural grounds. First and foremost, the Complaint represents an impermissible collateral attack on Order No. 1000⁵ and fails to confront binding appellate court precedent affirming longstanding FERC determinations that competitive pressures, in the development of large-scale transmission projects, are necessary to ensure just and reasonable rates.⁶ Complainants do not demonstrate that FERC has authority (or should determine it has the authority) to waive Order No. 1000. Nor do Complainants demonstrate that the FPA authorizes FERC to establish federal electric transmission franchises. Instead, the history of the FPA “indicates an **overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.**”⁷ The Complaint also fails to satisfy the procedural requirements for complaints, including the requirement of

⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 66,051 (2011) (“Order No. 1000”), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012) (“Order No. 1000”), *order on reh’g and 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) (“*South Carolina*”).

⁶ See *New York v. FERC*, 535 U.S. 1, 17, 22 (2005); *South Carolina*, 762 F.3d at 55, 65; *Groton v. FERC*, 587 F.2d 1296, 1301 (D.C. Cir. 1978); *New England Power Generators Ass’n v. FERC*, 881 F.3d 202, at 206 (D.C. Cir. 2018).

⁷ *Otter Tail Power Co. v. U.S.*, 410 U.S. 366, 374 (1973) (“*Otter Tail*”) (emphasis added).

Rule 206(b)(3) to show how Complainants' businesses are economically harmed by the existing SPP and MISO tariff provisions around competitive solicitations.

Even if those fatal procedural deficiencies could be disregarded, Complainants have failed to meet their burden under FPA Section 206 to demonstrate that the existing SPP and MISO tariffs are unjust and unreasonable. Yes, Artificial Intelligence ("AI") objectives are vitally important to the economy and national security. But Complainants provide no concrete empirical or theoretical evidence showing that competition is an impediment to achieving these objectives. Rather, they offer half-baked policy arguments, unsupported anecdotes, and appeals to emotion that are insufficient to show that the existing SPP and MISO competitive processes are unjust and unreasonable. Instead of providing a sound, analytical basis to establish that specific MISO and SPP tariff provisions and practices are causing unjust and unreasonable rates, the Complaint advances an unproven hypothesis that the competitive transmission process harms AI development.

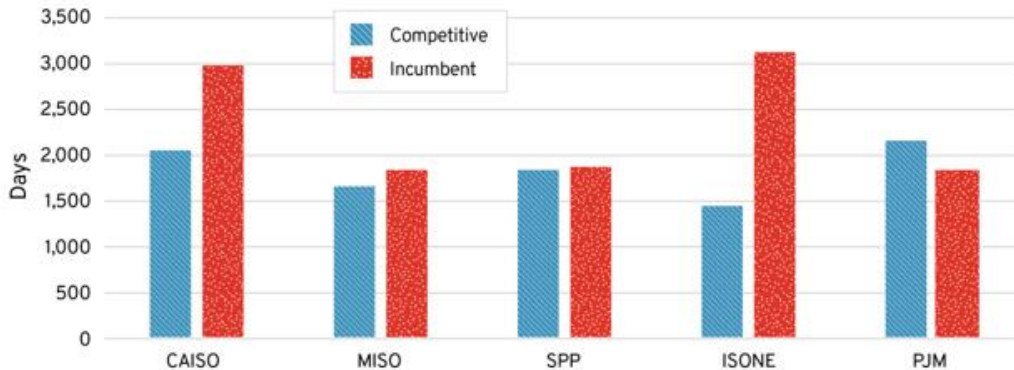
Complainants fixate on the front end of the solicitation process but ignore what really matters: how long it takes to get a project energized. As a result, the Complaint fails to substantiate its allegation that solicitations systematically delay in-service dates for transmission projects by 16-20 months. To the contrary, competitive projects are often ready in advance of the regional transmission operator ("RTO")-determined in-service date. Recent evidence and analysis of best available data in MISO, SPP, and other regions shows that, from the time a need for the transmission is identified to the date the asset is placed into service, competitive projects enter service as fast or faster than incumbent, directly assigned projects, even with the solicitation timelines baked in. Faster in-service

times for competitive projects are often attributable to binding in-schedule guarantees that shift risk away from customers to developers when projects exceed in-service estimates.

The R Street Institute’s recent analysis, which employs a methodologically sound approach⁸ and best available data by analyzing the median time to in-service for projects, reveals that competitive transmission projects generally reach service faster than comparable incumbent-developed projects across most planning regions. See Figure 1.⁹

Figure 1: Median Time to In-Service: Competitive vs. Incumbent Transmission Projects

Note: Comparisons reflect available completed projects with sufficiently comparable timing data



Source: ISO regulatory filings and reports

ETCC Witness Hartman has analyzed and reviewed the most recent and best available data concerning the solicitation processes in MISO and SPP, and has concluded that there “is no demonstrable evidence to support the Complaint’s fundamental claim that transmission competition delays the in-service date of transmission projects.”¹⁰

⁸ See “Need for Speed: An Analysis of Speed to Market and Cost Results of Competitive Transmission,” Kent Chandler and Olivia Manzagol, R Street Institute, May 26, 2026 (“R Street Study”) at 15-17. The R Street Study is available here <https://www.rstreet.org/commentary/need-for-speed-an-analysis-of-speed-to-market-and-cost-results-of-competitive-transmission/> and PDF version of the summary of the study and Part 1 (Introduction) and Part 2 (Timing) is appended as **Exhibit E** to this Protest.

⁹ See R Street Study at 4.

¹⁰ See **Exhibit D**, Affidavit of Devin Hartman (“Hartman Affidavit”) at 5:7-8.

The Complaint does not show why any long-term, regionally planned and cost-allocated projects subject to Order No. 1000 must be excluded from competition, especially when existing tariff provisions already allow for urgent “immediate need” projects and expedited project reviews (“EPRs”) to be assigned directly to the incumbent without competition. In fact, all MISO reliability-driven projects (even those not deemed urgent) are excluded from competition. Notably, MISO and SPP select the in-service date for a regionally planned project, and the Complaint does not demonstrate that the competitive solicitation process is causing any delays to the in-service date established by MISO or SPP. Notably, the competitive process often results in strict schedule commitments not present when incumbents are directly assigned projects. If a competitive project does experience delays, that competitive project will often be subjected to penalties, such as a 1.5 return on equity (“ROE) basis point per month penalty for delay.¹¹

The Complaint invokes several incumbent utility-funded reports and affidavits to question competitive solicitations in MISO and SPP, but Complainants’ outside affiants cannot substantiate their allegations that competition delays in-service dates nor definitively conclude that solicitations fail to provide consumer savings and benefits. Instead, Mr. Russo and Dr. Cohen only assert that “purported benefits of solicitations...are uncertain, and at best, small” and “are almost certainly overwhelmed by the costs of foregone benefits of AI development.”¹² Notably, the very parties Complainants claim stand to lose the most from the competitive process – large load customers – have expressed frustration with anti-competitive transmission laws, like state right-of-first-refusal

¹¹ See Hartman Affidavit at 14:14-19 (referring to penalty commitments by the Wolf Creek-Blackberry line and Minco-Pleasant Valley-Draper projects).

¹² See Complaint at 10, citing Exhibit G.

(“ROFR”) laws.¹³ Large load customers are noticeably absent from the parties to the Complaint.¹⁴

Even assuming *arguendo* the Commission could lawfully subordinate its duty to ensure that transmission rates are just and reasonable and thus lawful – where not even “ a little unlawfulness is permitted”¹⁵ – to speculative assessments of the economy-wide benefits of accelerated AI development,¹⁶ the Complaint provides no evidence (and none exists) to show the solicitation process for long-term regional projects delays in-service days for project or harms AI development. Therefore, the Complaint’s alleged supporting evidence rests on a false and an irrelevant premise – because the solicitation process does not harm AI development, it matters not how AI development is valued or quantified.

As to rate impacts on customers, it bears emphasizing that Complainants are advocating developing for large-scale transmission projects over the course of the asset’s multi-decade useful life, often utilizing a high-cost capital structure with no cost containment commitments, such as reasonable debt-to-equity ratio or a reduced ROE commitment. And recent evidence in both SPP and MISO demonstrates substantial cost

¹³ Hartman Affidavit at 21:1-22 (“Again, it is notable that the Complainants are utilities, not large load customers, whom I used to represent and work with regularly. The frustration of large load customers has been with anti-competitive transmission laws, especially state right-of-first-refusal (ROFR) laws in the MISO and SPP footprints, as well as this very complaint...I periodically speak with Mr. Stuart and other large load customer groups, as well as individual hyperscalers about their transmission policy preferences in MISO and SPP. They consistently request more analysis of the economic benefits of competition and request help in protecting and expanding competition.”).

¹⁴ See Hartman Affidavit at 3.

¹⁵ *FPC v. Texaco Inc.*, 417 U.S. 380, 399 (1974) (“*Texaco*”).

¹⁶ See *National Ass’n for the Advancement of Colored People v. FPC*, 425 U.S. 662, 666 (1976) (“*NAACP*”) (making clear that the issue is not whether a particular objective “is an important goal” but “whether or to what extent Congress did grant the Commission . . . authority” to pursue that goal).

savings and consumer protections – in the form of binding cost containment commitments – can only be delivered when the development of regionally cost-allocated transmission projects entails competitive processes.¹⁷

Despite its length and bombast, the Complaint is legally and logically deficient on multiple grounds and fails to provide the evidence necessary to meet the FPA’s Section 206 burden. The best available evidence indicates faster in-service dates for competitive transmission lines – after accounting for the entire planning and development process – than comparable incumbent projects in all RTOs with sufficient and quality data.¹⁸ Lacking both a legal and an economic foundation, the Complaint amounts to nothing more than a house of sticks that collapses under even cursory scrutiny. But this Protest provides evidence to support more than just rejection of the Complaint based on Complainants’ failure to meet their burden; it provides a basis for the Commission to reaffirm its commitment to competition as an invaluable tool for protecting consumers from excessive rates at a time when massive investments in transmission are being planned. Accordingly, the Complaint should be rejected with prejudice.

Because the Complainants have not met their burden under Step 1 of FPA Section 206, the Commission need not address Complainants’ suggested replacement rates or otherwise address Step 2. Even assuming, *arguendo*, that the Complaint could be found to meet its Step 1 burden, that would only establish that the existing processes could be improved. Complainants’ proposed remedies are disproportionate to, and disconnected from, the speed-to-power concerns the Complaint allegedly seeks to address. The proper

¹⁷ See Hartman Affidavit at 17-20.

¹⁸ See Hartman Affidavit at 5: 10-13.

remedy would not be to eliminate competition as Complainants propose, but to require modifications to accelerate the competitive solicitation and bid evaluation processes in MISO and SPP. Any replacement rate must continue competition to the fullest extent feasible, which could involve modifying and enhancing the solicitation rules rather than eliminating them.

II. EVIDENCE AND EXHIBITS IN SUPPORT OF PROTEST

Beyond the legal arguments and several sources referenced in web links and footnotes in this Protest, appended to this protest are the following key exhibits rebutting Complaint's allegations and demonstrating the benefits and consumer protections provided by RTO-administered competitive solicitations processes.

- **Exhibit A** – FERC Order No. 1000 Competitively Bid Transmission Project 2021-2025 (Summary Analysis by ETCC)
- **Exhibit B** – RTO/ISO Direct Assigned (Non-Competitive Projects) in the Order No. Era With No Cost Overrun Protections or Schedule Guarantees (Summary Analysis by ETCC)
- **Exhibit C** – Letter in Support of Protest of Century Aluminum Company
- **Exhibit D** – Devin Hartman Affidavit on Behalf of ETCC
- **Exhibit E** – May 26, 2026 R Street Institute Study
- **Exhibit F** – Viridon Southwest LLC January 7, 2026 Letter to SPP Board Regarding the 2025 ITP Short-Term Reliability Projects Report

III. STATEMENT OF INTEREST OF PROTESTERS

ETCC is a diverse, broad-based, nation-wide coalition focused on electricity affordability through increasing competition in the development and ownership of America's electricity transmission infrastructure.¹⁹ ETCC represents companies and

¹⁹ See <https://electricitytransmissioncompetitioncoalition.org/who-we-are/> (last accessed May 27, 2026). ETCC filed a Doc-less Motion to Intervene in this proceeding on May 21, 2026.

organizations throughout the continental United States, including manufacturing groups, retail electric consumers, state consumer advocates, public power representatives, think tanks, and non-incumbent transmission developers. ETCC members represent entities and individuals that pay hundreds of billions of dollars in electricity rates each year.

IECA²⁰ is a nonpartisan association of leading manufacturing companies located throughout the United States with \$1.3 trillion in annual sales, over 12,000 facilities nationwide, and with more than 1.9 million employees. Members of IECA operate a significant number of energy-intensive facilities throughout the United States. Manufacturing employs over 15 million people in the United States²¹ and contributed \$2.3 trillion to U.S. Gross Domestic Product (“GDP”) in 2023 (amounting to 10.2 % of total U.S. GDP, measured in chained 2017 dollars).²² Manufacturing is unique as compared to all other sectors. Manufacturers are energy intensive, frequently operate 24/7, are price sensitive, and compete globally. Small changes to the price of electricity can have significant impacts to competitiveness of existing facilities and serious implications for reshoring and expanding facilities and production capability in the United States. IECA has several manufacturing members with facilities and significant operations in both the SPP and MISO footprints.

²⁰ On April 8, 2026, IECA filed a Doc-less Motion to Intervene in this proceeding.

²¹ See U.S. Bureau of Labor Statistics (2024 data), *available at* <https://www.bls.gov/cps/cpsaat18.htm> (last accessed May 27, 2026).

²² See U.S. Manufacturing Economy, NIST, *available at* <https://www.nist.gov/el/applied-economics-office/manufacturing/manufacturing-economy/total-us-manufacturing> (last accessed May 27 2026).

CMTC²³ is an *ad hoc* association of large industrial customers with facilities located throughout the MISO region. MLEC is comprised of industrial consumers with energy-intensive facilities in North Dakota and Minnesota.²⁴ WIEG is comprised of industrial consumers with energy-intensive facilities in Wisconsin.²⁵ ABATE is comprised of industrial consumers with energy-intensive facilities in Michigan.²⁶ These industrial customers, who pay rates assessed by MISO transmission owners, consume large amounts of electricity throughout MISO’s footprint. Electricity is a significant operating cost for these customers, and the cost of electricity continues to increase exponentially. These customer groups have strongly advocated for transmission affordability over the past several years. The outcome of this case will materially impact the rates they pay.

The Maryland Office of People’s Counsel (“MPC”) is an independent agency of the State of Maryland, established by Maryland statute, Md. Code, Public Utilities Article (“PUA”), §§2-201 *et seq.*²⁷ Under its statute, MPC is authorized “to appear before any federal or State [agency] to protect the interests of residential and noncommercial users” in Maryland. PUA, §2-205 (b). In fulfilling this charge, MPC is a member of and participates in stakeholder processes of PJM Interconnection, LLC (“PJM”) and intervenes in and participates in proceedings at FERC. PJM is a sibling regional transmission owner to MISO and SPP. PJM’s operating and planning footprint includes Maryland, and its planning and procurement of electric transmission facilities has a direct and significant

²³ On April 10, 2026, CMTC filed a Doc-less Motion to Intervene in this proceeding.

²⁴ On May 26, 2026, MLEC filed a Doc-less Motion to Intervene in this proceeding.

²⁵ On May 26, 2026, WIEG filed a Doc-less Motion to Intervene in this proceeding.

²⁶ On May 27, 2026, ABATE filed a Doc-less Motion to Intervene in this proceeding.

²⁷ MPC intervened in this proceeding through the filing with the Commission on May 26, 2026 of a doc-less motion to intervene.

impact on the costs of electricity for Maryland consumers. Among the issues of long-standing importance to MPC and its constituents is securing and continuing the benefits flowing from competitive procurement of transmission projects by PJM established under Order No. 1000. MPC's interest in this proceeding is to assure that the Commission not weaken or undermine the Order's mandate for securing competition in transmission.

The transmission and distribution components of electricity rates represent the fastest rising component of electricity bills,²⁸ far outpacing inflation,²⁹ – with ongoing annual escalations expected well into the future to meet the grid's infrastructure needs.³⁰ “It is long-established that the ‘primary aim’ [of the Federal Power Act] is the protection of consumers from excessive rates and charges.”³¹ As organizations representing large loads and residential consumers, Protesters have a vital interest in the preservation of the protection against ballooning transmission costs provided by competitive processes and solicitations to the fullest extent feasible. Indeed, the price discipline provided by competition is one of the most important checks on ever-increasing transmission costs. Competition in transmission construction and ownership reduces costs to consumers and results in timely project construction to meet reliability requirements and market-driven

²⁸ See, e.g., “Transmission Costs Are Rising – Here’s What That Means for Your Electric Bill,” American for Fair Energy Prices, available at <https://www.fairenergyprices.org/energy-prices-blog/transmission-costs-are-risingheres-what-that-means-for-your-electric-bill> (last accessed May 27, 2026).

²⁹ See “Transmission Costs are the Primary Cause of Electricity Price Inflation Across the Country,” Press Release of the Industrial Energy Consumers of America (Aug. 5, 2025), available at https://www.ieca-us.org/wp-content/uploads/08.05.25_Transmission-Costs-IECA-Press-Release_FINAL.pdf (last accessed May 27, 2026).

³⁰ “Investor-owned utilities could spend \$1.1T between 2025 and 2029,” EEI, Utility Dive, Oct. 9, 2025, available at <https://www.utilitydive.com/news/investor-owned-utilities-spending-more-than-ever-eei/802315/> (last accessed May 27, 2026).

³¹ *Xcel Energy Services v. FERC*, 815 F.3d 947, 952-53 (D.C. Cir. 2016).

transmission needs. Competition incentivizes transmission developers to offer innovative and cost-efficient solutions across four key financial dimensions:

- 1) **Competitive Bidding Lowers Capital Costs** – competition imposes cost discipline by incentivizing transmission developers to sharpen their pencils on project costs and approaches;
- 2) **Competitive Bidding Lowers Requested Return on Equity** – competitive bidding brings additional consumer savings by incentivizing robust ROE competition among multiple bidders;
- 3) **Competitive Bidding Lowers the Overall Cost of Capital Structures** – competitive bidding encourages financial innovation and lower cost capital structures, with equity percentages that are materially lower than those found in the regulated formula transmission rates of incumbent utilities; and
- 4) **Competition Yields Accountability** – the cost containment commitments of winning bidders are legally binding and become part of project rate cases, thereby ensuring accountability for project costs and schedules in the more stringent competitive developer agreements.³²

Over and above competition’s most apparent benefit (acting as a check-and-balance for project cost estimates), the solicitation process provides other important benefits. For example, it improves cost transparency in projects.³³ It also incentivizes robust ROE competition among multiple bidders.³⁴ Competition fosters innovation, which can set the stage for long-term advances to the electricity industry.³⁵ The new topography of our

³² See “Answer of Electricity Transmission Competition Coalition,” FERC Docket Nos. RM21-17, AD22-8, and AD21-15 (filed Feb. 1, 2024) (*citing PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at PP 2, 33-48 (2018)) (the competitive developer agreement in PJM is more stringent than Consolidated Transmission Owners Agreement).

³³ *Id.*

³⁴ See Motion for Leave to Answer and Answer of the Electricity Transmission Competition Coalition, filed on February 1, 2024, at Docket No. RM21-17-000.

³⁵ See “Cost Savings Offered by Competition in Electric Transmission Presentation,” The Brattle Group, December 11, 2019, available at https://www.brattle.com/wp-content/uploads/2021/05/17805_cost_savings_offered_by_competition_in_electric_transmission.pdf (last accessed May 27, 2026).

energy landscape certainly calls for such innovation to the old processes, which were not designed to handle the demand we now face.

IV. THE COMPLAINT IGNORES THE EFFORTS OF THE COMPLAINANTS TO SECURE UNDULY DISCRIMINATORY AND PREFERENTIAL STATE LEGISLATION AND THE COMPLAINT MISCHARACTERIZES AND MISUNDERSTANDS THE NEEDS OF U.S. MANUFACTURERS.

In this section, ETCC and IECA will take the opportunity to put the Complaint in context and to correct factual mischaracterizations and material omissions in the Complaint, while also sharing the perspectives of manufacturers, competitive developers, and consumers that comprise ETCC's and IECA's members.

First, Protesters emphasize to the Commission that the Complainants now seek relief from FERC after enduring a series of losses by attempting to secure preferential and unduly discriminatory state legislation (*i.e.*, ROFRs or preference laws) throughout the Midwest.³⁶ Contrary to the Commission's prior legal and policy findings, the Complaint seeks an unduly discriminatory and preferential resolution by denying nonincumbent transmission developers "a comparable opportunity to propose and develop regionally cost-allocated transmission projects."³⁷

Second, Complainants misunderstand and mischaracterize the needs of U.S. manufacturing. The Complaint contends that removing competitive pressures is necessary to help rebuild U.S. manufacturing.³⁸ Unlike Complainants, IECA and ETCC actually represent manufacturers working to do just that. As such, their members are subjected to

³⁶ *See, e.g.*, May 5, 2026 Letter from Undersigned Members of the Iowa Legislature, Docket No. EL26-58-000 (posted May 21, 2026).

³⁷ Comment of the Harvard Electricity Law Initiative, at 1, Docket No. EL26-58-000 (filed May 26, 2026).

³⁸ *See* Complaint at 23-29.

significant local, regional, national, and international competitive pressures in all facets of their businesses. IECA and ETCC can confirm that these competitive pressures drive efficiencies, cost containment, and innovation in the conduct of their members' businesses, and inform their ever-deepening concerns about the electricity affordability crisis given that electricity is one of the top operational expenses for manufacturers. The Complaint correctly acknowledges that both data centers and manufacturers need sufficient energy at affordable prices.³⁹ But Complainants then try to put words in the mouths of industry to support a retreat from competition that would grant a windfall to Complainants and other incumbent transmission owners *at the expense of* data centers and manufacturers.

For example, the Complaint points to the aluminum industry and an article concerning IECA and ETCC member Century Aluminum Company⁴⁰ to imply that manufacturers like Century Aluminum would support their proposal to eliminate competitive transmission processes.⁴¹ But as confirmed by the letter from Century Aluminum provided in **Exhibit C** to this Protest, nothing could be further from the truth. Indeed, the article cited in the Complaint only underscores the fact that many manufacturers, unlike heavily financed data center developers, operate on thin margins.

Deep-pocketed tech companies backed by investor enthusiasm for AI development have shown they're willing to pay the cost of pricey power contracts. Some are looking to build their own power plants to fuel their data centers. On the other hand,

³⁹ *Id.* at 24.

⁴⁰ *Id.* at 24, n.101 (citing article regarding Century Aluminum smelter idled in response to electricity prices).

⁴¹ *Id.* at 23 (lowercasing the caption).

aluminum companies operate on thin margins. They need predictable and low electricity costs to thrive.⁴²

This makes the protection from excessive electricity prices provided by competitive transmission processes that much more important. The same is true of manufacturers that are seeking to onshore and expand facilities.

Because U.S. manufacturers, like IECA's members, operate on thin margins, they can testify to the disciplining effect that competition has on their own operations, and these thin margins, when combined with the fact that they are trade-exposed and that their operations are energy-intensive, make them strongly supportive of transmission competition as a vital tool to help drive down (or at least contain) ever-escalating electricity costs.⁴³ Small changes to the price of electricity can have significant impacts to competitiveness of existing facilities and serious implications for reshoring and expanding facilities and production capability in the United States. Any investment in a new manufacturing facility focuses on community impacts and the long-term energy cost profile at that manufacturing facility; therefore, manufacturers understand that short-term and short-minded solutions to automatically assign large-scale transmission projects to incumbents under a 20%-30% higher cost profile⁴⁴ will have rippling repercussions in the form of millions of dollars in excess electricity costs charged to customers over the next 30-60 years for that transmission asset.

⁴² See "Heavy industry competes with AI for grid access," E&E News by Politico (Feb. 20, 2026), available at (<https://www.eenews.net/articles/heavy-industry-competes-with-ai-for-grid-access/>) (emphasis added) (last accessed May 27, 2026).

⁴³ While AI developers may enjoy higher levels of financing and be more focused on speed-to-power than long-term costs, there is no evidence that there is any sort of consensus among AI developers that transmission competition is a problem or that granting incumbent transmission owners a monopoly would accelerate transmission development.

⁴⁴ See *infra* at 73, fn. 245.

V. PROTEST

“No one likes to be competed against. A firm blessed with a right of first refusal can by exercising its option exclude competition with it, in this instance competition in building a new transmission facility. So naturally members of MISO in areas in need of additional facilities oppose Order No. 1000. They want to retain their right of first refusal—they don’t want to have to bid down the prices at which they will build new facilities in order to remain competitive.”⁴⁵

A. FERC Should Reject and Dismiss the Complaint Outright on Procedural Grounds.

1. The Complaint Constitutes an Impermissible Attack on Order No. 1000 and Binding Appellate Precedent Authorizing Competitive Solicitations for FERC-Jurisdictional Transmission Projects

At its core, the Complaint is an effort to reargue and collaterally attack the Commission’s decision in Order No. 1000. There, the Commission found that it cannot effectively establish just and reasonable rates when rights of first refusal are present. Stated differently, incumbent preferences prevent the Commission from meeting its statutory consumer protection mandate to ensure just and reasonable rates. In Order No. 1000, the Commission held that “the elimination of federal rights of first refusal from Commission-jurisdictional tariffs and agreements is necessary and appropriate to ensure that rates for jurisdictional services are just and reasonable.”⁴⁶ That finding remains as true today as it was in July of 2011. And given the need to strengthen the aging grid in an affordable manner, that finding is even more important today.

⁴⁵ *MISO Transmission Owners v. FERC*, 819 F.3d 329, 333 (7th Cir. 2016) (“*MISO Transmission Owners*”).

⁴⁶ See Order No. 1000 at P 313.

In Order No. 1000, the Commission found “there is a need to act at this time to remove provisions from Commission-jurisdictional tariffs and agreements that grant incumbent transmission providers a federal right of first refusal to construct transmission facilities selected in a regional transmission plan for purposes of cost allocation.”⁴⁷ The Commission further found that federal rights of first refusal could “lead[] to rates for jurisdictional transmission service that are unjust and unreasonable”⁴⁸ because “it is not in the economic self-interest of incumbent transmission providers to permit new entrants to develop transmission facilities, even if proposals submitted by new entrants would result in a more efficient or cost-effective solution to the region’s needs.”⁴⁹ The United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) upheld the Commission’s findings in this area, explaining that “basic economic principles make clear that rights of first refusal are likely to have a direct effect on the costs of transmission facilities because they erect a barrier to entry.”⁵⁰ The Commission’s prediction as to the removal of the incumbent’s self-granted preferences has proven prescient in multiple ways.

Most importantly to the Commission’s statutory consumer protection mandate, when competition has occurred, transmission developers (including incumbent developers forced to compete) have offered consumer beneficial terms and conditions to transmission development and ownership that are absent when projects are just handed to incumbent developers.⁵¹ Thus, the experience since Order No. 1000 demonstrates that competition

⁴⁷ See Order No. 1000 at P 253.

⁴⁸ *Id.* at P 256.

⁴⁹ *Id.*

⁵⁰ *South Carolina*, 762 F.3d at 74.

⁵¹ See R Street Study at 35-36; see also “Cost Savings Offered by Competition in Electric Transmission,” The Brattle Group, April 2019 at 39-44.

helps ensure that transmission rates are just and reasonable.⁵² Further, the Commission has found that the contractual agreements arising through the Order No. 1000-mandated competitive processes themselves provide consumer benefits above and beyond any obligation arising from transmission owner agreements.⁵³ The Commission was clear in Order No. 1000 that the need for a competitive test to ensure just and reasonable rates crossed all transmission drivers, rejecting calls for an exclusion for reliability projects,⁵⁴ and extending the competitive requirement to projects needed to meet public policy requirements.⁵⁵ As such, the Commission’s national directive in Order No. 1000 to remove anti-competitive, self-granted, incumbent preferences applies fully to the transmission needed to address increases in load from data center expansion.

Experience since Order No. 1000 has also borne out the Commission’s observation that it is not in the economic self-interest of incumbent transmission providers to permit new entrants to develop transmission facilities, even if (or because) proposals submitted by new entrants would result in “a more efficient or cost-effective solution to the region’s needs.”⁵⁶ As discussed more fully below, when projects have been subject to competition and incumbents have been deprived of their government-created monopoly, the incumbent transmission owners in MISO and SPP have consistently used every tool at their disposal

⁵² See “Reply Comments of the Electricity Transmission Competition Coalition,” at Docket No. RM21-17-000, filed on November 30, 2021, starting at 21.

⁵³ *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 2, 33-48 (2018)) (the competitive developer agreement in PJM is more stringent than Consolidated Transmission Owners Agreement); *see also American Municipal Power Inc. et al. v. PJM Interconnection, L.L.C.*, 188 FERC ¶ 61,055 (2024).

⁵⁴ *See* Order No. 1000 at P 266; Order No. 1000-A at P 428.

⁵⁵ *See* Order No. 1000 at P 166.

⁵⁶ *See* Order No. 1000 at P 256. The Commission reached that conclusion based on a long history of utilities acting in their economic self-interest.

to thwart Order No. 1000 and ensure that only they were assigned transmission opportunities.

a. Incumbent Transmission Owners' Challenges to Order No. 1000 Were Properly and Universally Rejected by the Courts.

Following the issuance of Order No. 1000, both MISO and SPP, on behalf of incumbent transmission owners, vigorously argued to preserve provisions in their governance documents through which the transmission owners had granted themselves preferences. Incumbent transmission owners in both MISO and SPP argued that the contracts by which they divided the transmission market among themselves in those regions deserved protection under the *Mobile-Sierra* doctrine.⁵⁷ The Commission rejected the contract arguments in both MISO and SPP.⁵⁸

For example, the Commission determined that “we agree with Missouri PSC that the construction rights and obligations contained in section 3.3 of the [SPP] Membership Agreement are prescriptions of general applicability rather than negotiated rate provisions that are necessarily entitled to a *Mobile-Sierra* presumption.”⁵⁹ The Commission made a similar finding with respect to the MISO Transmission Owners Agreement.⁶⁰ The Commission also held that the “*Mobile-Sierra* presumption does not apply to the federal

⁵⁷ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) (“*Mobile*”), and *Fed. Power Comm’n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (“*Sierra*”); see also *Okla. Gas & Elect. Co. v. FERC*, 827 F.3d 75, 76 (D.C. Cir. 2016) (“*Oklahoma G&E*”) (Under the doctrine, “FERC must presume a contract rate for wholesale energy is just and reasonable and cannot set aside the rate unless it is contrary to the public interest.”).

⁵⁸ *Midwest Independent Transmission System Operator, Inc.*, 142 FERC ¶ 61,215 (2013) (“MISO Initial Order”) *on reh’g*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127, at P 436 (2014); *Southwest Power Pool, Inc.*, Order on Compliance Filings, Docket No. ER13-366-000, *et al.*, 144 FERC ¶ 61,059 (July 18, 2013) (“SPP Initial Order”), *on reh’g*, 149 FERC ¶ 61,048 (Oct. 16, 2014) (“Rehearing Order”).

⁵⁹ See SPP Initial Order at P 130.

⁶⁰ See MISO Initial Order at P 180 (agreeing with the Illinois Commerce Commission).

right of first refusal in section 3.3 of the Membership Agreement because that provision arose in circumstances *that do not provide the assurance of justness and reasonableness* on which the *Mobile-Sierra* presumption rests.”⁶¹

Both the MISO transmission owners and the SPP transmission owners sought appellate review of the Commission’s decision to require removal of the self-granted incumbent preferences. In *MISO Transmission Owners*, the United States Court of Appeals for the Seventh Circuit (“Seventh Circuit”) recognized the contract between and among MISO and the incumbent transmission owners for what it was: “contract in which the parties are seeking to protect themselves from competition from third parties (cartels are the classic example of such contracts).”⁶² Distinguishing such an arrangement from the contract in *Sierra*, with respect to which “the parties brought adverse interests to the table and their contract could be assumed to have split the difference,” the Seventh Circuit found “FERC’s abrogation of the right of first refusal . . . was lawful.”⁶³

The Seventh Circuit also noted that “if there are indeed good things to be said about the rights of first refusal claimed by the petitioners, they are not said in any of the voluminous filings in this case.”⁶⁴

⁶¹ See SPP Initial Order at P 132 (emphasis added).

⁶² *MISO Transmission Owners*, 819 F.3d at 335.

⁶³ *Id.* at 335. As the Seventh Circuit aptly held “[a] market that can support only one firm because conditions of supply and demand leave room for no more—what is called a ‘natural monopoly’—has no need for a right of first refusal. Such a right implies a possibility of entry (why otherwise create such a right?)—in other words room for an additional firm or firms, yet the right enables the incumbent firm to ward off entry.” *Id.* at 333-34.

⁶⁴ *Id.* at 334.

One of the Complainants in this case, Ameren, along with two other transmission owners⁶⁵ sought certiorari with the Supreme Court of the Seventh Circuit’s decision. In its response, the Commission bluntly and correctly characterized the rights of first refusal as “the product of a collusive arrangement between parties with a mutual interest in maintaining their monopoly over the construction of transmission facilities within MISO’s operating area— an arrangement that allows them to avoid ‘hav[ing] to bid down the prices at which they will build new facilities in order to remain competitive’ and to pass on the costs of any resulting inefficiencies to consumers in the form of higher rates.”⁶⁶ The Commission defended its abrogation of these contractual rights, stating:

the Commission has used its rulemaking authority under the FPA to “break down regulatory and economic barriers that hinder a free market in wholesale electricity,” *Morgan Stanley Capital Grp., Inc. v. Public Util. Dist. No. 1*, 554 U.S. 527, 536 (2008) (*Morgan Stanley*). This case concerns one such rule, known as Order No. 1000, which the Commission promulgated in 2011 to “address opportunities for undue discrimination by public utility transmission providers” and to “ensure that rates for Commission-jurisdictional service are just and reasonable in light of changing conditions in the industry.” 76 Fed. Reg. 49,845 (Aug. 11, 2011).⁶⁷

The Commission went on to tell the Supreme Court that rights of first refusal “gave incumbent utilities the option to construct any new transmission facilities in their particular

⁶⁵ Joining Ameren in its petition were Northern Indiana Public Service Company (“NIPSCO”) and Otter Tail Power Company. Perhaps NIPSCO did not join the anti-competition complaint given that a project that it was handed without competition in response to an Indiana right of first refusal, currently subject to challenge, just received a “variance” from MISO because of a significant increase in projected costs. See Protest at 81-85 (explaining that NIPSCO’s \$340 million project increase to \$675.4 million.

⁶⁶ *MISO Transmission Owners*, 819 F.3d at 14.

⁶⁷ See “Brief for Respondent Federal Energy Regulatory Commission in Opposition” at P 4, available at <https://www.ferc.gov/enforcement-legal/legal/court-cases/ameren-services-co-et-al-v-ferc-8> (last accessed May 27, 2026).

service areas, even if the proposal for new construction came from a third party’ and *even if the third party was capable of building the facility more cheaply.*”⁶⁸

Like their MISO counterparts, incumbent transmission owners in SPP sought judicial review of the Commission’s elimination of their rights of first refusal. The D.C. Circuit reached the same result as the Seventh Circuit, noting that “the Commission in its expert judgment already determined, the rights of first refusal created ‘a pre-existing barrier to entry’ for nonincumbent transmission owners.”⁶⁹ The D.C. Circuit further held that

The Seventh Circuit has gone so far as to describe such self-protective and anti-competitive agreements as cartel-like. See *MISO Transmission* [], 819 F.3d at 335 []. We similarly think that such terms through “which the parties are seeking to protect themselves from competition from third parties” are a far cry from those in the original *Mobile-Sierra* cases.⁷⁰

In another case, involving a challenge brought by incumbent transmission owners in New England, the D.C. Circuit affirmed the Commission’s finding that even if these cartel-like arrangements enjoyed *Mobile-Sierra* protection, the public interest would nonetheless require it to abrogate the contract.⁷¹ Specifically, the D.C. Circuit noted the Commission’s finding that the public interest compelled elimination of the right of first refusal, because it ““would adversely affect transmission development.””⁷² The D.C. Circuit emphasized the high bar that *Mobile-Sierra* imposed by “reserv[ing] the Commission’s contract-abrogation power for *those extraordinary circumstances where the*

⁶⁸ *Id.* (citing *South Carolina*, 762 F.3d at 72; see 76 Fed. Reg. at 49,880-49,881.)

⁶⁹ *Oklahoma G&E*, 827 F.3d at 80.

⁷⁰ *Id.*

⁷¹ See *Emera Me. v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) (“*Emera Maine*”).

⁷² *Id.* at 671.

public will be severely harmed.”⁷³ The D.C. Circuit went on to affirm that the Commission “made such a finding here. . . , thereby clearing the *Mobile-Sierra* bar as articulated in *Morgan Stanley*.”⁷⁴

b. The Existing Tariffs’ Solicitation Requirements Were Implemented In Compliance With Order No. 1000 and Upheld by the Appellate Courts.

The incumbent transmission owners’ resistance to elimination of federal rights of first refusal continued into the Order No. 1000 compliance proceedings, MISO and SPP, on behalf of the existing incumbent transmission owners, simultaneously filed compliance filings that preserved as much of federal rights of first refusal as possible. Importantly, both the existing MISO and SPP processes each confirm that nonincumbent competitive developers are fully qualified from a financial, development, maintenance, and operational perspective to develop and own transmission. MISO has 63 qualified transmission developers.⁷⁵ SPP has 44 qualified developers (*i.e.*, RFP Participants).⁷⁶ Further, both MISO and SPP have conceded that nonincumbent developers are the more efficient or cost-effective transmission developers for regionally planned and cost allocated projects.⁷⁷

⁷³ *Id.* (citing *Morgan Stanley*, 554 U.S. at 551 (emphasis in original)).

⁷⁴ *Emera Maine* 854 F. 3d at 671.

⁷⁵ See “MISO Qualified Transmission Developers List,” April 1, 2026, available at [https://cdn.misoenergy.org/MISO Qualified Transmission Developers List82330.pdf](https://cdn.misoenergy.org/MISO%20Qualified%20Transmission%20Developers%20List82330.pdf) (last accessed May 27, 2026).

⁷⁶ See “2026 Approved SPP Qualified RFP Participants,” January 1, 2026, available at https://www.spp.org/documents/75550/approved_qrp_for_2026.pdf (last accessed May 27, 2026).

⁷⁷ See MISO Selection Reports: Sub T - Iowa/Illinois State Line - Woodford County, available at <https://cdn.misoenergy.org/STIW%20Selection%20Report758478.pdf> (last accessed May 27, 2026); Woodford County - Illinois/Indiana State Line, available at <https://cdn.misoenergy.org/WIIL%20Selection%20Report758479.pdf> (last accessed May 27, 2026); Bell Center - Columbia - Sugar Creek - Illinois/Wisconsin State Line, available at <https://cdn.misoenergy.org/BECL%20Selection%20Report734487.pdf> (last accessed May 27, 2026); Wisconsin Southeastern Project, available at <https://cdn.misoenergy.org/WISE%20Selection%20Report734486.pdf> (last accessed May 27, 2026).

At the same time, however, the multiple compliance filing iterations, particularly in MISO, reflect a concerted effort by MISO and its transmission owners to preserve the incumbent transmission owners' cartel by maintaining barriers to competition. For example, MISO has the broadest definition of "upgrade" that the Commission permitted in response to Order No. 1000.⁷⁸ For MISO's Tranche 1 Long Range Transmission Plan ("LRTP"), MISO sheltered nearly half of the \$10 billion in transmission from competition as "upgrades," even though the facilities so labeled were new 345 kV transmission facilities. MISO also excluded nearly half of the \$10 billion based on state rights of first refusals, each of which was lobbied for and enacted after the issuance of Order No. 1000.⁷⁹

2026); Reid EHV - Indiana/Kentucky State Line, *available at* <https://cdn.misoenergy.org/RIKY%20Selection%20Report710990.pdf> (last accessed May 27, 2026); Denny - Zachary - Thomas Hill Maywood, *available at* <https://cdn.misoenergy.org/DZTM%20345%20kV%20Selection%20Report632383.pdf> (last accessed May 27, 2026); IA/IL State Border – Ipava, *available at* <https://cdn.misoenergy.org/IIBI%20345%20kV%20Selection%20Report631212.pdf> (last accessed May 27, 2026); 345 kV Deadend (WI) – Tremval, *available at* <https://cdn.misoenergy.org/DEWT%20345%20kV%20Selection%20Report631213.pdf> (last accessed May 27, 2026); Fairport to Denny to IA/MO State Border, *available at* <https://cdn.misoenergy.org/FDIM%20345%20kV%20Selection%20Report630669.pdf> (last accessed May 27, 2026); Hiple to IN/MI State Border, *available at* <https://cdn.misoenergy.org/HIMB%20345%20kV%20Selection%20Report628866.pdf> last accessed May 27, 2026); Hartburg-Sabine, *available at* <https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf> (last accessed May 27, 2026); Duff-Coleman, *available at* <https://www.misoenergy.org/planning/competitive-transmission-administration/#nt=%2Fctaddoctype%3APreviously%20Awarded%20Projects%2Fctaprojectname%3AMTEP15%20Duff-Coleman&t=10&p=0&s=FileName&sd=desc> (last accessed May 27, 2026). See SPP Integrated Transmission Planning Postings, *available at* <https://www.spp.org/spp-documents-filings/?id=31491> (last accessed May 27, 2026).

⁷⁸ *Compare*, Attachment FF, VIII.A.2 Upgrades to Existing Facilities (with its 10-page definition of qualifying upgrades); *New York Independent System Operator, Inc.*, 175 FERC ¶ 61,038 (2021).

⁷⁹ *See, e.g.*, Complaint of The Industrial Energy Consumers of America, The Coalition of MISO Transmission Customers, The Wisconsin Industrial Energy Group, The Resale Power Group of Iowa, Association of Businesses Advocating Tariff Equity and Michigan Chemistry Council, Docket No. EL22-78-000 (filed July 22, 2022) (pending complaint challenging MISO tariff provisions giving effect to state rights of first refusal).

MISO's assignment of projects in Indiana, notwithstanding an ongoing challenge to incumbent preference, has already led to significant ratepayer harm.⁸⁰

Ironically, while Complainants point to the length of the competitive process as a reason to eliminate competition, the lengthy process is itself one of the barriers to competition erected for the benefit of incumbents. Despite being the architects of the nearly identical and lengthy processes in MISO and SPP,⁸¹ incumbent transmission owners have bemoaned the time the processes take since the earlier days of competitive solicitations. If they actually wanted to improve the process, rather than using it as a pretext to reinstate their unnatural monopoly, incumbents could work with consumers and competitive developers, who have long recognized that the solicitation timelines could be made more efficient.⁸² To be clear, Order No. 1000 leaves plenty of room for such efforts. While it mandates a competitive process that allows non-discriminatory participation by all qualified competitive developers, Order No. 1000 does not mandate a specific process. But as is obvious from the Complaint, Complainants' real issue is not with the length of the competitive process but with its very existence – that is, with the competitive mandate itself. Eliminating competition entirely, or for five years, would be a direct attack on the

⁸⁰ See “MTEP21 – Morrison-Ditch-Reynolds-Burr-Oak-Leesburg-Hiple Variance Analysis Outcome Determination, available at <https://www.misoenergy.org/planning/transmission-planning/mtep/#nt=/mtepstudytypenew:Variance%20Analysis/mtepdev:Variance%20Analysis%20Outcome%20Determinations/mtepdev:MTEP21%20-%20Morrison%20Ditch-Reynolds-Burr%20Oak-Leesburg-Hiple> (last accessed May 27, 2026).

⁸¹ See, e.g., Comments of the ITC Companies, *Midcontinent Indep. Sys. Op., Inc.*, at 2-3, Docket No. ER18-41-000 (filed Oct. 27, 2017) (supporting MISO's staggering process as necessary and asserting it will not cause unreasonable delays); see, e.g., Comments of Xcel Energy Services, Inc., at 4-5, Docket No. ER15-509-000 (filed Dec. 17, 2014) (supporting SPP's proposed revisions to Attachment Y to increase flexibility, including extending the RFP deadline from 90 days to 180 days).

⁸² See “Reply Comments by the Electricity Transmission Competition Coalition,” at 34, Docket No. RM21-17 (filed on Sept. 19, 2022).

findings of Order No. 1000 (and the compliance filings) that rights of first refusal are not in the public interest. The Commission should reject Complainants' collateral attack on those findings.

2. Complainants Violate Several of the Commission's Procedural Rules Governing Section 206 Complaints.

To ensure that complaints are properly vetted and supported, Commission Rule 206 establishes several informational requirements for complainants.⁸³ In Order No. 602, FERC revised its rules governing complaints "to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner."⁸⁴ FERC changed its rules to ensure that "the process used to resolve a complaint is suited for the facts and circumstances surrounding the complaint, the harm alleged, the potential impact on competition, and the amount of expedition needed."⁸⁵ The Commission regularly denies or dismisses complaints that fail

⁸³ See 18 CFR § 385.206.

⁸⁴ Order No. 602, *Complaint Procedures*, 64 Fed. Reg. 17088, Docket No. RM98-13-000 (Mar. 31, 1999) (codified at CFR Parts 1b, 343, and 385), available at <https://www.govinfo.gov/content/pkg/FR-1999-04-08/pdf/99-8518.pdf>. (last accessed May 27, 2026).

⁸⁵ *Id.*

to meet the Commission’s “minimum requirements for complaints”⁸⁶ and such dismissals have been affirmed by the courts.⁸⁷ The rule of law demands no less here.

a. Complainants Violated Rule 206(b)(3) By Failing to Demonstrate with Any Specificity and Quantification How Complainants’ Businesses Are Economically Harmed by Existing SPP and MISO Tariff Provisions Related to Competitive Solicitations.

Rule 206(b)(3) of the Commission’s rules governing Section 206 Complaints requires a complaint to “[s]et forth the business, commercial, economic or other issues presented by the action or inaction **as such relate to or affect the complainant.**”⁸⁸ Instead of articulating how the existing SPP and MISO Tariff provisions specifically inflict harm on the Complainants, the Complaint vaguely asserts that the “solicitation process, and the delay it creates, harms the Coalition, customers, and the public at large.”⁸⁹ But the Complaint does not quantify or show any financial harm or any ongoing injury caused to

⁸⁶ *Independent Mkt. Monitor for PJM v. PJM Interconnection, L.L.C.*, 194 FERC ¶ 61,227 at n.103 (2026) (citing *Pastoriza v. Pub. Serv. Co. of N.H.*, 194 FERC ¶ 61,156, at P 23 (2026); *Coalition of Eastside Neighborhoods for Sensible Energy v. Puget Sound Energy, Inc.*, 183 FERC ¶ 61,057 at P 29 (2023); *La Paloma Generating Co., LLC v. Cal. Indep. Sys. Operator Corp.*, 157 FERC ¶ 61,002 at P 28 (2016); *Berka v. Cuomo*, 175 FERC ¶ 61,212 at P 32 (2021); *Illinois Muni. Elec. Agency v. Cent. Ill. Pub. Serv. Co.*, 76 FERC ¶ 61,084, at 61,482 (1996)). *See also*, e.g., *Eric S. Morris v. Southwest Power Pool, Inc.*, 149 FERC ¶ 61,207 at P 15 (2014) (dismissing complaint “for failure to comply with the Commission’s Rules of Practice and Procedure”); *Tri-State Generation & Transmission Ass’n v. Public Serv. Co. of N.M.*, 143 FERC ¶ 61,226 at P 21 (2013) (dismissing complaint, in part, because it was “procedurally deficient”); *Californians for Renewable Energy, Inc. v. Pacific Gas & Elec. Co.*, 143 FERC ¶ 61,005 at P 19 (2013) (dismissing complaint for failure to comply with Rule 206); *Californians for Renewable Energy, Inc. v. Pacific Gas & Elec. Co.*, 142 FERC ¶ 61,143 at P 18 (2013) (dismissing complaint “for failure to comply with the Commission’s Rules of Practice and Procedure”); *Energy Mgmt. Corp. v. Peoples Gas Sys.*, 78 FERC ¶ 61,044 at 61,181 (1997) (dismissing complaint as “patently deficient under Rule 203” where the complaint was “vague and confusing” and “consists of a few conclusory statements devoid of any factual support”).

⁸⁷ *See Columbia Gulf Transmission, LLC v. FERC*, 106 F.4th 1220, 1232-33 (D.C. Cir. 2024) (“*Columbia Gulf*”).

⁸⁸ 18 CFR § 385.206(b)(3) (emphasis added).

⁸⁹ *See* Complaint at 79.

Complainants, let alone demonstrate that the existing Tariff provisions on competitive solicitations impede Complainants’ supposed efforts “to win the AI race” and legal obligations to “fulfill their obligation to serve.”⁹⁰

In *Columbia Gulf Transmission*, the Court held that the underlying FERC complaint failed to adequately plead violation of a tariff provision.⁹¹ Citing its prior precedent, the Court explained: “We have made it clear that we ‘will not grant relief on the merits’ when the Commission has ‘properly dismissed the pleading on procedural grounds.’”⁹² Elsewhere, the Commission has found dismissal warranted where a complainant had not “made a good faith effort to quantify the financial impact or burden to it arising from [respondent’s] actions”⁹³ Here, Complainants have failed to demonstrate any harm, much less any cognizable harm, to them caused by the existing SPP and MISO Tariff provisions, especially given that Complainants have ample opportunities to help address speed-to-power objectives through immediate need projects and expedited project reviews where, in those instances, the underlying transmission projects are directly assigned to the incumbent transmission owners and not subjected to competitive bidding. While there is nothing wrong with a party acting in its economic self-interest, Complainants do not enjoy any right under the FPA to be insulated from competitive

⁹⁰ *See id.* at 78.

⁹¹ *Columbia Gulf*, 106 F.4th at 1232-33.

⁹² *Id.* at 106 F.4th at 1232-33 (internal citations omitted) (quoting *NTCH, Inc. v. FCC*, 950 F.3d 871, 883 (D.C. Cir. 2020) (quoting *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1183 (D.C. Cir. 2003)) (internal quotations omitted).

⁹³ *Chevron Prods. Co. v. SFPP, L.P.*, 99 FERC ¶ 61,196 at P 26 (2002). *See also Tri-State Generation & Transmission Ass’n, Inc. v. Public Serv. Co. of N.M.*, 143 FERC ¶ 61,226 at P 19 (2013) (denying complaint in which the complainant “ha[d] failed to meet the requirement to quantify the financial impact or burden of its Complaint under Rule 206(b)(4)”).

pressures,⁹⁴ and being forced to compete and engage in cost discipline does not therefore constitute a legally cognizable harm that entitles Complainants to relief from this Commission.⁹⁵

b. Complainants Fail to Verify, Per Rule 206(c), That They Served the Complaint on Affected Regulatory Agencies and Other Parties Reasonably Known To Have a Clear Interest and to Be Affected By the Complaint.

Rule 206(c) requires a complainant “to serve a copy of the complaint on the respondent, affected regulatory agencies, and others the complainant reasonably knows may be expected to be affected by the complaint.”⁹⁶ Complainants verified in the Complaint’s Certificate of Service that Complainants served the Complaint on the two respondents, SPP and MISO. However, Complainants did not verify that they served the Complaint on “affected regulatory agencies,” including the several state utility and public service commissions throughout the 21 states in the SPP and MISO footprints. Nor did Complainants verify that they served the Complaint on other customers or the ETCC, for whom Complainants should have reasonably known would be affected by the Complaint,

⁹⁴ See *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351 n.8 (1974) (“Regulation was superimposed on . . . natural monopolies as a substitute for competition and not to eliminate it”); *Otter Tail*, 410 U.S. 366, 374 (1973) (“[T]he history of Part II of the Federal Power Act indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.”).

⁹⁵ See *Pacific Water & Power, Inc.*, 50 FERC ¶ 61,292 at 61,942 (1990) (finding that an applicant’s desire to be “free from competition” is “not cognizable by the Commission”). Cf. *Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 115 (1986) (a firm’s “loss of profits to [] competitors . . . [i]s of no concern under the antitrust laws” if “it resulted only from continued competition”); *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, (1977) (holding that alleged damages based on “profits [plaintiffs] would have realized had competition been reduced” to be “inimical to the purposes of the[antitrust] laws”).

⁹⁶ 18 CFR § 385.206(c).

especially in light of ETCC’s public advocacy and extensive support from consumer groups, including IECA, for competitive solicitations for regional transmission projects.

B. Complainants Fail to Meet Their Burden under FPA Section 206 (Step 1) to Demonstrate That the Existing SPP and MISO Tariffs Are Unjust and Unreasonable.

Complainants bear the initial burden under FPA Section 206 to demonstrate that the existing SPP and MISO tariff provisions are unjust and unreasonable.⁹⁷ Under FPA Section 206, FERC may determine that an existing rate (or practice affecting a rate) is unjust, unreasonable, unduly discriminatory or preferential. However, “[o]nly *after* having made the determination that the utility’s existing rate fails that test may FERC exercise its section 206 authority to impose a new rate.”⁹⁸

Instead of providing a sound, analytical basis to establish that specific MISO and SPP Tariff provisions and practices are causing unjust and unreasonable rates, the Complaint rests on an emotional appeal concerning the “AI Arms Race” and attendant national security objectives by advancing an unproven hypothetical that competitive solicitations harm AI development. The Complaint fails to substantiate the allegation that the competitive process systematically delays in-service dates for transmission projects by 16-20 months. Indeed, the Complaint invokes the 16–20-month figure for the generic, unsupported proposition that “[e]xperience has shown that the MISO and SPP solicitations add 16-20 months on average.”⁹⁹ But the Complaint fails to show that the amount of time

⁹⁷ See 16 U.S.C. § 824e(b) (providing that “[i]n any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant.”).

⁹⁸ *Emera Me. v. FERC*, 854 F.3d at 21 (emphasis original).

⁹⁹ See Complaint at 30.

allotted to the solicitation process delays the actual RTO-determined in-service date for the project at all, let alone by 16-20 months. In fact, a study¹⁰⁰ undertaken this year by the R Street Institute and released on May 26, 2026 (“R Street Study”), found no evidence that Order No. 1000-based competition led to transmission development delays.¹⁰¹ The R Street Study found that “even with solicitations and evaluations, the few competitive projects that have been placed into service have done so faster than, or on a timeline comparable to, similar incumbent projects.”¹⁰²

Instead of showing that the current practices are directly causing the alleged harm, the Complaint relies on anecdotes, speculation, and hasty generalizations. For example, the Complaint extracts a few quotations from big tech companies around the need for more power and a stronger grid to imply the issue lies with the competitive solicitation process in SPP and MISO alone.¹⁰³ Yet, Complainants do not establish any nexus between these generalized statements about the companies’ urgent need for more power and alleged delays with competitive solicitations and direct harm to AI development. In fact, the quoted statements from AI leaders do not even speak to a need for more transmission capacity, much less to any perceived problems arising out of the competitive solicitation process. The speed-to-power problem is multi-faceted, with delays attributable to a wide

¹⁰⁰ See “Need for Speed: An Analysis of Sped to Market and Cost Results of Competitive Transmission,” Kent Chandler and Olivia Manzagol, R Street Institute, May 26, 2026 at 1. The authors of the R Street Institute Study recognize that data availability and quality limit the ability to make definitive conclusions but emphasize that the results are instructive, nonetheless.

¹⁰¹ See Hartman Affidavit at 10: 19-20.

¹⁰² See R Street Study at 21.

¹⁰³ See Complaint at 22-23.

range of issues including permitting and zoning constraints and other generation bottlenecks and limitations.¹⁰⁴

In pursuit of Complainants’ preferred solution (insulation from competitive pressures) under step 2 of FPA Section 206, the Complaint desperately searches for a problem and paints the competitive solicitation process as the boogeyman. But in doing so, the Complaint does not make the required demonstration under step 1 of FPA Section 206 to show that the existing rate or process is unjust, unreasonable, or unduly discriminatory or preferential. The D.C. Circuit has explained:

[A] finding that an existing rate is unjust and unreasonable is the “condition precedent” to FERC’s exercise of its section 206 authority to change that rate. Section 206 therefore imposes a “dual burden” on FERC. Without a showing that the existing rate is unlawful, FERC has no authority to impose a new rate.¹⁰⁵

The Complaint fails to show that the existing competitive solicitation timelines in the SPP and MISO tariff are delaying in-service dates for transmission projects.

1. The Complaint Fails to Demonstrate That Competition Causes Unreasonable Delays and That the Competitive Solicitation Process Harms AI Development.

Complainants’ bottom-line argument – that incumbent developers are inherently more efficient than competitive developers due to the length of the solicitation process – rests on an unproven and flawed assumption that the competitive solicitation process causes a systematic 16–20-month delay for the in-service date of a transmission project. Complainants argue that the 16-20 month delay “stymie[s] the interconnections of both large load customers and new generation resources” and “saddle[s] customers with higher

¹⁰⁴ See Direct Testimony of Neeya Toleman on Behalf of Viridon, at 10-11 (filed in Docket No. EL26-58-000 on May 27, 2026) (“Toleman Affidavit”).

¹⁰⁵ *Emera Maine*, 854.F3d at 25 (cleaned up); see also *Pub. Serv. Elec. & Gas Co. v. FERC*, 989 F.3d 10, 13 (D.C. Cir. 2021).

costs.”¹⁰⁶ However, the Complaint fails to demonstrate that the time needed for any MISO or SPP competitive solicitation process results in any delay and certainly not a 16-20 month delay *in in-service dates*. That being the case, Complainants fail to demonstrate that the competitive solicitation process stymies load and generation interconnections, let alone that it somehow increases consumer costs.

Under its tariff, MISO is required to “consider the timing impacts of the Competitive Developer Selection Process with respect to the in-service dates of the Competitive Transmission Projects,” when developing the RFP schedule.¹⁰⁷ There are no examples of any competitive project in MISO not meeting the required in-service date, even with the existence of the MISO Competitive Solicitation Process. In fact, the only MISO completed project, Duff-Coleman, came in over six months ahead of MISO’s estimated in-service date.¹⁰⁸

The Complaint’s whole analysis rests on an unproven, unsupported, and unwarranted assumption, as evidenced by the language in the Complaint itself: “It should come as no surprise that *if* transmission is delayed, it hinders the interconnection of load and generation alike.”¹⁰⁹ That is true in the same sense that it is true that if a frog had wings, it would not need to hop, but it does not even come close to satisfying a complainant’s burden under Section 206 of the FPA.

¹⁰⁶ See Complaint at 37.

¹⁰⁷ See “MISO Open Access Transmission Tariff,” (MISO Tariff), Attachment FF, VIII.C. REQUEST FOR PROPOSALS.

¹⁰⁸ See R Street Study at 36.

¹⁰⁹ See Complaint at 39 (emphasis added).

Complainants assume that, absent a competitive solicitation process, incumbents would begin work immediately upon approval, or even before, but there is no evidence – and Complainants certainly have not provided any – that this is the case. This argument also fails to acknowledge routine delays that developers encounter regardless of solicitation: siting, permitting, stakeholder engagement processes, environmental reviews, and financing (*i.e.*, internal capital budgeting process for utilities). When Complainants arbitrarily assign a 16–20-month delay to competitive solicitation projects, they feign ignorance of the fact that many delays could occur regardless of whether a solicitation occurred, and surely Complainants are not suggesting that incumbent transmission owners enjoy some sort of special immunity from permitting and regulatory review. The reality is that incumbent transmission owners face the same challenges in siting and permitting transmission projects as competitive transmission developers, processes that, as incumbent transmission owners’ trade association, the Edison Electric Institute, put it, “can stop projects in their tracks or add years to deployment timelines”¹¹⁰

¹¹⁰ See Letter from Drew Maloney to Mike Johnson, John Thune, Hakeem Jeffries and Charles Schumer (Sept. 16, 2025), available at <https://www.eei.org/News/news/All/eei-letter-to-congress-on-permitting-reform> (last accessed May 27, 2026).

Complainants’ use “experience” as the basis for their 16–20-month delay assertion.¹¹¹ But their memory, like their data choices, is selective.¹¹² Complainants produced charts in support of alleging delayed project timelines in MISO and SPP, but do not show the complete picture. As ETCC Witness Hartman explains:

Competitive solicitations take time, but the evidence indicates that the time solicitations take are not causing in-service delays. Even accounting for months-long competitive solicitation processes, competitive projects are generally placed into service faster after the need for transmission is identified, relative to comparable incumbent projects. Further, competitive project performance is better or similar to comparable incumbent projects as it relates to meeting initial in-service deadlines.¹¹³

Complainants’ use a 2024 Concentric Energy Advisors study to support that incumbent projects are delivered faster and cheaper than solicited projects.¹¹⁴ Similar reports from Concentric have been debunked by researchers at the Brattle Group.¹¹⁵ The

¹¹¹ See Complaint at 31. Nowhere does the Complaint establish that the SPP or MISO competitive qualification process is unjust and unreasonable. Participants under Order No. 1000 are qualified on the basis of financial and technical qualifications, and the qualification process is an important foundation of Order No. 1000. Both SPP and MISO have robust qualification processes. The incumbent transmission owner contention that they have more “experience” and therefore deserve preferential or discriminatory treatment was addressed previously in Order No. 1000, paragraph 260: **“The Commission is not persuaded to abandon our proposed reforms to federal rights of first refusal based on arguments that incumbent transmission providers are better situated to build and operate transmission facilities.** While we acknowledge that incumbent transmission providers may have unique knowledge of their own transmission systems, familiarity with the communities they serve, economies of scale, experience in building and maintaining transmission facilities, and access to funds needed to maintain reliability, we do not believe removing the federal right of first refusal diminishes the importance of these factors.... However, we do not believe that, just because an incumbent public utility transmission provider may have certain strengths, a nonincumbent transmission developer should be categorically excluded from presenting its own strengths in support of its proposals or bids.” (emphasis added).

¹¹² See Hartman Affidavit at 17: 16-20.

¹¹³ See *id.* at 10: 20-11:4.

¹¹⁴ See Complaint at 34.

¹¹⁵ See “Response to Concentric Energy Advisors’ Report on Competitive Transmission,” The Brattle Group, August 2019, available at https://www.brattle.com/wp-content/uploads/2021/05/16873_response_to_concentric_energy_advisors_report_on_competitive_transmission.pdf (last accessed May 27, 2026).

Brattle Group rebutted a 2019 Concentric study in August 2019¹¹⁶, demonstrating that even accounting for post-award cost escalation, competitive projects still delivered material savings relative to incumbent cost profiles. A report just released by the R Street Institute on May 26, 2026 also called the Concentric study's conclusions into question.¹¹⁷ Importantly, the R Street Study's methodology works to incorporate a larger sample of projects with observed outcomes than was used in earlier studies.¹¹⁸

Overall, competitive transmission projects currently in service in MISO and SPP (as well as in CAISO and ISO-NE) were developed faster, when accounting for the entire planning and project development process. As demonstrated in the R Street Study:

Incumbent projects across the country come in well past their original expected in-service dates. The exception to this observation is PJM, where incumbent developers of greenfield transmission lines only miss their expected in-service dates by a few weeks on average. Competitive and incumbent developers of greenfield transmission lines in CAISO and SPP place their projects into service late, with comparable delays. Delays may be region-specific (at least in CAISO), and evidence suggests the causes may impact competitive and incumbent projects similarly. The few greenfield competitive projects in MISO, ISO-NE, the New York Independent System Operator, and PJM came in ahead of schedule.¹¹⁹

The Complaint incorrectly presumes that the time of competitive processes corresponds to a delay in in-service dates, ignoring that RTOs, including MISO and SPP,

¹¹⁶ *Id.*

¹¹⁷ See R Street Study, Exhibit E. at 13. (“The response further noted the importance of timing in transmission development; however, it did not seriously study the issue. Instead, Concentric conducted a case study of the “longest solicitation” of available competitive projects, attempting to highlight the Brattle report’s purported shortcoming and giving the impression that Concentric’s case study was a representative result.”)

¹¹⁸ See R Street Study at 15 (“This series relies on two core datasets developed from primary sources that track transmission project outcomes across major U.S. [transmission planning regions](#): one focused on projects developed by incumbent utilities and the other on projects awarded through competitive solicitations. If an incumbent wins a competitive solicitation, we still consider that project in our competitive samples.”)

¹¹⁹ See R Street Study, Exhibit E at 3.

conduct long-term transmission plans to meet inherently distant times of need. According to witness Hartman, “The time for competitive processes is built into transmission planning processes proactively, such that it does not alter the target in-service date.”¹²⁰

Complainants’ claims of “headstart” advantages for direct assignment projects are red herrings and not an accurate representation of industry norms.¹²¹ Pre-Notice to Construct (“NTC”) costs an incumbent incurs before final Board approval are borne entirely by that transmission owner — not ratepayers — creating a strong financial disincentive to actually begin work early.¹²² Additionally, the Complaint incorrectly relates competitive solicitations to in-service dates as follows:

The complaint presumes that the time of competitive processes corresponds to a commensurate delay in in-service dates. This is incorrect because RTOs, including SPP and MISO, conduct long-term transmission plans to meet distant need dates. The time for competitive processes is built into transmission planning processes proactively, such that it does not alter the target in-service date.¹²³

An objective review shows that competitive projects are often ready in advance of RTO-determined in-service date, as shown in the following chart from Mr. Hartman’s affidavit.¹²⁴

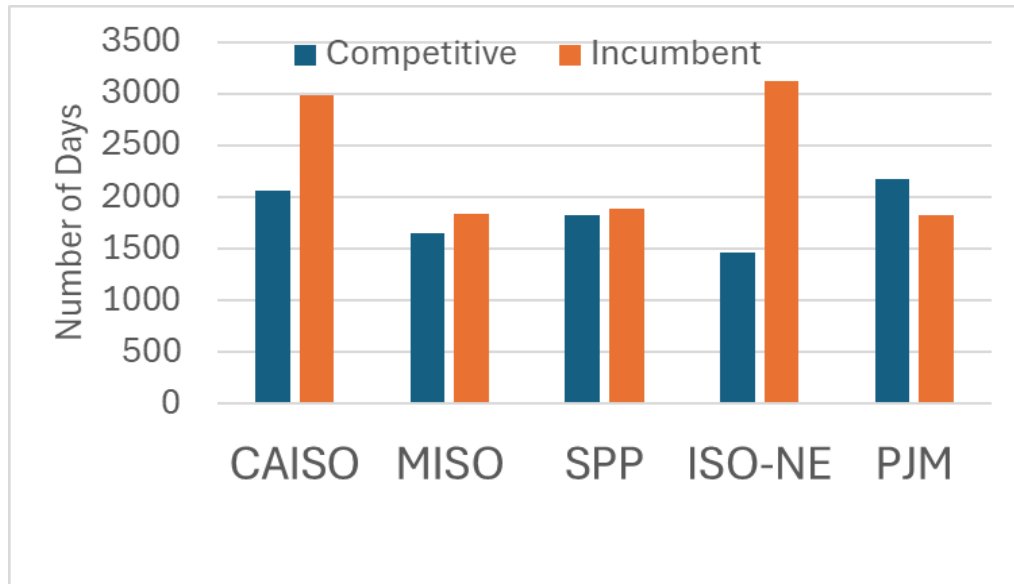
¹²⁰ See Hartman Affidavit at 18:23-24.

¹²¹ See Toleman Affidavit at 11.

¹²² *Id.*

¹²³ See Hartman Affidavit at 18:20-24.

¹²⁴ See Hartman Affidavit at 12:19-13:4. As for PJM, Hartman explains: “PJM was the only footprint where the data indicated that competitive lines took longer to be planned and placed into service than comparable incumbent projects. However, the RSI Study team questions what conclusions can be drawn because of profound data quality concerns. PJM has the least standardized data across the FERC-jurisdictional RTOs in the RSI Study. PJM data reporting on scope changes, the vintage of cost figure updates, and the source of data was unclear for many projects. If expected in-service dates change for a project, the transmission owner can replace the initial estimates in the tracker, and the original in-service estimate disappears without record. Updating these in-service expectations would make a project appear on schedule when it is actually delayed. In fact, the RSI Study authors found inconsistencies in final project cost



Complainants further attempt to romanticize the “traditional” transmission process, stating that incumbent transmission owners “simply developed and built needed projects in their service territories, working collaboratively with neighboring utilities.”¹²⁵ But consumer affordability and the grid of tomorrow necessitate independent, holistic regional planning that identifies the “more efficient or cost-effective solution[s] to a region’s needs.”¹²⁶ Complainants neglect to include in their “tale of a past that never was,” that incumbent transmission owners were regional monopolies charging increasingly unreasonable rates from which consumers had little protection. That is why, in Order No. 1000, the Commission held that the need for increased transmission investment made elimination of federal rights of first refusal and other reforms “even more critical,” not less important, as incumbent transmission owners argued then and as Complainants do now, as

reporting, which is self-reported by transmission owners. Overall, the fidelity of the PJM data is low.”

¹²⁵ See Complaint at 29.

¹²⁶ See Order No. 1000-A, 139 FERC ¶ 61,132 at P 11 (footnote omitted).

a means of supporting “more efficient and cost-effective investment decisions”¹²⁷ Importantly, Complainants do not address why reforms to the solicitation process, *i.e.*, a required condensing of solicitation timelines, would not right the wrongs they advance. This may well be because Complainants are not as interested in a more efficient transmission project completion timeline, as they are in avoiding competition for transmission projects.

a. The Complaint’s Entire Economic Analysis is Flawed Because It Rests on an Unproven Fact – a Systematic 16–20-Month Delay in the In-Service Date.

Complainants retained Michael Schnitzer, a Partner at the NorthBridge Group, to testify on how the Order No. 1000 solicitation processes in SPP and MISO allegedly “materially delay serving new large load customers, impose significant costs on the economy, and even jeopardize national security.”¹²⁸ Mr. Schnitzer uses an unproven assumption – that the 26 solicitations in MISO and SPP “add one to two years to the time needed to complete the affected projects”¹²⁹ – to undergird the entirety of Mr. Schnitzer’s outcome-oriented testimony. The false and misleading picture of the solicitation process that Mr. Schnitzer paints is captured in Figure 2 of Mr. Schnitzer’s testimony¹³⁰:

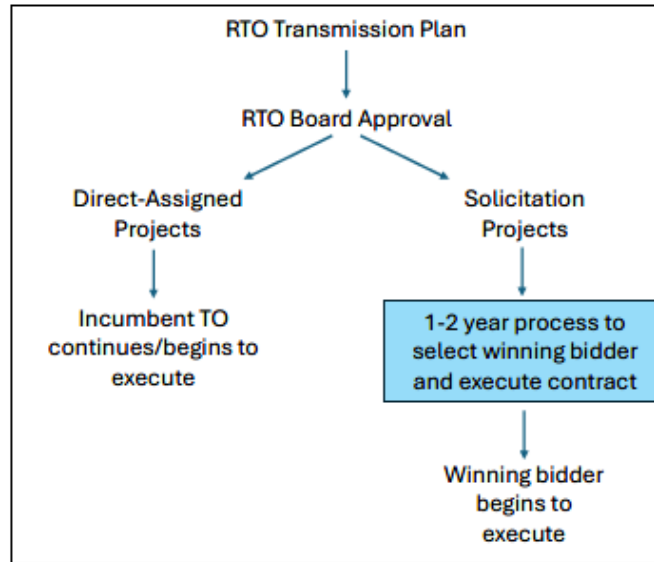
¹²⁷ See Order No. 1000, 136 FERC ¶ 61,051 at P 46.

¹²⁸ See Complainants’ Exhibit F, Schnitzer Testimony at 2:11-13. While Mr. Schnitzer has testified before the Commission on issues pertaining to wholesale market design and transmission cost allocation, Complainants have failed from the outset to demonstrate that Mr. Schnitzer has the requisite experience on matters pertaining to transmission planning, transmission engineering, permitting and regulatory approvals, transmission project management, and the competitive transmission processes in SPP and MISO, much less that he is qualified to testify on matters of national security. Neither in the brief biography appended to Mr. Schnitzer’s testimony nor in the outset of Mr. Schnitzer’s testimony do Complainants demonstrate that their witness has the requisite qualifications and credentials, let alone practical project management experience, to testify on transmission project planning and competitive solicitations.

¹²⁹ See Schnitzer Testimony, Exhibit F at 3:11-12.

¹³⁰ See Schnitzer Testimony, Exhibit F at 6 (Figure 2); *see also* Complaint at 30.

Fig. 2: Illustrative Timeline for Solicitation and Directly Assigned Projects²



This simplistic, incomplete, and inaccurate view of the process leads Mr. Schnitzer to assume (without demonstrating the veracity of his assumptions) that: (1) the incumbent transmission owner begins immediately upon initiation of the direct assignment without incurring delays, and (2) a 1-2 year process to select a winner in a solicitation means that winning bidder is systematically 16-20 months delayed. Because Complainants’ economic analysis rests solely on a false and unsupported assumption – Mr. Schnitzer’s testimony collapses and has no real value.

As demonstrated herein, and in the protests and supporting affidavits of LS Power Grid Midcontinent, LLC and Viridon Energy LLC (“Viridon”), the competitive solicitation processes do not delay the in-service dates for transmission projects, as nonincumbent developers are routinely faster than incumbent developers and incumbent developers do not start as early as Figure 2 implies.¹³¹ MISO’s incumbent sample in the R Street Study

¹³¹ See Toleman Affidavit at 9-11; see also Hartman affidavit at 16-17; see also R Street Study, Exhibit E, at 4.

were delayed by an average of 215 days (or a median delay of 108 days), as compared to the MISO competitive project, which was 204 days early.¹³² In SPP, incumbent sample projects were delayed an average of 129 days (6-day median), as compared to an 80-day average (98-day median) for the four competitive projects.¹³³ Importantly, although some SPP competitive projects have experienced delays, incumbent projects “also experience meaningful schedule extensions and long development timelines.”¹³⁴

Mr. Schnitzer’s testimonial charts further present misleading and false depictions in Figure 3 because the allegation of a 20-month delay in MISO and 16-month delay in SPP omits the actual in-service date achieved (or RTO-planned in-service date) for the project.¹³⁵ Notably, the completed competitive project in MISO has been completed on time or ahead of the RTO-determined in-service date, and those in SPP finished faster than that of incumbent developers. The median total time for transmission projects was 1645 days for the competitive project in MISO versus 1835 days for comparable incumbent projects. The median total time in SPP was 1825 days for competitive projects and 1884 days for comparable incumbent projects.¹³⁶ Tellingly, Mr. Schnitzer fails to grapple with the fact that the completed competitive project in MISO finished on or ahead of the RTO-determined in-service date, and the two projects in SPP that ran past their in-service date were subjected to serious ROE basis point reduction penalties.¹³⁷

¹³² See R Street Study at 37.

¹³³ See *id.* at 33.

¹³⁴ See *id.* at 34.

¹³⁵ See Schnitzer Testimony, Exhibit F at 14; Complaint at 32-34 (Figures 5 and 6).

¹³⁶ See Hartman Affidavit at 16:8-10.

¹³⁷ See *id.* at 14:14-17.

b. The Data Does Not Show That Solicited Projects Are More Delayed Than Directly Assigned Projects.

While Complainants characterize the “costs of delaying data center interconnections” as “huge,”¹³⁸ “massive,”¹³⁹ and “extraordinary,”¹⁴⁰ they fail to demonstrate that depriving ratepayers of the valuable protection against excessive rates provided by competition would actually avoid such delays. Complainants assert that solicited projects are delayed more often than incumbent-built projects, but their data is selective. At the outset, Complainants’ present their 16-20 month delay assertion as an observed reality, when in actuality, the projects it bases this figure on are still in progress. The delay claim is based on imprecise process references, rather than sound methodology, and it generally refers to projects under development with unknown final timelines.¹⁴¹

A 2024 report from the Brattle Group and Grid Strategies LLC found that projected in-service dates for certain upgrades to support more generation capacity were most often delayed due to corporate capital constraints, resulting in prioritization of safety projects (e.g., wildfire risk mitigation) over interconnection of new generators.¹⁴² The report additionally found that certain transmission owners’ construction management practices and more specifically, corporate limits on their approved vendor lists, can significantly delay construction timeline estimates, resulting in longer and more uncertain construction

¹³⁸ Complaint at 50.

¹³⁹ *Id.* at 45.

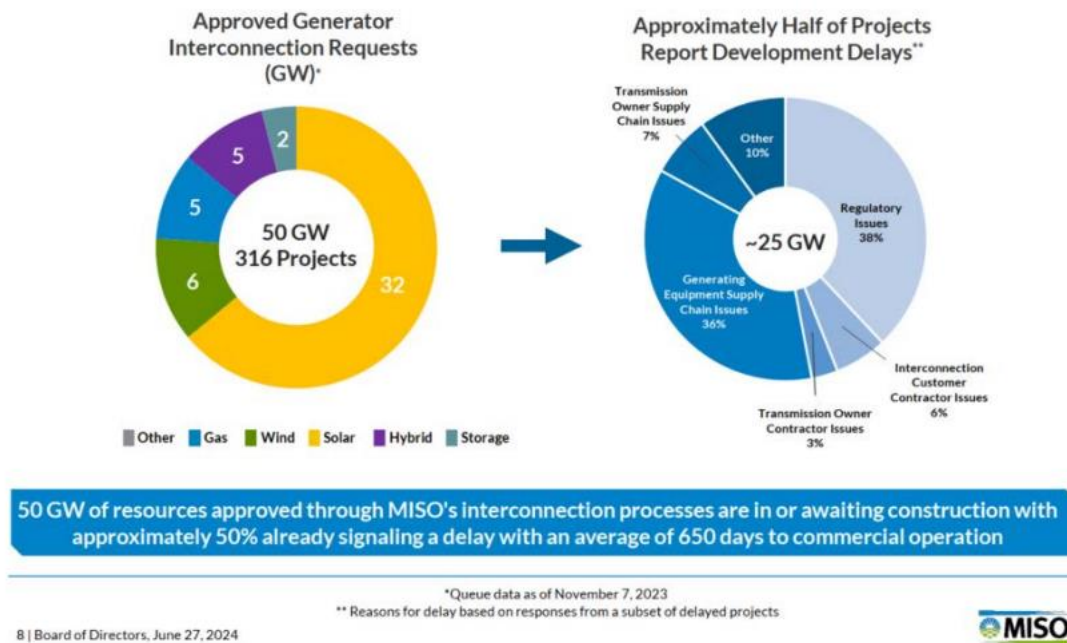
¹⁴⁰ *Id.*

¹⁴¹ *See* Hartman Affidavit at 17:17-20.

¹⁴² “Unlocking America’s Energy,” The Brattle Group, August 2024 at 77, available at <https://www.brattle.com/wp-content/uploads/2024/08/Unlocking-Americas-Energy-How-to-Efficiently-Connect-New-Generation-to-the-Grid.pdf>, (last accessed May 27, 2026).

schedules that impact project marketing and financing.¹⁴³ Additionally, a recent MISO report shows regulatory issues and supply chain issues as responsible for the vast majority of development delays.¹⁴⁴ See the figure below.¹⁴⁵

FIGURE 2 | MISO Construction Delays Constrain 2023 Capacity Additions to 5.6 GW (nameplate)¹⁸⁶



Complainants claim “every” competitive project is delayed.¹⁴⁶ This figure conveniently avoids those projects, included in Complainants’ own Figure 5, that are not delayed.¹⁴⁷ In MISO, for example, the RIKY (288 days), Hartburg-Sabine (357 days), HIMB (347 days), and Full Coleman (425 days) projects all finished within the tariff

¹⁴³ *Id.* at 126.

¹⁴⁴ *Id.* at 78.

¹⁴⁵ *Id.* (citing, MISO Board of Directors, “Strategy Update: Reliability Imperative,” June 27, 2024, p. 7-8).

¹⁴⁶ *See* Complaint at 4, 30.

¹⁴⁷ *See id.* at 32, *see* Figure 5.

window.¹⁴⁸ Competitive solicitation, in fact, expands the universe of potential transmission developers, ultimately expediting development. For example, with more developers and a broader workforce, more work can occur simultaneously.¹⁴⁹ This works to reduce development timelines and relieve backlogs in the project development queue. The recent R Street Study found that in-service competitive transmission lines were developed faster than comparable incumbent projects in MISO, SPP, California Independent System Operator (“CAISO”), and ISO- New England (“ISO-NE”).¹⁵⁰ Additionally, the R Street Study observed competitive projects holding distinct timing advantages, such as in-service commitments with financial penalties for being late.¹⁵¹ Bearing in mind inherent data limitations, such as small sample size of completed projects, the R Street Study found more evidence for competition accelerating in-service dates than delaying them.¹⁵²

Even assuming *arguendo* that Complainants were right that competition results in delay, their data still would not support their claims that competition causes, or needs to cause, anything close to the 16-20 month delays Complainants allege. Indeed, even assuming *arguendo* that the competitive processes currently in place in MISO and SPP were causing 16-20 month delays, Complainants fail to explain why MISO and/or SPP could not tighten the timeline of the current solicitation process before wiping it out

¹⁴⁸ *Id.*

¹⁴⁹ See “Competitive Solicitation in Transmission Line Development Lowers Ratepayer Costs and Decreases Delays,” The Public Advocates Office, June 9, 2023, *available at* <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/press-room/reports-and-analyses/230609-caladvocates-increasing-competitive-solicitation-in-transmission.pdf>. (last accessed May 27, 2026).

¹⁵⁰ See *supra* at 5.

¹⁵¹ See Hartman Affidavit at 11:14-16.

¹⁵² *Id.*

altogether. Nor do Complainants support the counterintuitive assumption underlying their entire Complaint that incumbent utilities would, without fail, hit every project date that they claim competitive developers cannot. In fact, due in no small part to the same sort of permitting and siting issues faced by incumbents and competitive developers alike, incumbents have a long history of missing in-service dates, often by very large margins.¹⁵³ The R Street Study proves this very point.¹⁵⁴ While Complainants fixate on the front end of the solicitation process, they ignore what is actually integral: the time it takes to get a project energized.

Evidence from across CAISO, MISO, and SPP shows that, from the time a need for the transmission is identified to the date it's placed into service, competitive projects reach service as fast or faster than incumbent, directly assigned projects, even with the solicitation timelines baked in.¹⁵⁵ This measurement includes 1) the time it takes to issue an RFP, and 2) the competitive solicitation process. At the same time, the data suggests there are substantial time and cost efficiencies to be gained from FERC prodding MISO and SPP to streamline and accelerate their competitive solicitation processes.

¹⁵³ See Nathan Shreve, *et al.*, “Fewer New Miles: Strategic Industries Held Back by Slow Pace of Transmission, Rev.1” Grid Strategies, July 2025, at 9 (discussing Cardinal-Hickory Creek project developed by ITC Midwest and other incumbent transmission owners, which “faced lengthy delays” and “ultimate moved forward to completion [in 2024] after more than a decade of litigation and regulatory review”), available at https://cleanenergygrid.org/wp-content/uploads/2025/07/ACEG_Grid-Strategies_Fewer-New-Miles-2025_Rev-1.pdf (last accessed May 27, 2026); See R Street Study at 25.

¹⁵⁴ See R Street Study at 3-4.

¹⁵⁵ See *id.* at 21.

c. Complainants Mischaracterize the Facts Concerning Several Projects in an Effort to Support Their Delays Allegations.

Complainants cherry-pick five projects in the MISO and SPP regions to attempt to substantiate their delay argument. But even when one looks at these cherry-picked examples, there is more to the story than Complainants selectively reveal, and there is no evidence (and certainly none in the Complaint) that the projects would have been completed earlier if they had been directly assigned to incumbents. At base, the selected transmission projects are not in-service, making the ultimate effect of competition on each project timeline inherently inconclusive.¹⁵⁶

Wisconsin Southeast Project (“WISE”)

MISO awarded LRTP Tranche 2 Project 28, the Wisconsin Southeast Competitive Transmission Project (“WISE”) to Viridon Midcontinent LLC (“Viridon”). According to Complainants, the WISE project shows “systemic delays imposed by the solicitation process. . . .”¹⁵⁷ The Complaint explains that MISO passed over direct assignment of the project to American Transmission Company (“ATC”), who is a party to the Complaint, in favor of a competitive solicitation process.¹⁵⁸ The Complaint avers that ATC could have commenced development upon MISO Board approval of the project in 2024, while the solicitation process caused 15 months of delay to choose a competitive developer. But Complainants fail to substantiate ATC’s allegation; fail to provide context as to how competition is implemented in MISO; and conveniently neglect to mention that the WISE

¹⁵⁶ See Hartman Affidavit at 15-17.

¹⁵⁷ See Complaint at 43.

¹⁵⁸ *Id.*

project is a textbook example of the enormous consumer and grid benefits that flow from competition.¹⁵⁹

Here, the selected competitive developer (Viridon) submitted superior cost containment provisions, the lowest return on equity and weighted average cost of capital, as well as the lowest Present Value of the Revenue Requirements (“PVRR”) of any potential developer.¹⁶⁰ The WISE Selection Report explains MISO’s competitive developer selection process and the WISE project, summarizes the four proposals MISO received to build and operate WISE, and explains why MISO selected Viridon to develop WISE. The four proposals were from American Transmission Company and Dairyland Power Cooperative (jointly) with WPPI Energy as a Proposal Participant, Longview Infrastructure Midwest LLC with Great River Energy as a Proposal Participant, LS Power Grid Wisconsin Inc, and Viridon Midcontinent LLC. MISO’s evaluation scores for the four proposals indicate that Viridon’s proposal had the best value across a range of factors, as shown below.¹⁶¹

Figure 3. Evaluation Scores

Proposal	Cost and Design 35%	Project Implementation 30%	Oper. & Maint. 30%	Planning Participation 5%	Score
A (Viridon)	Best	Good (3)	Good (3)	✓	86
C	Good (2)	Better (2)	Best	✓	84
D	Good (4)	Best	Good (3)	✓	78
B	Good (3)	Good (4)	Better (2)	✓	74

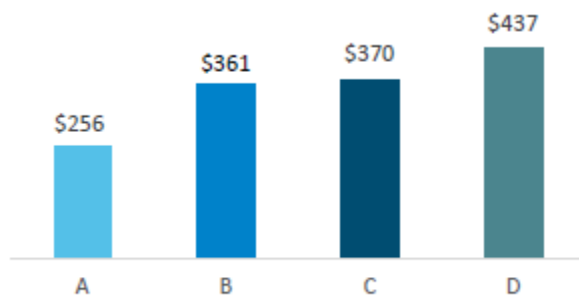
¹⁵⁹ See Direct Testimony of Jeff L. Dodd on Behalf of Viridon, at Table 1, 3-4 (filed in Docket No. EL26-58-000 on May 27, 2026) (“Dodd Affidavit”).

¹⁶⁰ See “WISE Selection Report,” MISO, at iii (Jan. 6, 2026), available at https://cdn.misoenergy.org/WISE_Selection_Report734486.pdf (last accessed May 27, 2026) (hereinafter “WISE Selection Report”).

¹⁶¹ See WISE Selection Report at iii.

As indicated in the Report, while both Viridon and Developer C had the most competitive proposals, Viridon submitted superior cost containment provisions. By comparison, MISO indicated that Developer C had “less effective cost containment” and “the highest return on equity and weighted average cost of capital of any potential developer.”¹⁶² MISO’s estimate of the PVRR over a 40-year period as shown below (MISO’s Estimated PVRR) indicates Viridon had the lowest PVRR (Developer A), which reinforces that it offered the least cost solution. MISO attributed the lower amount due to Viridon’s very low capital cost estimate and lowest weighted average cost of capital.

MISO’s Estimated PVRR



Viridon has committed to a number of important cost containment provisions that will be instrumental in minimizing costs to customers as compared to other developers, including ATC. These include:

1. Soft capital cap of \$349 million. Viridon had the lowest capital cost of all the offerors, which is over 25% lower than the next bidder. To the extent the capital costs are higher than the cap, the higher amounts would be subject to a Weighted Cost of Equity cap (WACE)¹⁶³.
2. The WACE to be applied to the capital costs up to the cap are the lowest at 3.92% (of all the developers) which is lowered to 2.8% for cost overruns. While it is not known whether American Transmission Company (ATC), the incumbent

¹⁶² *Id.* at iii.

¹⁶³ WACE is calculated as the product of equity percentage and return on equity.

transmission owning entity, included any cost containment provisions, data from its latest Attachment O filing would suggest ATC has a WACE of 5.24% (50% Equity X 10.48% ROE).

3. Viridon's cost containment provisions also includes annual revenue requirement caps.
4. Viridon waived the Construction Work in Progress ("CWIP") incentive.¹⁶⁴

This solicitation demonstrates that MISO's competitive bidding process has been successful in selecting a developer who has committed to substantial cost containment provisions to protect customers, especially given that it is atypical for an incumbent to offer any cost containment commitments outside of the competitive process. Complainants choose to focus only on avoiding delay while ignoring the larger picture, including the consumer benefits that flow from competitive bidding and the opportunities that exist for improving the process while maintaining those consumer benefits.¹⁶⁵

The WISE project further establishes evidence that rebuts the Complaint's generic claims and insinuations that the competitive solicitation process and competitive projects are delaying the interconnection of large loads. In fact, the responsibility for any delays often lies with the incumbent utility itself.¹⁶⁶

¹⁶⁴ See WISE Selection Report at 7-8.

¹⁶⁵ See Direct Testimony of Eric Gleason on Behalf of Viridon, at 8 (filed in Docket No. EL26-58-000 on May 27, 2026) ("Gleason Affidavit") (explaining that an 18-month solicitation process could be tightened by another six months). Mr. Gleason further explained that the maximum amount of "lost" time through the competitive solicitation process is about one month, which is easily made up through superior project execution and schedule guarantees from developers that only result from the competitive process itself).

¹⁶⁶ See Dodd Testimony at 9-11 (providing a detailed chronology of events to show that ATC itself is responsible for the delay and confusion surrounding approval of the substation upgrades, which are a subset of the broader WISE project).

Crawfish Draw – Woodward Potter Project

Complainants' characterize the two 765 kV transmission projects termed Crawfish Draw-Woodward as "essential links in the chain" for other expedited transmission segments in the SPP region that are already approved.¹⁶⁷ Without support, Complainants' witness Cooley, who is employed by SPP incumbent transmission owner Southwestern Public Service Company ("SPS"), arbitrarily assigns blame to "delays associated with solicitation" for a 16-month lag time in initiation of service, claiming such lag time would not be present had projects been directly assigned.¹⁶⁸ Mr. Cooley claims that "subjecting the line to a mandatory Order No. 1000 process will thus delay new load and generation service requests on SPS's system."¹⁶⁹ Mr. Cooley fails to offer any insight into what specifically about the solicitation process causes delays.¹⁷⁰

Mr. Cooley, whose company stands to gain through direct assignment and elimination of competition, advances bald, unsupported assertions,¹⁷¹ but does not offer even one concrete example of how much, if any, time would supposedly have been saved in the case of the Crawfish Draw-Wood by eliminating the competitive solicitation process. Notably, as demonstrated through the supporting testimony from Viridon Witness Toleman, there is no credible evidence that shows that the competitive solicitation process in SPP has impeded or slowed down transmission development, especially given that 1) competitive bids routinely include enforceable schedule guarantees backed by financial

¹⁶⁷ See Complaint at 41.

¹⁶⁸ *Id.*, See also Complainants' Exhibit A, Cooley Testimony, at 5-6.

¹⁶⁹ See Cooley at 10.

¹⁷⁰ See Toleman Affidavit at 9-11, 13.

¹⁷¹ See Complainant Exhibit A, Cooley Testimony, at 17 ("an unnecessary and time-consuming solicitation process slows the realization of benefits...").

penalties for missed in-service dates; 2) competitive bid proposals undergo independent evaluation by SPP and the SPP Independent Evaluation Panel for cost reasonableness, schedule credibility, and prudence; and 3) the time devoted to the solicitation process is not wasted time because it yields long-term savings and a better allocation of risk between customer and developer.¹⁷²

Minnesota Data Center customer

Complainants next highlight a project to serve a “Minnesota Data Center customer” that avoided a competitive solicitation based on Minnesota’s ROFR. Complainant witness Standing, who is employed by an incumbent transmission owner (Northern States Power Company, owned by Complainant Xcel Energy), asserts that had the necessary transmission projects been subject to solicitation, they would have been delayed “20 months.”¹⁷³ But he fails to explain exactly how the solicitation process resulted in such delay, much less how much, if any, delay would have occurred under an improved solicitation process. Once again, Complainants introduce a fledgling assertion and fail to follow it with any supporting data.

MARS Project

Complainants next describe the nine-component MARS Project, including four parts requiring solicitation.¹⁷⁴ According to Complainant witness Terry, the MARS project has faced 22 months of delays, which Mr. Terry, an employee of an incumbent transmission owner (ITC Midwest), attributes *entirely* to the solicitation process.¹⁷⁵ What he neglects

¹⁷² See Toleman Affidavit at 10-11.

¹⁷³ See Complaint at 41.

¹⁷⁴ See Complaint at 42.

¹⁷⁵ See Complainants’ Exhibit D, Terry Testimony at 5.

to mention is that the delay in this case was attributable to a very particular feature of MISO’s solicitation process, namely, MISO’s tariffed “staggering” process – a feature that could be eliminated or substantively modified. MISO’s Business Practice Manual explains that if there are multiple Competitive Transmission Projects contained in a single MTEP, MISO retains discretion to elect to stagger the release of RFPs upon consideration of project complexity, the proposal window, and the level of internal and external resource commitment needed to develop the RFP and evaluate later proposals, as well as the timing impacts of the Competitive Developer Selection Process should MISO elect to stagger.¹⁷⁶ If Complainants and their witness had consulted the MISO tariff, they would know that it is MISO that determines proposal windows and deadlines.¹⁷⁷ Such proposal window is designed to match the complexity of the project with that of the evaluation, and are explicitly not absolute or formulaic.¹⁷⁸ MISO has the ability to expedite and accelerate the Competitive Transmission Process to ensure speed-to-power. However, if Complainants find MISO’s staggering process to be unjust and unreasonable, they could have, instead, submitted a complaint asking the Commission to reform that, rather than proposing the Commission take an ax to competition. But improving the process in this and other ways is, obviously, not in Complainants’ self-interest.

Additionally, Complainants incorrectly assess the solicitation timeline of the MARS project. The Complaint claims that the MARS project took over 22 months, based on the assumption that the developer could have started the project the month the project

¹⁷⁶ See MISO BPM-027-r15, effective January 8, 2025, at p. 26-27.

¹⁷⁷ See *Id.* at 32.

¹⁷⁸ MISO BPM-027-r15 at 32.

was approved.¹⁷⁹ However, roughly half of this time period was RTO scheduling, which operates independently of the solicitation process.¹⁸⁰ As witness Hartman explains, “If RTO scheduling takes too long, it is not an indictment of the competitive process.¹⁸¹ RTO scheduling deferrals are often used to confirm the need before putting out for bid, which is done with sufficient time to meet the in-service date without delay. This is a consumer protection measure because sometimes projects are cancelled when need evaporates. The Complaint mistakenly “treats this as an uneconomic flaw within the competitive process, when it is actually an economical practice separate from the competitive process.”¹⁸²

Big Cedar Industrial Center

Complainants use the Big Cedar Industrial Center as an example of a project that was saved from delay by a state ROFR. There, two proposed data centers in Iowa required about 1,600 MW of interconnection service.¹⁸³ Because Iowa utilized a state ROFR, Complainants claim ITC Midwest was able to begin work immediately upon MISO approval.¹⁸⁴ Mr. Terry asserts that subjecting the project to a competitive solicitation would have delayed the work for at least 18 months.¹⁸⁵ In keeping with Complainants’ pattern, Mr. Terry makes the 18-month delay assertion, yet follows it with no basis or explanation of what would cause a delay of that length, or a delay of any kind for that matter.

¹⁷⁹ See Complaint at 43.

¹⁸⁰ See Hartman Affidavit at 18:11-12.

¹⁸¹ Hartman Affidavit at 18:12-13.

¹⁸² *Id.*

¹⁸³ See Complaint at 44.

¹⁸⁴ See Complaint at 45.

¹⁸⁵ See Terry Testimony at 8.

Complainants work to undermine their own credibility by continuously assigning arbitrary time periods to their delay arguments and providing no reasoning or supporting evidence for such assertions. Complainants do not explain, because they cannot, what about the solicitation process, specifically, creates delays of 16, 18, and 20 months.

d. Complainants Fail to Acknowledge That Incumbent Projects That Use the MISO Expedited Project Review Process Are Often Delayed, With Cost Overruns.

In a passing footnote,¹⁸⁶ Complainants reference MISO’s Expedited Project Review (“EPR”) study process, which is frequently utilized to ensure timely responses to emergent, significant load additions or other new system needs that require addressing regulatory requirements, construction and other project development support prior to approval of the annual MISO Transmission Expansion Plan (“MTEP”).¹⁸⁷ Unlike MISO’s Long Range Transmission Planning focused on *long-term* projects, the EPR process addresses an incumbent transmission owner’s emergent needs (actual or claimed) quicker than the regular MTEP cycle process. Given the urgency and the lack of competitive solicitations, EPR projects should, if one is to believe Complainants, be completed on schedule, particularly if one accepts Mr. Terry’s claims that directly assigned projects outside of a competitive bidding process “have a substantial head start in the development process, prior to Board approval, compared to projects subject to the solicitation process.”¹⁸⁸ But even where these projects, which are, by definition, supposed to be urgent,¹⁸⁹ are

¹⁸⁶ See Complaint at 29, fn. 127.

¹⁸⁷ See MISO Tariff, Att. FF § I.D.1.c.

¹⁸⁸ See Terry at 4:1-3.

¹⁸⁹ See MISO Tariff, Att. FF § I.D.1.c (describing the EPR process as being intended for use when “a Transmission Owner determines that system conditions warrant the urgent development

concerned, incumbent transmission owners often miss the expected in-service dates, in some cases by wide margins.

Because the Complaint contends that time is of the essence and the Complainants assert that the competitive process creates significant lags in constructing the necessary upgrades in a timely fashion, Protesters evaluated the use of the MISO EPR process by incumbent transmission owners to ascertain whether these transmission owners constructed all the transmission projects approved through the EPR process in a timely fashion and with the same expected costs as originally proposed and approved by the MISO Board. Because the EPR process is a special option used outside of the regular annual MTEP process, the status of these projects is a key indicator to evaluate the cost-effectiveness and time efficiency associated with the incumbent transmission owners, including ITC Midwest and other ITC Holdings Corp. companies, that initiated this process.

Protesters reviewed processed and approved EPRs included in MTEP18 through MTEP24 and found that EPRs were not always implemented as originally proposed and approved by the Board. For instance, there were 32 EPR projects included in MTEP18 through MTEP24 for the ITC group comprising of ITC Midwest, ITC Transmission, and Michigan Electric Transmission Company (“METC”). The table below shows ten EPR projects by MISO Project ID that were either delayed or had significant cost variances or both.

of system enhancements that would be jeopardized unless the Transmission Provider performs an expedited review of the impacts of the project”).

ITC EPRs with time and/or cost variances¹⁹⁰

MTEP	Project ID	Transmission Owner	Expected In-Service Date at MTEP Approval	Expected (or Actual) In-Service Latest	Cost Variance	Comments
MTEP'19	16686	ITC Midwest	9/30/2020	3/12/2030	36.28%	
MTEP'19	15704	ITC Transmission	3/31/2021	12/16/2024	124.50%	
MTEP'21	21105	ITC Transmission	5/28/2023	12/31/2027		No cost variance reported so far
MTEP'23	24449	ITC Midwest	12/31/2024	7/31/2026	18.80%	Excluding 2 withdrawn projects
MTEP'23	25060	ITC Midwest	6/30/2025	6/1/2026		No cost variance reported so far
MTEP'23	24393	ITC Midwest	12/31/2024	7/16/2025	80.74%	
MTEP'23	24115	ITC Transmission	6/3/2024	6/3/2024	227.27%	
MTEP'23	24593	ITC Transmission	5/31/2025	12/3/2026		No cost variance reported so far
MTEP'23	24740	ITC Midwest	6/1/2024	4/30/2026	21.06%	
MTEP'24	50106	ITC Midwest	3/31/2026	10/1/2026		No cost variance reported so far

The above table shows the following delays from direct assignment.

- Project 16686 has a 10 year Delay from Expected In-Service Date
- Project 15704 has a 3 year and 9 month Delay from Expected In-Service Date
- Project 21105 has a 4 year and 7 month Delay from Expected In-Service Date
- Project 24449 has a 1 year and 5 month Delay from Expected In-Service Date
- Project 25060 has a 1 year Delay from Expected In-Service Date
- Project 24393 has a 6-1/2 month Delay from Expected In-Service Date
- Project 24593 has a 1-1/2 year Delay from Expected In-Service Date
- Project 24740 has an almost 2 year Delay from Expected In-Service Date
- Project 50106 has a 6 month Delay from Expected In-Service Date

Even disregarding the often-staggering cost variances, the foregoing makes clear that there is no assurance that incumbent transmission owners, even in the case of what they characterize as urgently needed projects, will complete projects on a timely basis.

¹⁹⁰ The data was sourced from MTEP18 through MTEP24 and MISO EPR dashboard. See <https://www.misoenergy.org/engage/MISO-Dashboard/>. Certain information such as original in-service date was also verified through various MTEPs (Appendix A). The review of the data is current through May 21, 2026. Protesters did not analyze status of EPRs past 2024 because these EPRs were approved by the MISO Board in December 2025 and not enough time has passed to ascertain a realistic understanding of the status of those EPRs.

These examples demonstrate that faster timelines in the process do not always equate to meeting expected project in service dates. Unlike the winning developer in MISO's Competitive Transmission Process, incumbent transmission owners that are directly assigned transmission projects are not subject to any written, binding cost containment and schedule commitments. Nothing in the Complaint suggests or shows that incumbent transmission owners will (or can) meet schedule and cost commitments that can only be derived from the cost discipline and accountability imposed in the competitive process. To the contrary, the data shows that the incumbent transmission owners are not as capable as they seem to claim to meet the speed-to-power demands of the moment, thereby raising the question as to whether more – not fewer – transmission projects should be subjected to competitive solicitations.

2. The Complaint Fails to Account for Existing Processes to Address Speed-To-Power Considerations for Transmission Projects, Including Ongoing Initiatives to Reform Competitive Processes.

Even accepting Complainants' overblown, unsupported, and self-serving claims about delays from the current competitive solicitation processes, those claims would, at most, establish that MISO's and SPP's processes could be improved. But all stakeholders, including Protesters, recognize that transmission demands are both swiftly evolving and of utmost importance. For their part, SPP and MISO clearly also recognize this urgency and are advancing ongoing initiatives to reform competitive stakeholder processes accordingly. Complainants briefly acknowledge that MISO and SPP are pursuing transmission solutions, such as non-firm service and reviewing limited transmission projects of out of

cycle, but argue these steps are not enough.¹⁹¹ What Complainants discount as merely “short-term solutions,¹⁹²” are, in reality, a series of measures that would address just the issues Complainants’ highlight and do so without depriving consumers of the vital protections afforded by competition.

SPP is in the midst of proposing for approval various revision requests to implement solicitation process improvements.¹⁹³ SPP’s recommendations include optimizing the current RFP response window to reduce cycle time, adjusting the scoring rubric for competitive bids, and development of standardized sensitivities related to project cost control.¹⁹⁴ A number of these recommendations could be implemented as quickly as to impact projects from the 2026 ITP.¹⁹⁵ Additionally, SPP proposed to its Board a transition of its transmission-owner selection framework from competitive bids to a sponsorship-based approach.¹⁹⁶ A strong majority of SPP’s transmission ‘task force’ voted to maintain and improve the competitive bidding process, even in light of issues Complainants allege are due to competitive bidding.¹⁹⁷

¹⁹¹ See Complaint at 28.

¹⁹² *Id.* at 29.

¹⁹³ See “SPP Works to Improve Order 1000 Processes,” RTO Insider, May 11, 2026, *available at* https://www.rtoinsider.com/131955-spp-works-improve-ferc-order-1000-process/?utm_source=ActiveCampaign&utm_medium=email&utm_content=Today%20%40%20RTO%20Insider&utm_campaign=Daily%20News%20for%20Paid%20%26%20Trial%20Subscribers%3A%20xxx%20%28Copy%29 (last accessed May 27, 2026).

¹⁹⁴ See SPP RR 751 Recommendations Update, April 2026.

¹⁹⁵ See SPP O1000 Strategic Review Task Force, Recommendations to the SPC, January 2026, *available at* <https://www.spp.org/documents/75587/o1000srtf%20final%20report%20draft%20-%20122325.pdf> (last accessed May 27, 2026).

¹⁹⁶ See Recommended Improvements for SPP’s Order 1000 Transmission Owner Selection Process, SPP.

¹⁹⁷ *Id.*

While SPP retains full discretion over the RFP window duration (ranging from 90-180 days), RFP issuance remains subject to incumbent NTC-C delays, which create a staggering effect.¹⁹⁸ As SPP encounters timing cramps, recommendations from the SPP Board advance a staggering process similar to that present in MISO already and discussed herein.¹⁹⁹

Further, MISO is concurrently advancing competitive process improvements, such as streamlining the solicitation timeline, revising its Business Practices Manuals on Competitive Transmission Process and Minimum Project Requirements for Competitive Transmission Projects, revising the Requests for Proposals (“RFPs”) templates used for competitive transmission projects, and soliciting targeted stakeholder feedback.²⁰⁰

The Complaint largely ignores that projects with tight need timelines are exempt from competition.²⁰¹ MISO’s Immediate Need Reliability Project designation exists to meet needs identified within 36 months, which are directly assigned to the applicable incumbent transmission owner to develop, own, and operate.²⁰² Similarly, SPP has a Short-Term Reliability Projects (“STRP”) designation to meet needs within three years, which are directly assigned to an incumbent.

¹⁹⁸ See SPP Business Practice Manual 7700.

¹⁹⁹ See *supra* at 52-53.

²⁰⁰ Competitive Transmission Timeline, MISO, Sept. 25, 2024, available at <https://cdn.misoenergy.org/20240925%20LRTP%20Workshop%20Item%2002%20Competitive%20Transmission%20Timeline649742.pdf> (last accessed May 27, 2026).

²⁰¹ See Hartman Affidavit at 19:17-18.

²⁰² “Immediate Need Reliability Projects,” MISO, January 1, 2021, available at <https://cdn.misoenergy.org/Immediate%20Need%20Reliability%20Project514798.pdf> (last accessed May 27, 2026).

Complainants argue their proposed remedies are the only effective solution, the only way to “win the AI race” and stave off attendant “existential threats,”²⁰³ but ignore existing and proposed mechanisms that address those threats without eliminating competitive solicitations altogether. There are other avenues for addressing transmission demand and speed-to-power than to request FERC rush to abandon its own Order 1000 requirements.

a. The Complaint Completely Ignores the Existing Language in Current MISO and Tariff, and the Existing Protections related to MISO or SPP-Directed In-Service Dates and Competition and Fails to Show that the Existing Protections are Unjust and Unreasonable.

It is MISO and SPP that determine the need for a transmission project, the project specifics, and the date that the project is required for system reliability. It is the responsibility of MISO and SPP to determine the required in-service dates. It is fundamental and foundational in transmission planning that transmission is independently planned around the date that projects are actually needed. MISO and SPP, in their independent planning function, establish the in-service dates. If there is a true Immediate Need, both SPP and MISO already have mechanisms in their Tariffs to directly assign the project.

Specifically, under MISO’s tariff today: (1) MISO determines the in-service date; and (2) MISO will either set the competitive project out for bid within 60 days of MISO Board approval or electively uses its staggering process.²⁰⁴ The MISO Tariff is clear that in determining the schedule of the RFP releases, and when staggering is used, the

²⁰³ See Complaint at 1.

²⁰⁴ See *Midcontinent Indep. Sys. Op, Inc.*, 161 FERC ¶ 61,248 at PP 17-18 (2017).

Transmission Provider will consider the timing impacts of the Competitive Developer Selection Process with respect to the in-service dates of the Competitive Transmission Projects. Specifically, Attachment FF – MISO Tariff states provides:

In determining the schedule of RFP releases when staggering is used, the Transmission Provider will consider the timing impacts of the Competitive Developer Selection Process with respect to the in-service dates of the Competitive Transmission Projects.

In all events, the schedule of RFP releases developed by the Transmission Provider shall provide that all RFPs are released not later than three hundred and sixty five (365) Calendar Days after the date the Transmission Provider Board approved the Competitive Transmission Facilities for inclusion in Appendix A of the MTEP. **If the Transmission Provider elects not to stagger the release of RFPs, the Transmission Provider shall release each RFP within sixty (60) Calendar Days of the date the respective MTEP was approved by the Transmission Provider Board.**²⁰⁵

In a MISO Business Practice Manual 27 (“BPM 27”)²⁰⁶, effective as of January 8, 2026, MISO asserts sole discretion over the length of proposal windows. BPM 27 states specifically: “MISO will determine the Proposal Window based on characteristics of the Project, and in general, the Proposal Window will match the complexity of the Project with the complexity of the evaluation.”²⁰⁷ While many of MISO’s Tranche 2.1 competitive windows have been set for 165 days²⁰⁸, MISO retains absolute discretion to set competitive windows for less than 165 days under its Proposal Submission Deadline

²⁰⁵ See MISO Tariff, Attachment FF at 125 (emphasis added).

²⁰⁶ See MISO BPM-27-r15, available at <https://www.misoenergy.org/planning/competitive-transmission-administration/#t=10&p=0&s=FileName&sd=asc> (last accessed May 27, 2026).

²⁰⁷ *Id.* at 31-32.

²⁰⁸ MISO utilized a 165-day window for all LRTP Tranche 2.1 projects except the RIKY RFP. RIKY was considerably less complex than all the other RFPs in the tranche with only one new 345 kV and an estimated cost of \$73.6M. Another development to flag – MISO announced the winners of both the WIIL and STIW projects (Joint bid from Ameren/NextEra) last Friday 5/15/2026 ahead of the required deadline for MISO by the tariff. That reduced the overall timeline of WIIL by 49 days and STIW 35 days.

definition.²⁰⁹ BPM 27 also anticipates situations where competitive projects within MISO could have Proposal Windows as short as 90 days with no Tariff or BPM changes, as “The project characteristics for each Proposal Window are indicative, not absolute or formulaic.”²¹⁰ For example, in MISO Tranche 2.1 windows, MISO shortened the Proposal Submission Deadline to 90 days for the Reid EHV – Indiana/Kentucky State Line (“RIKY”) project, based on its determination that RIKY was considerably less complex than all the other RFPs in the tranche with only one new 345 kV line addition and an estimated cost of \$73.6 million.²¹¹ BPM 27 specifically outlines:

6.1 Proposal Window & Deadline

Proposals may be submitted once an RFP has been issued (i.e. the date and time MISO posted the public version of an RFP to its website) but no later than the Proposal Submission Deadline specified in the issued RFP, in accordance with the MISO Tariff²⁸; hereafter known as the “Proposal Window” in this BPM-027.

Any Proposal submission received outside the Proposal Window, including the submission of the Proposal Deposit, shall not be accepted and will be deemed invalid and not evaluated by MISO. Any unsolicited offers and/or proposals submitted to MISO (e.g. a proposal that is not associated with an issued RFP) are prohibited and will not be reviewed or considered.

The applicable Proposal Window will be stated in the RFP. MISO will determine the Proposal Window based on characteristics of the Project, and in general, the Proposal Window will match the complexity of the

²⁰⁹ MISO’s Tariff definition of Proposal Submission Deadline: The date and time Proposals must be submitted to the Transmission Provider by in order to be considered and evaluated by the Transmission Provider. The Submission Deadline shall be no later than 5:00 PM EPT on the date specified in the RFP, which shall not exceed one hundred and sixty-five (165) Calendar Days from the date the RFP was issued by the Transmission Provider, unless such date falls on a Saturday, Sunday, or MISO observed holiday in which case the Proposal Submission Deadline shall be the next Business Day that is not a MISO observed holiday.

²¹⁰ MISO BPM 27 at 32.

²¹¹ See LRTP – Tranche 2.1 Competitive Transmission Projects Schedule, *available at* [https://cdn.misoenergy.org/LRTP Tranche 2.1 RFP Release Schedule671259.pdf](https://cdn.misoenergy.org/LRTP%20Tranche%202.1%20RFP%20Release%20Schedule671259.pdf) (last accessed May 27, 2026).

Project with the complexity of the evaluation. Indicative project characteristics matched with different Proposal Windows are shown in Table 6.1-1 below. The selection of a Proposal Window may not necessarily match all the project characteristics. The project characteristics for each Proposal Window are indicative, not absolute or formulaic.

An entity must be certified by MISO as a QTD at the time the Proposal is submitted.

PROJECT CHARACTERISTICS	INDICATIVE PROPOSAL WINDOW		
	90 Calendar Days	120 Calendar Days	165 Calendar Days
Complex Routing/Siting (e.g., river crossings, wetlands, urban areas, etc.).	Low	Moderate	High
States/RTOs Impacted (Quantity)	1	2	2+
In-Service Date (years from MTEP)	3 - 4 years	4 - 5 years	5 years +
Facilities (Quantity)	1 Facility	1 - 2 Facilities	2+ Facilities (Lines and Substations)
Project Value (USD)	\$5M - \$100M	\$100M - \$250M	Over \$250M

Table 6.1-1: Project characteristics aligning with Proposal Windows²¹²

By failing to recognize MISO’s existing discretion to expedite competitive bid processes when needed to accommodate earlier in-service dates, the Complaint fails to establish that the Existing Definitions of Project Submission Deadline in MISO Tariff are Unjust and Unreasonable. The Complaint also ignores MISO’s ability to make adjustments during the MISO evaluation process. MISO has discretion to shorten its evaluation process once bids are submitted. MISO tariff states that MISO will evaluate a proposal within 165 calendar days from the respective Proposal Submission Deadline. The BPM specifies that MISO targets its evaluation time span to match the proposal window (*i.e.*, 90, 120, or 165 calendar days).

²¹² MISO BPM 27 at p. 32-33.

For example, winners of the fourth and fifth of seven competitive projects identified in the Long Range Transmission Planning (LRTP) Tranche 2.1 portfolio were announced on May 15, 2026, after MISO’s board of directors approved the projects in December 2024. MISO chose the joint-developer partnership of Ameren Transmission Company of Illinois, GridLiance Heartland, LLC, Dairyland Power Cooperative, and the Illinois Municipal Electric Agency to develop both the Woodford County – IL/IN State Line 765 kV Competitive Transmission Project (WIIL) and the Sub T – IA/IL State Line – Woodford County 765 kV Competitive Transmission Project (STIW).²¹³ MISO announced the winners of both the WIIL and STIW projects ahead of MISO’s required evaluation deadline, reducing the evaluation timeline by a further 49 days in the case of the WIIL project and 35 days in the case of the STIW project.

Meanwhile in SPP, following overwhelming stakeholder support, SPP initiated a Section 205 filing in FERC Docket No. ER26-2471 to further improve its solicitation process, with an effective date of July 6, 2026.²¹⁴ This will have the net effect of further reducing the SPP competition proposal timeline by an additional 60 days, as stated by SPP:

²¹³ See “Partnership That Includes IMEA Chosen by MISO to Develop Transmission Projects,” American Public Power Association, May 17, 2026, *available at* <https://www.publicpower.org/periodical/article/partnership-includes-imea-chosen-miso-develop-transmission-projects> (last accessed May 27, 2026).

²¹⁴ On May 6, 2026, SPP submitted revisions to Section V of Attachment Y of the Open Access Transmission Tariff (“Tariff”) in ER26-2471 to accelerate transmission development by removing unnecessary administrative delay in the Notification to Construct (“NTC”) commitment process. An effective date of July 6, 2026, was requested, *available at* [https://urldefense.com/v3/_http://click.spplist.spp.org/?qs=ABB7InYiOjEsImQiOjQ4Njh9AAwAAAAAHIWemQQEwSmNeM7szAkpqnWJyBTTaEOjbuK2D83arl3vMW-Q3KTjKiDJ4rTjZNcOwyVoV2_i9ybj0r66o1Ev0lQizX7D869e2vTFw_!!CdIIDb5c!WFGY21a4byDKdNX7PndbukXk4eDxu4AENt3Q-XNEfXoaymtOy-HRoIQIaa_MAOSkti2f7bs_MtmRPXNLa8PEZhA\\$](https://urldefense.com/v3/_http://click.spplist.spp.org/?qs=ABB7InYiOjEsImQiOjQ4Njh9AAwAAAAAHIWemQQEwSmNeM7szAkpqnWJyBTTaEOjbuK2D83arl3vMW-Q3KTjKiDJ4rTjZNcOwyVoV2_i9ybj0r66o1Ev0lQizX7D869e2vTFw_!!CdIIDb5c!WFGY21a4byDKdNX7PndbukXk4eDxu4AENt3Q-XNEfXoaymtOy-HRoIQIaa_MAOSkti2f7bs_MtmRPXNLa8PEZhA$) (last accessed May 27, 2026).

These Proposed Tariff revisions better align commitment timing with project readiness by reducing the number of days a DTO has to accept the NTC, without conditions, from ninety (90) Calendar Days to thirty (30) Calendar Days. These changes will improve efficiency while maintaining existing cost rigor and oversight.²¹⁵

Like MISO, SPP has the discretion to determine the length of the competitive window, as SPP Current Business Practice 7700 states: “SPP will determine the schedule for releasing RFPs based on staffing requirements, availability of the industry experts and the estimated time needed to complete the Competitive Upgrade” and “QRPs will have 180 calendar days (the “RFP Response Window”) to submit a RFP Response.”²¹⁶ SPP may shorten the RFP Response Window to no less than ninety (90) calendar days based on collaboration with stakeholders prior to the issuance of the RFP.” Nowhere in the Complaint do the Complainants establish such SPP Tariff language, requiring that SPP’s exclusive ability to determine the schedule based “on... the estimated time needed to complete the Competitive Upgrade²¹⁷”, is unjust and unreasonable.

SPP Current Business Practice 7700 provides:

RFP Issuance Process and Timeline

The process and timeline for RFPs is specified in Attachment Y, Section III of the Tariff. The Tariff requires that “SPP staff will issue the RFP by or before the later of (1) thirty (30) calendar days after approval of the Competitive Upgrade by the SPP BOD; or (2) eighteen (18) months prior to the date that anticipated financial expenditure is needed for the Competitive Upgrade.” SPP will determine the schedule for releasing RFPs based on staffing requirements, availability of the industry experts and the estimated time needed to complete the Competitive Upgrade. Once the final RFP issue date has been determined, QRPs will be notified by email

²¹⁵ See Transmittal Letter of Southwest Power Pool, Inc., at 6, Docket No. ER26-2471 (filed May 6, 2026).

²¹⁶ SPP OATT Business Practices 7700 Order 1000: Competitive Upgrade Request for Proposal (RFP) Process, available at [spp oatt business practices 20210120.pdf](https://www.spp.org/~/media/Files/2021/10/20/SPP_OATT_Business_Practices_7700_Order_1000_Comp_Uprg_Request_for_Proposal_RFP_Process.pdf) (last accessed May 27, 2026).

²¹⁷ *Id.*

and public announcement on the SPP website. The anticipated financial expenditure date will be developed by SPP during the portfolio development stage and will be communicated in the Competitive Upgrade Transmission Report. RFPs shall be posted to spp.org and issued to QRPs through email distribution. Email distribution will be made to the contacts provided by the QRP. It is the QRP's responsibility to update SPP through the [Request Management System](#) ("RMS") of any changes to the QRPs contact name or information.

QRPs will have 180 calendar days (the "RFP Response Window") to submit a RFP Response. SPP may shorten the RFP Response Window to no less than ninety (90) calendar days based on collaboration with stakeholders prior to the issuance of the RFP. The RFP Response Window duration will be stated in the RFP. All RFP Responses by a QRP to a RFP must be submitted to SPP utilizing RMS. Refer to Business Practice 7060 for more detail on SPP's required structure and accuracy of cost estimates. The information required for a RFP Response is included in the RFP and RFP response forms. The RFP Response form must be used when submitting the RFP Response to SPP.

On May 22, 2026, SPP filed another set of tariff revisions to improve SPP's competitive solicitation process.²¹⁸ These submitted revisions would implement updates to SPP's Transmission Owner Selection Process ("TOSP") to align with recommendations from the Order 1000 Strategic Review Task Force ("SRTF"). Such measure exemplifies that SPP is working to tangibly improve its process, therefore, this Complaint is not needed.

3. The Complaint Would Have FERC Ignore Its Core Duty to Ensure Just and Reasonable Rates

The Complaint gets it half right in asserting that FERC's "core duty under the Federal Power Act" is "to ensure electricity is available."²¹⁹ In fact, the Federal Power Act charges the Commission with "encourag[ing] the orderly development of plentiful supplies

²¹⁸ See Submission of Tariff Revisions to Transmission Owner Selection Process recommended by the Order 1000 Strategic Review Task Force, Docket No. ER26-2604-000 (filed May 22, 2026).

²¹⁹ See Complaint at 1.

of electricity ... *at reasonable prices.*”²²⁰ That Complainants would prefer that the Commission ignore this second part is as telling as it is unsurprising. But a “major purpose of the whole [Federal Power] Act is to protect consumers against excessive prices,”²²¹ and the Commission cannot, therefore, take such a selective view.²²² The Complaint fails to articulate and point to any authority empowering the Commission to suspend application of the “just and reasonable” rate standard in Sections 205 and 206 of the FPA in order to elevate “speed-to-power” considerations above affordability and just and reasonable rates for consumers.²²³ The Complaint offers a few generic platitudes about affordability,²²⁴ but fails to provide any cogent explanation as to how eliminating competition will ensure affordability and protect customers.

a. The Commission Has Determined That Consumer Protections Provided By Competition Are Necessary to Ensure Just and Reasonable Rates Over the Development of Large-Scale Multi-Decade Transmission Investments.

Complainants deride the competitive solicitation requirements arising from Order 1000 as nothing more than “bureaucratic red tape,”²²⁵ but as organizations that represent

²²⁰ *NACCP*, 425 U.S. at 670 (emphasis added). *See also Gulf States Utils. v. FPC*, 411 U.S. 747, 758 (1973) (“The [Federal Power] Act had two primary and related purposes: to curb abusive practices of public utility companies by bringing them under effective control, and to provide effective federal regulation of the expanding business of transmitting and selling electric power in interstate commerce.”).

²²¹ *Pennsylvania Water & Power Co. v. FPC*, 343 U.S. 414, 418 (1952) (“*Pennsylvania Water*”).

²²² *See FERC v. Electric Power Supply Ass’n*, 577 U.S. 260, 290 (2016) (rejecting an outcome that would “flout the [Federal Power Act]’s core objects” of “protect[ing] ‘against excessive prices’ and ensur[ing] effective transmission of electric power” (quoting *Pennsylvania Water*, 343 U.S. at 418)).

²²³ Notably, this Protest demonstrates that the Commission and the Nation can have both speed-to-power and affordability through competitive transmission processes.

²²⁴ *See* Complaint at 1, 2-3, 7, 13, 24 (the competitive process “hurts affordability for everyday Americans”).

²²⁵ *See id.* at 4.

electricity consumers facing unprecedented increases in electricity costs, Protesters submit that the consumer protections afforded by these requirements are even more important now than they were when the Commission declared federal rights of first refusal to be “unjust and unreasonable.”²²⁶ As the Commission made clear in Order 1000 and in defending its merits on appeal and in subsequent proceedings, these requirements are integral to ensuring just and reasonable rates for consumers.

In issuing Order 1000, FERC determined that the existing regulatory landscape for transmission planning failed to address long-term transmission needs. This Commission enjoys a deferential standard of review and is permitted to use predictive judgment in determining the justness and reasonableness of utility action.²²⁷ As the Commission reiterated in Order 1920-A, when issuing Order 1000, it made “several predictions that were fully consistent with the grounds for action that courts have accepted in the past, including in [*South Carolina*].”²²⁸ The Commission reasonably predicted that observed deficiencies in existing regional transmission planning and cost allocation requirements were resulting in deleterious consequences, ultimately rendering rates unjust and unreasonable, and that then-existing cost allocation requirements were insufficient to appropriately allocate costs associated in the context of the Long-Term Regional Transmission Planning requirements established in Order No. 1920.²²⁹ The Commission additionally anticipated that, absent Order No. 1920’s reforms, “regional transmission

²²⁶ See Order No. 1000 at P 284.

²²⁷ *Wisconsin Pub. Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007) (holding that “[a]n agency’s predictive judgments about areas that are within the agency’s field of discretion and expertise are entitled to particularly deferential review, as long as they are reasonable.”)

²²⁸ See Order 1920-A at P 83.

²²⁹ *Id.*

planning processes will continue to fail to identify, evaluate, and select regional transmission facilities that can more efficiently or cost-effectively meet Long-Term Transmission Needs, requiring customers to pay for relatively inefficient or less cost-effective transmission development.”²³⁰

Courts have previously permitted such predictions be used as the basis for Section 206 rulemakings.²³¹ Indeed, “[a]gencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall.”²³² In *South Carolina*, the court found the Commission satisfied its burden as to the first prong of the Section 206 analysis where “[t]he threat to just and reasonable rates arose, in the Commission’s judgment, from existing planning and cost allocation practices that could thwart the identification of more efficient and cost-effective transmission solutions.”²³³

As in Order No. 1000, the Commission explained in Order 1920-A,

Even if the identified deficiencies in existing regional transmission planning and cost allocation requirements have yet to manifest clearly in every transmission planning region, we can reasonably predict that they will in the near future. The Commission acted within its authority to prevent that eventuality from materializing.²³⁴

FERC justified its Section 206 step one finding in Order 1000 based largely on the future threat of rising rates due to an evolving resource mix, the impacts of those changing

²³⁰ *Id.* at P 83.

²³¹ *Id.*

²³² *Associated Gas Distributors*, 824 F.2d at 1008 (discussing *Wis. Gas Co. v. FERC*, 770 F.2d 1144 (D.C. Cir. 1985); *Elec. Consumers Res. Council v. FERC*, 747 F.2d 1511 (D.C. Cir. 1984)).

²³³ *South Carolina*, 762 F.3d at 66.

²³⁴ *See* Order 1920-A at P 96, quoting *South Carolina*, 762 F.3d at 64-65, 85 (“[W]hether a threat of unjust or unreasonable rates derives from a practice or the absence thereof, Section 206 empowers the Commission to address it.”)

resources on cost allocation, and recent increases in transmission investment.²³⁵ The Commission exercised its prerogative to make reasonable predictions that current transmission planning is failing to meet both present and projected future needs.

b. Complainants Fail to Substantiate Their Claims that Competition Imposes Significant Costs On Consumers.

Complainants' claim the MISO and SPP solicitation processes impose significant costs on customers, "saddling" them with higher costs and depriving them of billions in cost-reducing benefits.²³⁶ As organizations that unlike Complainants, actually represent consumers, Protesters reject the notion that eliminating competition benefits consumers. Complainants bear the burden of proof to demonstrate by a preponderance of the evidence that current MISO and SPP solicitation processes are sufficiently unjust and unreasonable so as to necessitate FERC action; Complainants fail the task with their two-sided claim of excessive costs resulting from competitive solicitation and excessive savings from incumbent development. Complainants' reliance on projections, estimates, and hypothetical harms, rather than demonstrated, RTO-specific evidence may amount to a compelling narrative, but not a successful Section 206 challenge.

Complainants overlook how innovation and more cost-effective transmission stimulated by competition would benefit the industry by reducing rate pressures and increasing the attractiveness of transmission investments as a solution to address the

²³⁵ *Compare South Carolina*, 762 F.3d at 66, with Order 1920-A PP 72–73 & n.154, 78 (citing studies indicating a need for dramatically increased transmission investment in the amount of \$330 billion by 2030 and in an amount ranging from \$750 billion to \$2.2 trillion by 2050, yet noting that transmission investment has been declining in certain regions).

²³⁶ *See* Complaint at 38.

challenges of a rapidly changing energy economy.²³⁷ Meeting the demand of the moment does not require or justify exposing customers to excessive rates in the name of satisfying rapid load growth. Rather, this is an opportunity to use Order 1000's solicitation requirements to ensure that ratepayers do not suffer further cost increases for the benefit of incumbent developers, who are well-funded enough to pay "well above the consumer cost of electricity" for "scarce available supplies."²³⁸

Complainants' cost savings argument encounters two fatal flaws: incumbent development is not immune from cost overruns, both planned and unexpected, and Complainants' evidence, while selective and misrepresentative, even shows some savings exist with competitive solicitations. Despite Complainants' broad claims, a closer look at the data, both introduced by Complainants and ignored by Complainants, demonstrates that cost savings do, in fact, result from competition.

On solicitations, Complainants assert "no study evaluating actual costs has found savings," and that "there *certainly* is no evidence of those hypothetical savings in MISO and SPP—much less savings that could exceed the demonstrated costs of delay in those regions."²³⁹ Not only does Complainants' position make no economic sense; it also ignores empirical evidence that, just as one would expect, competition does produce cost savings.²⁴⁰

²³⁷ See "Cost Savings Offered by Competition in Electric Transmission," The Brattle Group, April 2019, available at <https://www.brattle.com/insights-events/publications/report-by-brattle-economists-discusses-the-benefits-of-competitive-transmission/> (last accessed May 27, 2026).

²³⁸ See Complaint at 45.

²³⁹ See Complaint at 38.

²⁴⁰ See Toleman Affidavit at 3, Table 1 ("SPP Competitive Project Bids vs. Initial Cost Estimates").

From 2021-2025, 19 competitive transmission projects across five RTOs (SPP, MISO, PJM, ISO-NE, and CAISO) produced a 38% reduction in costs and a total initial capital cost avoidance of \$4.9 billion.²⁴¹ Conversely, of 15 non-competitive projects across those same five RTOs in the same four-year period, there was an average cost overrun of 89%.²⁴²

According to a 2019 Brattle report, competition could be expanded to 1/3 of total transmission investments and, if so, estimated customer benefits would be \$6-9 billion over just five years.²⁴³ In the CAISO territory, competitive solicitations have been found to lower the capital cost of transmission projects, and have led to an estimated 29% reduction in such costs in the CAISO territory and a 40% reduction nationwide from 2013-2019.²⁴⁴ In 2021, SPP approved its third competitive project under Order 1000, with the winning bid at \$85 million – 27% less than the next closest bid of \$116 million. Bids for that project went as high as \$151 million. The resulting \$31 million difference is direct customer savings.²⁴⁵ Incumbent costs would likely surpass the runner-up bid given their tendency to exceed initial RTO cost estimates and lack of cost guardrails.²⁴⁶

²⁴¹ See Exhibit A.

²⁴² See Exhibit B.

²⁴³ “Cost Savings Offered by Competition in Electric Transmission Presentation,” The Brattle Group, December 11, 2019, available at https://www.brattle.com/wp-content/uploads/2021/05/17805_cost_savings_offered_by_competition_in_electric_transmission.pdf (last accessed May 27, 2026).

²⁴⁴ See “Competitive Solicitation in Transmission Line Development Lowers Ratepayer Costs and Decreases Delays,” The Public Advocates Office, June 9, 2023, available at [230609-caladvocates-increasing-competitive-solicitation-in-transmission.pdf](https://www.caladvocates-increasing-competitive-solicitation-in-transmission.pdf) (last accessed May 27, 2026).

²⁴⁵ Tom Kleckner, “SPP Board of Directors/Members Committee Briefs: Oct. 26, 2021,” RTOInsider, Nov. 1, 2021, available at <https://www.rtoinsider.com/articles/28966-spp-board-directors-mc-102621> (last accessed May 27, 2026).

²⁴⁶ Devin Hartman, “Plenty of low-hanging fruit: How FERC can catalyze transmission infrastructure,” UtilityDive, April 9, 2021, available at <https://www.utilitydive.com/news/plenty->

In a response memorandum following criticism of the aforementioned 2019 report, Brattle stated that using competitive solicitations in transmission development is estimated to save 20% to 30% of project costs compared to traditionally-developed transmission projects.²⁴⁷ On that basis, Brattle recommended that policymakers and system planners consider expanding the scope of competitive solicitations for transmission projects, estimating that doing so could save \$8 billion over the course of five years.²⁴⁸ An MIT study analyzed data on ISO cost estimates and found the proposals submitted in response to the RFPs analyzed in the study contained a “strikingly” wide range of estimated costs between various proposals for the same project or to meet the same transmission expansion need.²⁴⁹ This finding led researchers to conclude that there is a “substantial potential benefit” to competitive procurement.²⁵⁰

Available data do not support Complainants contention that delays supposedly attributable to competitive solicitations “saddle customers with higher costs”²⁵¹ and instead support the common sense proposition, embraced in Order No. 1000, that competition can

[of-low-hanging-fruit-how-ferc-can-catalyze-transmission-infrastruct/598088/](https://www.ferc.gov/ferc-can-catalyze-transmission-infrastruct/598088/) (last accessed May 27, 2026).

²⁴⁷ “Response to Concentric Energy Advisors’ Report on Competitive Transmission,” The Brattle Group, August 2019, at 2, available at https://www.brattle.com/wp-content/uploads/2021/05/16873_response_to_concentric_energy_advisors_report_on_competitive_transmission.pdf (last accessed May 27, 2026).

²⁴⁸ *Id.*

²⁴⁹ See “Competition for Electric Transmission Projects in the U.S.: FERC Order 1000,” Paul L, Joskow, February 20, 2019, available at <https://cepr.mit.edu/wp-content/uploads/2021/09/2019-004.pdf> (last accessed May 27, 2026).

²⁵⁰ *Id.*, see also Toleman Affidavit at 3 (“Competitively bid projects consistently offer costs below SPP’s independent third-party cost estimates. Second, binding cost containment provisions including capital cost caps, annual revenue requirement caps, return-on-equity caps, and schedule guarantees protect ratepayers from cost overruns and missed in-service dates.”)

²⁵¹ Complaint at 38.

be expected to reduce costs borne by consumers.²⁵² To be sure, there have been instances in which competitively bid projects experienced costs overruns. But as Witness Hartman notes regarding the the R Street Study, “Cost increases during development affect competitive and incumbent projects alike.”²⁵³ According to Witness Hartman, this suggests exogenous, industry-wide factors as the core driver of cost increases, rather than differences in developer models.²⁵⁴ R Street looked at cost increases affecting both incumbent and competitive projects and found that even with cost increases, “initial savings based on bids from competitive solicitations—particularly those highlighted in previous analyses—are largely maintained (relative to incumbents) by the time projects go into service.”²⁵⁵

The aforementioned MIT study found that data for initial project cost estimates and final projects show significant cost escalations for many traditionally-developed transmission projects, including inflation, routing or project changes, and siting complications.²⁵⁶ Please see the below table from the Brattle Group.²⁵⁷

²⁵² See Toleman Affidavit at 5 (“The trend is undeniable: competitively bid projects consistently are bid below the third-party study cost, while directly assigned projects consistently rise to or exceed it.”)

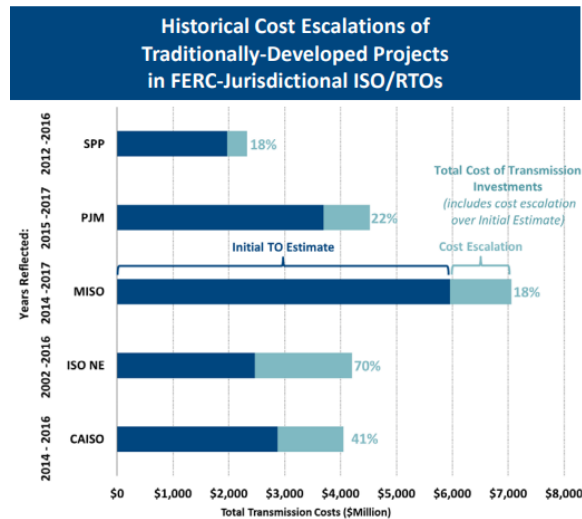
²⁵³ Hartman Affidavit at 23:6-7.

²⁵⁴ *Id.* at 23:7-8.

²⁵⁵ See “Competition for Electric Transmission Projects in the U.S.: FERC Order 1000,” Paul L, Joskow, February 20, 2019, available at <https://ceepr.mit.edu/wp-content/uploads/2021/09/2019-004.pdf> (last accessed May 27, 2026); see also R Street Study at 5.

²⁵⁶ *Id.*

²⁵⁷ See “Cost Savings Offered by Competition in Electric Transmission Presentation,” The Brattle Group, December 11, 2019, at slide 15, available at https://www.brattle.com/wp-content/uploads/2021/05/17805_cost_savings_offered_by_competition_in_electric_transmission.pdf (last accessed May 27, 2026).



* Weighted average based on competitively selected transmission investments in each ISO/RTO. ISO-NE has yet to select any transmission project through its competitive planning processes. Therefore, the weighted average of historical cost escalation of traditionally-developed projects shown above excludes ISO-NE projects' observed historical cost-escalation.

While Complainants criticize nonincumbent cost cap exceptions,²⁵⁸ they ignore the fact that costs caps themselves are the exception when competition is absent and that incumbent projects can experience substantial cost overruns. The Complaint does not, and cannot, show that incumbent projects systematically hit closer to their initial estimates as measured against competitive projects, and it is irrational to expect granting incumbents a monopoly would provide greater cost discipline than competition. Moreover, even if one could make such a showing (and Complainants certainly have not made it), it would only establish that without the cost discipline provided by competition, incumbent transmission providers will have no more incentive to establish realistic cost targets than they do to meet such targets once established. Complainants aver that final costs of competitive projects exceed bids.²⁵⁹ Even if that does happen, it does not follow that competition produces no savings at all, even when the initial estimates are exceeded. As explained earlier, competitive bids work to discipline initial project scoping and design, the benefits of which

²⁵⁸ See Complaint at 59.

²⁵⁹ See *id.* at 55.

still accrue even if some cost escalation occurs post-award of the final bid. (The same cannot be said for incumbent scoping and design.)

Complainants here have a shared interest in building the most expensive project possible – more rate base, more revenue. If there are two possible solutions to a transmission need, absent a competitive, transparent process, why wouldn't an incumbent transmission owner want the more expensive solution, and even more troubling, how would consumers even know of the other, more cost-effective alternative?²⁶⁰

Experience shows²⁶¹ that competitive projects have come in on time and on budget. Curiously, the Complaint fails to demonstrate the same for incumbent projects.

c. Complainants Assume, Without Evidence, That Consumers Will Be Protected from Excess Costs in the Absence of Employing the Competitive Transmission Process for Large-Scale Regional Projects.

The Complaint argues that the competitive solicitation process “hurts affordability for everyday Americans”²⁶² and that direct assignment of large-scale transmission projects to incumbent transmission owners is the best way to ensure affordability and protect customers.²⁶³ The Complaint invokes several incumbent utility-funded reports and affidavits to question cost-savings from competitive solicitations, but Complainants’ outside affiants are not able to definitively conclude that solicitations fail to provide

²⁶⁰ “Counterflow: Say It Ain’t So, Joe,” RTO Insider, July 4, 2022, *available at* <https://www.rtoinsider.com/30413-counterflow-say-it-aint-so-joe/> (last accessed May 27, 2026).

²⁶¹ “Response to Concentric Energy Advisors’ Report on Competitive Transmission,” The Brattle Group, August 2019, at 2, *available at* https://www.brattle.com/wp-content/uploads/2021/05/16873_response_to_concentric_energy_advisors_report_on_competitive_transmission.pdf (last accessed May 27, 2026).

²⁶² Complaint at 1; *see also id.* at 7.

²⁶³ *See* Complaint at 3, 11 (limiting Order No. 1000’s solicitation process in MISO and SPP will “promote affordability”).

consumer savings and benefits. And they certainly do not provide any evidence to support the facially absurd proposition that granting them a monopoly over transmission developers will reduce costs borne by consumers. Instead, Mr. Russo and Dr. Cohen only assert that “purported benefits of solicitations...are uncertain, and at best, small” and “are almost certainly overwhelmed by the costs of foregone benefits of AI development.”²⁶⁴

Mr. Russo and Dr. Cohen also advocate a position that the cost savings from competition are not important because “the hyperscalers would be willing to pay significantly more for power,”²⁶⁵ asserting that “hyperscalers should be willing to pay significantly more for power than current prices to bring their data center online.”²⁶⁶ As a practical matter, it is hard to see – and Complainants certainly do not explain – how all of the costs of eliminating competition could be allocated solely to hyperscalers in a way that would protect “everyday Americans,”²⁶⁷ who are already struggling with current prices. In any event, however, this also fails under the Federal Power Act’s mandate that *all* rates must be just and reasonable; “all” rates includes the rates of data centers and other large loads like manufacturers, both of whom are absent from the parties to this Complaint.

As an initial matter, there is no *de minimis* exception to the FPA’s requirement that rates be just and reasonable, so even if the benefits were small, the Commission would not be free to disregard them.²⁶⁸ That is true regardless of whether the benefits are supposed to be small in an absolute sense or relative to purported economy-wide benefits of

²⁶⁴ See Complaint at 10 (citing Exhibit G (Russo & Cohen testimony)).

²⁶⁵ See Cohen/Russo Affidavit at 12.

²⁶⁶ *Id.* at 16.

²⁶⁷ Complaint at 1.

²⁶⁸ *Texaco*, 417 U.S. at 399.

accelerated AI development. Indeed, the suggestion that the Commission could tolerate unjust and unreasonable rates on the theory that they are outweighed by the benefits of AI development ignores the fact that Congress tasked the Commission with ensuring that rates for FERC-jurisdictional services are just and reasonable and did not give it any sort of “broad license to promote the general public welfare.”²⁶⁹ In any event, as demonstrated herein, there is no evidence that the solicitation process will cause any undue delays or harm AI development. Therefore, the Complaint’s alleged supporting evidence rests on a false and irrelevant premise – because the solicitation process does not harm AI development, it matters not how AI development is valued or quantified.

i. Direct Assignment of Large-Scale Transmission Projects to High Cost Incumbent Transmission Owners, Like ITC Midwest, Harms Consumer Affordability.

Direct assignment of large-scale transmission projects to incumbent utilities outside of a competitive process hurts affordability in the near-term and the long-term. To demonstrate the high-cost profile of incumbent utilities like the Complainants, the Protesters have reviewed the network integrated transmission service (“NITS”) rate of ITC Midwest and compared that rate to the rest of the MISO footprint to show that the ITC Midwest rate is non-competitive from the outset. Mr. Terry, President of ITC Midwest, asserts that delaying large load project additions denies ITC Midwest’s customers “the affordability benefits” from transmission.²⁷⁰ Witness Terry further explains as follows:

For example, ITC Midwest projects that its network rate will decrease between 12-15 percent by 2030 due to new electricity load additions at the Big Cedar Industrial Center load. Those rate benefits would be lost had the transmission facilities to serve data

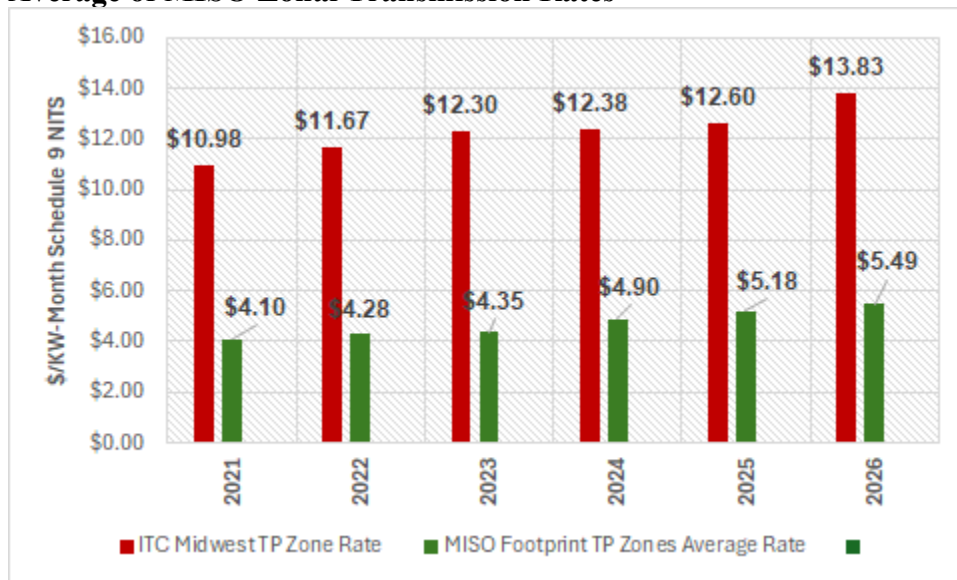
²⁶⁹ *NAACP*, 452 U.S. at 669.

²⁷⁰ *See* Exhibit D, Terry Testimony at 8:4-5.

centers at the Big Cedar Industrial Center been subject to the lengthy solicitation process. These rate benefits from serving large load customers across ITC Midwest’s footprint are even higher—ITC Midwest projects that its network rate will decline 20 percent from now through 2030 due to additional load growth on the system.²⁷¹

MISO Schedule 9 rates reflect costs associated with NITS service, including investments made to interconnect new load additions.²⁷² Zonal rates for ITC Midwest for the last five years show an increasing trend and continues to be the highest in the MISO footprint. The below figure compares the ITC Midwest Zonal rate with the average MISO rate for each of the years between 2021 and 2026. The ITC Midwest Zonal rate ranges being 140% – 180% more than the overall average.

Schedule 9 NITS Rate (\$/KW-Month): ITC Midwest Zonal Rate v. Average of MISO Zonal Transmission Rates



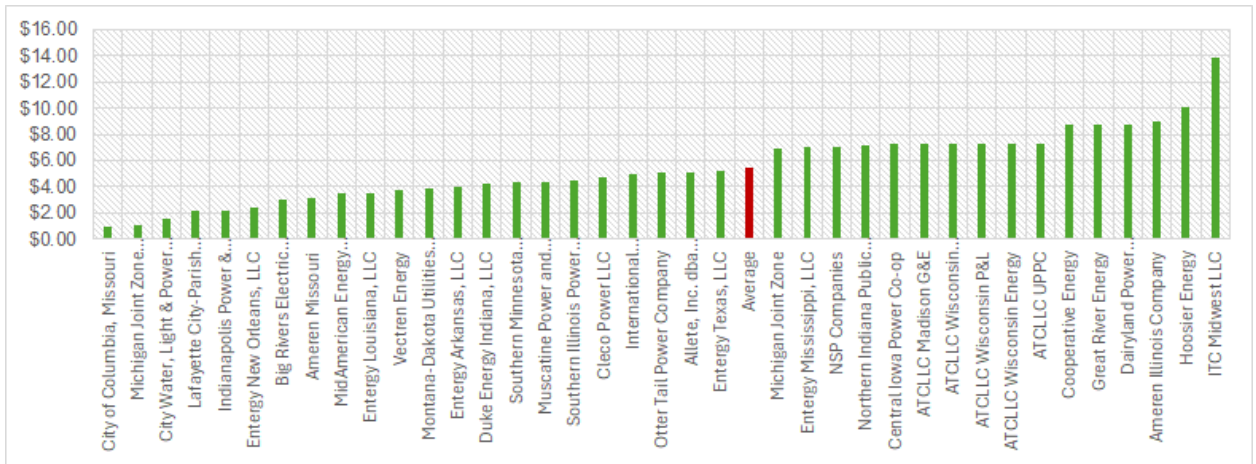
²⁷¹ See Exhibit D, Terry Testimony at 8:5-1.

²⁷² More information regarding the zones can be found here (see Schedule 9-Network Integrated Transmission Service): <https://www.misoenergy.org/legal/rulesmanuals-and-agreements/tariff/>.

ITC has not substantiated its speculative assertion that ITC Midwest’s rates will go down in the future as a result of load growth on the system. The above chart demonstrates that ITC Midwest’s transmission cost profile is excessive compared to the rest of the MISO footprint, and raises serious questions as to the justness and reasonableness of ITC Midwest’s rates, let alone the wisdom in providing more direct assignments of projects to ITC Midwest outside of a competitive solicitation process.

As can be observed from the figure below, data from 2026 continues to reinforce that ITC Midwest zonal rate is the highest in the MISO footprint and it is 152% higher than the average of all MISO zonal rates. Thus, even if ITC Midwest’s rate were to decrease by 20% and other zones’ rates were to increase by 20% by 2030, ITC Midwest rates would continue to be the highest rate, which directly undermines Witness Terry’s assertions about ITC’s rate becoming affordable in the future.

2026 Schedule 9 NITS Zonal Rate (\$/KW-Month)



ii. Directly Assigned Projects to Incumbent Utilities Do Not Require Binding Cost Containment Commitments, Thereby Failing to Protect Consumers from Cost Overruns.

On July 25, 2022, MISO’s Board of Directors approved the LRTP Tranche 1 portfolio for inclusion in the 2021 MISO Transmission Expansion Plan (“MTEP21”). The Tranche 1 portfolio includes Morrison Ditch – Reynolds – Burr Oak – Leesburg – Hiple LRTP Tranche 1 project, which MISO assigned all facilities for the project to Northern Indiana Public Service Company (“NIPSCO”) because the project (“NIPSCO Project”) did not contain any Competitive Transmission Facilities. At the time the Board approved the LRTP Tranche 1 portfolio, MISO estimated the Project cost to be \$260.9 million (in 2022 dollars) which is considered the Project’s Baseline Cost Estimate (“BCE”) under the MISO Tariff.²⁷³ MISO later converted the Project’s BCE to an equivalent value of \$340 million (nominal dollars).²⁷⁴

As part of its required Q2 2024 MTEP Quarterly Project update, NIPSCO informed MISO that the estimated costs for the assigned Project were forecasted to be \$675.4 million (nominal dollars). MISO initiated the Variance Analysis process, given the proposed increase in costs at roughly twice the amount that was approved by the Board and greater than the 25% cost increase trigger in the MISO Tariff.²⁷⁵

²⁷³ See MISO Tariff, Attachment FF, § IX.C.1 (providing that a forecasted or actual cost increase of 25% or more relative to the Baseline Cost Estimate is grounds for the commencement of Variance Analysis investigation by MISO).

²⁷⁴ See NIPSCO Project Mitigation Plan (Mar. 19, 2026), available at [https://cdn.misoenergy.org/Morrison Ditch %E2%80%93 Reynolds %E2%80%93 Burr Oak %E2%80%93 Leesburg - Hiple Variance Analysis Mitigation Plan Public Notice746498.pdf](https://cdn.misoenergy.org/Morrison%20Ditch%20Reynolds%20Burr%20Oak%20Leesburg%20Hiple%20Variance%20Analysis%20Mitigation%20Plan%20Public%20Notice746498.pdf) (last accessed May 27, 2026) (hereinafter “MISO NIPSCO Project Mitigation Plan”).

²⁷⁵ See MISO Tariff, Attachment FF, § IX.C.1.

As part of the Variance Analysis investigation, MISO identified refined scopes of work, reductions in construction cost and lower contingency costs, which resulted in a revised cost estimate of \$477.8 Million.²⁷⁶ While NIPSCO had proposed a much higher cost increase, this amount was reduced to the \$477.8 million because MISO took the initiative to work with NIPSCO to make the routes and/or upgrade solution more cost effective than what NIPSCO had proposed. This highlights the fact that incumbent transmission owners developing projects not subject to competitive solicitations often lack incentives to be cost conscious or provide solutions that might minimize costs. Unlike competitive developers that commit to cost containment provisions to win competitively bid projects, incumbent transmission owners do not have any specific motivation to do so – this is particularly true for long-range, Multi-Value Projects (“MVPs”), which are regionally cost shared across a larger portion of the RTO’s footprint. Notably, from a state jurisdictional perspective, the customers at the local level are not directly bearing the entire cost increase. The increase is spread throughout the footprint (MISO north/central in this case), which results in making the project appear to be cost effective at the “local” level even with massive cost overruns.

It is also worth noting that in this instance with such massive cost overruns, potential outcomes are still geared towards retaining the incumbent transmission owning entity, NIPSCO, for the Project because of potential applicability of a state ROFR status.²⁷⁷ Reassignment was not an option because none of the facilities in the Project were eligible for the competitive transmission process. Cancellation was not an option due to the

²⁷⁶ See MISO NIPSCO Project Mitigation Plan at 1.

²⁷⁷ The Commission has an opportunity to fully exercise its ratemaking jurisdiction in Docket No. EL22-78-000.

“interconnectedness of the Project with the rest of the Tranche 1 portfolio.”²⁷⁸ That is, the economic analysis is done at the LRTP Portfolio level and not on an individual project basis. Given that the benefit to cost ratio was relatively high for Tranche 1 as a portfolio, the NIPSCO project could have increased many times over and yet this project would not have been cancelled because the cost effectiveness is evaluated at the portfolio level. If this project had been competitively procured and the costs had increased due to unforeseen factors, ratepayers would have been more protected due to the cost containment commitments offered by competitive developers. Competitive bidding, especially associated with large scale MVP projects that are cost shared, is therefore a critical factor to minimize costs for consumers and should be positively reinforced.

In October 2024, the MISO End Use Customer Sector initiated a new stakeholder issue submission on the topic of transmission cost containment and advocated for several reforms to tracking and challenging costs, including transparency reforms to MISO’s Variance Analysis (which is conducted confidentially without any publicity or stakeholder input).²⁷⁹ The MISO End Use Customer Sector faced ongoing resistance from the incumbent transmission owners to several proposed cost containment reforms.²⁸⁰ Ultimately, MISO did facilitate and advance heightened public notice and transparency improvements to the Variance Analysis, which resulted in a robust stakeholder discussion

²⁷⁸ See MISO NIPSCO Project Mitigation Plan at 2.

²⁷⁹ The landing page for the Transmission Cost Containment Issue Submission is available here: <https://www.misoenergy.org/engage/MISO-Dashboard/transmission-cost-containment/>

²⁸⁰ See, e.g., “RECBWG: Transmission Cost Containment: Variance Analysis proposed reforms and Attachment FF proposed redlines (RECBWG-2024-1) (20251118),” MISO Stakeholder Feedback of the Transmission Owners Sector, available at [RECBWG: Transmission Cost Containment: Variance Analysis proposed reforms and Attachment FF proposed redlines \(RECBWG-2024-1\) \(20251118\)](#) (last accessed May 71, 2026).

during the April 22, 2026 Planning Advisory Committee.²⁸¹ While Protesters appreciate these transparency improvements, as well as MISO’s efforts to push back on NIPSCO in the recent Mitigation Plan for the NIPSCO Project, the fact remains that consumers still remain largely unprotected from cost overruns associated with incumbent projects. The End Use Customer Sector summarized their concerns at the conclusion of the cost overrun review as follows:

We stand by our reforms recommended during the November [2025 stakeholder meeting], and we respectfully submit that no one has disproven our fundamental point: in light of the substantial planned spend in transmission, there is a significant risk that consumers will be subjected to paying excessive transmission charges, including for projects where benefits no longer exceed the costs and for projects that may not even become used and useful. The Eligible Projects enjoy a presumption of prudence that costs are prudently incurred. Many projects enjoy the Abandoned Plant Incentive, which transfers 100% of financial risk from the developer to consumers. **Given the existing federal ratemaking regime and the lack of successful prudence challenges pertaining to transmission projects, the Damocles sword of high energy costs hangs over consumers’ heads in the years to come.**²⁸²

Notably, the Complaint fails to advance any consumer protections, let alone show how direct assignments of projects will help protect consumers against cost overruns.

²⁸¹ See “Stakeholders Demand Details of MISO Tx Project Re-evaluations, Cost Estimates,” RTO Insider, Apr. 26, 2026, available at <https://www.rtoinsider.com/130865-stakeholders-want-details-behind-miso-tx-project-reevaluations/> (last accessed May 27, 2026). The Minutes from the April 22, 2026 Planning Advisory Committee are available here: https://cdn.misoenergy.org/20260527_PAC_Item_01c_Minutes_20260422754915.pdf (last accessed May 27, 2026).

²⁸² See “End Use Customer Sector Statement on Transmission Cost Containment at the December 16, 2025 Regional Expansion Criteria and Benefits Working Group (RECBWG) Special Meeting,” available at https://cdn.misoenergy.org/20251216_RECBWG_Item_02_End_Use_Customer_Sector_Comments737624.pdf (last accessed May 27, 2026) (emphasis added).

iii. Consumers in SPP are Not Protected By Incumbent Transmission Owner Project Cost Overruns; Competition Delivers Savings While SPP Short Term Reliability Projects (That Are Directly Assigned to Incumbents) Are Prone to Substantial Cost Overruns Due to a Lack of Cost Containment Protections.

Contrary to Complainants' assertions that competitive solicitations produce no measurable savings for ratepayers, the evidence affirmatively demonstrates clear consumer benefits from binding cost containment provisions including capital cost caps, annual revenue requirement caps, return-on-equity caps, and schedule guarantees that protect ratepayers from cost overruns and missed in-service dates. The only two competitive developers with completed projects in SPP, Transource Oklahoma, LLC and NextEra Energy Transmission Southwest, LLC, proposed cost containment provisions that reduced the projects' 2026 annual revenue requirements by more than \$25 million in aggregate, representing an average concession of 32% per project.²⁸³ Thus, while these projects experienced cost overruns, cost caps and concessions were instrumental in limiting the impacts.

In contrast, directly assigned projects to incumbent transmission owning entities do not demonstrate similar cost containment provisions. Indeed, there appears to be only one instance where the transmission owning entity, SPS, volunteered any sort of cost concession and this was after SPS's capital cost estimate on the project (the Potter – Crossroads – Phantom 765 kV project) more than doubled, (from \$1.69 billion to \$3.62

²⁸³ See Toleman Affidavit on Behalf of Viridon at 6, Table 2 (“2026 Competitive Cost Concessions”).

billion. Even then, the incumbent's cost concessions were weaker and narrower than those on competitively bid projects.²⁸⁴

Further, data indicates that several direct assigned projects to address potential reliability violations in an expedited manner, are plagued with time delays and cost overruns. Attachment Y of the SPP tariff and associated SPP Business Practices establish a narrow exception to competition for projects that must be placed in service within three years to address an identified reliability violation. This provision is intended to allow expedited execution of limited-scope projects where urgency precludes a competitive process. The projects that fit this category are defined as Short Term Reliability Projects or STRs. In 2025, the recommended STR projects were projected to enter service an average of ~3 years after the associated need dates.²⁸⁵ These timelines are inconsistent with the tariff's three-year construct and undermine the premise that urgency necessitates direct assignment. From a cost variance perspective, Viridon's analysis shows that the STR process only directly assigning projects has cost ratepayers over \$2 billion, with eight of the 13 previous STR projects reporting cost overruns, as shown in the table below.

²⁸⁴ Toleman Affidavit at 8, Table 3 (Direct Assignment vs. Competitive Outcomes).

²⁸⁵ See Exhibit F (Viridon Southwest LLC January 7, 2026 Letter to SPP Board Regarding the 2025 ITP Short-Term Reliability Projects Report).

All STR Projects Costs (Appendix 4 to Viridon Comments)²⁸⁶

Study	Project	Project Cost (\$M)		Delta		Competitive Upgrade(s) Cost (\$M)		Delta	
		SPP Estimate or Baseline with Escalation	Current or Final	\$M	%	SPP Estimate or Baseline with Escalation	Current or Final	\$M	%
2015 ITPNT ⁴⁰	Tap Hitchland - Finney 345 and New Sub - Walkemeyer 115 kV	35 ⁴¹	35 ⁴²	-5	-17%	28 ⁴¹	24 ⁴²	-5	-17%
	Baldwin Creek 230/115 kV transformer								
	RIAC 115 kV voltage conversion	5 ⁴¹	4 ⁴⁶	-1	-26%	5 ⁴¹	4 ⁴⁶	-1	-26%
2016 ITPNT ⁴⁷	Mustang - Seminole 115 kV	22 ⁴⁸	16 ⁴⁹	-6	-26%	22 ⁴⁸	16 ⁴⁹	-6	-26%
2018 ITPNT ³³	Blue Valley - Crosstown 161 kV								
2023 ITP ³⁴	Craig - Atlantic - W Gardner 345 kV	42 ²⁹	117 ¹¹	+91	+215%	25 ³⁷	73 ¹¹	+48	+194%
	Cunningham - Quahada 115 tap to Buckeye 115 kV	26 ⁴⁸	39 ³	+13	+50%	14 ³	19 ¹¹	+5	+38%
	Potter - Crossroads - Phantom 765 kV	1691 ²	3624 ³	+1933	+114%	1691 ²	3624 ³	+1933	+114%
2024 ITP ⁶⁰	Holcomb - NE State Line (Sidney) 345 kV	887 ²	1051 ¹⁸	+163	+18%	399 ²	500 ¹⁸	+101	+25%
	Buffalo Flats - Delaware 345 kV	484 ²	493 ⁷	+9	+2%	484 ²	476 ⁷	-8	-2%
	Delaware - Monett 345 kV	343 ²	433 ³	+90	+26%	343 ²	414 ³	+71	+21%
	Monett - N Branson 345 kV	166 ²	253 ³	+87	+52%	166 ²	213 ³	+47	+28%
	Moore County - XIT 230 kV	53 ²	72 ¹⁰	+19	+36%	53 ²	55 ¹⁰	+2	+3%
	Iron House - Texaco 115 kV	6 ²	24 ¹¹	+18	+314%	6 ²	20 ¹¹	+14	+249%
	Grapevine - Kingsmill 115 kV	14 ²	28 ¹¹	+14	+93%	14 ²	11 ¹¹	-3	-26%
AVERAGE					+63%				+44%
TOTAL				+2,409				+2,199	

C. Complainants Fail to Justify the Relief Sought in the Complaint (FPA Section 206, Step 2).

As explained above, Complainants have failed to demonstrate that MISO’s and SPP’s competitive solicitation rules are unjust, unreasonable or unduly discriminatory. Accordingly, because Complainants have failed to satisfy their threshold burden under Section 206 of the FPA, the Commission need not – and lawfully cannot – consider the relief sought in the Complaint,²⁸⁷ and the Complaint should be summarily rejected. Even assuming *arguendo* that Complainants’ speculative and unsubstantiated assertions about

²⁸⁶ See Exhibit F (Viridon Southwest LLC January 7, 2026 Letter to SPP Board Regarding the 2025 ITP Short-Term Reliability Projects Report).

²⁸⁷ See 16 U.S.C. § 824e(a) (2018) (providing that the Commission shall fix a replacement rate where it has found an existing rate to be unjust, unreasonable, unduly discriminatory or preferential); *Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) (explaining that Section 206 of the FPA “mandates a two-step procedure that requires FERC to make an explicit finding that the existing rate is unlawful before setting a new rate”); *id.* at 25 (“Without a showing that the existing rate is unlawful, FERC has no authority to impose a new rate.” (citation omitted)); *American Gas Ass’n v. FERC*, 912 F.2d 1496, 1504 (D.C. Cir. 1990) (stating that “the directive to impose a just and reasonable rate or provision is triggered only by the Commission’s finding that the existing one is ‘unjust, unreasonable, unduly discriminatory, or preferential’”).

delays allegedly attributable to competitive solicitations were sufficient to carry their burden, there would still be no basis for adopting either of the remedies proposed in the Complaint, which would effectively reinstate federal rights of first refusal already found unlawful in Order No. 1000.²⁸⁸

At bottom, Complainants would have the Commission eliminate competition in the name of correcting perceived inefficiencies in the competitive solicitation processes put in place by MISO and SPP. This extreme proposal does nothing to ensure real improvements in the time it takes to complete projects.²⁸⁹ In fact, if eliminating competition were the efficient solution, there would be no need for any right of first refusal. As Judge Posner observed in the decision affirming the elimination of the right of first refusal in MISO:

A market that can support only one firm because conditions of supply and demand leave room for no more—what is called a “natural monopoly”—has no need for a right of first refusal. Such a right implies a possibility of entry (why otherwise create such a right?)—in other words room for an additional firm or firms, yet the right enables the incumbent firm to ward off entry.²⁹⁰

The disconnect between the alleged wrong and the proposed remedy here only serves to underscore that the Complaint has nothing to do with efficiency or “speed to power” and

²⁸⁸ See, e.g., Order No. 1000, 136 FERC ¶ 61,051 at P 7 (finding that “leaving federal rights of first refusal in place for these facilities would allow practices that have the potential to undermine the identification and evaluation of a more efficient or cost-effective solution to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are unjust and unreasonable or otherwise result in undue discrimination by public utility transmission providers”); *id.* at P 284 (explaining that “granting incumbent transmission providers a federal right of first refusal with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation effectively restricts the universe of transmission developers offering potential solutions for consideration in the regional transmission planning process” and holding that “[t]his is unjust and unreasonable because it may result in the failure to consider more efficient or cost-effective solutions to regional needs and, in turn, the inclusion of higher-cost solutions in the regional transmission plan.”).

²⁸⁹ See Toleman Affidavit at 16 (“So long as the oil and gas, data center, and manufacturing industries exist, the challenge of steeply rising energy consumption will be a persisting challenge well beyond the five-year hiatus Complainants purport to be requesting.”)

²⁹⁰ *MISO Transmission Owners*, 819 F.3d at 333-34.

everything to do with Complainants’ desire to have their unnatural monopoly back and thereby “to ward off entry”²⁹¹ and extract monopoly rents from consumers.

Complainants have not demonstrated that the Commission has authority under the FPA to grant federal electric transmission franchises. If Congress wanted FERC to establish monopolies, versus regulating natural monopolies, it would have done so expressly. Contrary to the Complaint’s requested relief, the history of the FPA “indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.”²⁹² The body of relevant appellate and FERC precedent favors maximizing competition, not restricting it.²⁹³

1. The Remedies Proposed by Complainants are Disproportionate to the Harm Alleged, as They Would Unnecessarily Eliminate Competition

a. Option 1 Eliminates Competition Without Addressing the Timeliness Concerns Raised in the Complaint

Under the first option proposed in the Complaint, a project would not be subject to solicitation to the extent that either (a) the project has “already been identified, in any generator interconnection study, load study, delivery-point study, transmission service study, or other comparable study available to the RTO before issuance of the RFP, as a

²⁹¹ *Id.* at 334.

²⁹² *Otter Tail Power Co. v. U.S.*, 410 U.S. 366, 374 (1973).

²⁹³ See *Morgan Stanley Capital Grp. v. Public Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 535-536 (2008) (cautioning against utilizing the transmission grid to “exert monopolistic influence over other areas”); *Grid Reliability & Resilience Pricing*, 162 FERC ¶ 61,012 at P 9 (2018) (“[F]or more than two decades now, support for markets and market-based solutions has been a core tenet of Commission policy.”), *on reh’g*, 174 FERC ¶ 61,112 (2021)); see also *North Carolina State Bd. Of Dental Examiners v. FTC*, 574 U.S. 494, 504 (2015) (describing “the Nation’s commitment to a policy of robust competition”); see also *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951) (“The heart of our national economic policy long has been faith in the value of competition.”).

contingent transmission facility necessary to enable a specific new generation or load to take service”;²⁹⁴ or (b) “running a solicitation would delay the additions of new loads or generation”²⁹⁵ Far from being “appropriately tailored,”²⁹⁶ these exceptions would leave few, if any, projects subject to competition. While such an outcome serves Complainants’ purposes, it does little or nothing to accelerate the transmission development process. Complainants claim that “many generators selected in MISO’s ERAS process have service that is contingent on transmission facilities that are subject to solicitation requirements,”²⁹⁷ but fail to explain how exempting all contingent transmission facilities from solicitation would speed the development of ERAS generators.

Similarly, the Complaint does not say how MISO or SPP are supposed to determine whether a solicitation would cause a delay or, even if such a determination could be made, how eliminating solicitations would speed up the total development time. In this respect, the Complaint completely fails to address the fact that *MISO and SPP* set the target in-service dates for transmission facilities,²⁹⁸ and the development timelines in responses to solicitations are driven by those target dates.²⁹⁹ If MISO or SPP needs a given transmission project completed earlier, it can and presumably would set the in-service date accordingly.

²⁹⁴ See Complaint at 64.

²⁹⁵ *Id.* at 65.

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 68.

²⁹⁸ See MISO Tariff, Attachment FF, §§ VIII.C.1.1(a), VIII.C.1.2(a) (stating that an RFP shall include, among other things, the “[e]xpected in-service date”); SPP Tariff, Attachment Y, § V.2 (SPP shall issue a Notification to Construct, which shall include “a reasonable project schedule, including a project need date”).

²⁹⁹ See MISO Tariff, Attachment FF, § VIII.D.5.2 (stating that proposals must “contain a detailed project implementation schedule, driven by the required in-service date”); SPP Tariff, Attachment Y, § III.2.c.vi.3 (proposals must include an “anticipated project timeline”).

Moreover, as noted previously, Complainants ignore existing procedures under which MISO and SPP can bypass or shorten the solicitation process when they need a transmission project completed earlier.³⁰⁰ It makes no sense to blame competitive bidding for supposed delays when the timelines are dictated by MISO and SPP themselves, and eliminating competition will do nothing to tighten those timelines.

In fact, as discussed above, competition has successfully reduced transmission development timelines, even taking into account the time required for the solicitation and selection process. By contrast, Complainants' Option 1 will result in no real speed-to-power improvements and would only serve to effectively reinstate an unjust, unreasonable, and unduly discriminatory federal right of first refusal that would "undermine the identification and evaluation of a more efficient or cost-effective solution to regional transmission needs,"³⁰¹ to the detriment of consumers.

b. Option 2 Falsely Assumes that the Commission Can Lawfully Impose an Unjust and Unreasonable Rate On a Temporary Basis

Under Complainants' second option, "the Commission would direct MISO and SPP to suspend the solicitation process for a five-year period from the date of this Complaint, covering the next five years of Board-approved projects in the annual MTEP process in MISO and the annual ITP process in SPP through April 2031."³⁰² While Option 1 is a thinly veiled attempt to reinstate the same federal rights of first refusal already found to be

³⁰⁰ See MISO Tariff, Attachment FF, § VIII.A.3 (stating that the applicable Transmission Owner will be designated to develop any Immediate Need Reliability Project); SPP Tariff, Attachment Y, § I.13 (allowing designation of the incumbent Transmission Owner for Short-Term Reliability Projects).

³⁰¹ See Order No. 1000, 136 FERC ¶ 61,051 at P 7.

³⁰² See Complaint at 66-67 (footnote omitted).

unjust and unreasonable,³⁰³ Option 2 wears no veil at all. Like Option 1, Option 2 would do nothing to accelerate transmission development and would simply reinstate the unnatural monopoly eliminated in Order No. 1000.

As an initial matter, it bears emphasis that, while Complainants describe Option 2 as “temporary,”³⁰⁴ they concede that the five-year period it would cover constitutes “the most critical time period for the building of transmission infrastructure” and that “transmission approved over the next several years will determine the availability of transmission lines needed over the next 10-15 years”³⁰⁵ This means that Option 2 would require MISO and SPP to build out their systems, including the entirety of SPP’s 765 kV backbone, with *zero* competition, a patently unjust and unreasonable result.

The Complaint tries to suggest that it is necessary to throw competition to the wolves at this time in order “to win the AI race.”³⁰⁶ But as the Commission well knows, President Trump has called for AI companies and hyperscalers to bring their own new generation and cover the costs of any transmission needed for their data centers, emphasizing that data centers “must not pass this cost on to the American people.”³⁰⁷ To the extent a transmission project is needed in less than three years, the existing tariffs already allow MISO or SPP to address that need, without using a competitive solicitation

³⁰³ See, e.g., Order No. 1000, 136 FERC ¶ 61,051 at PP 7, 284.

³⁰⁴ See Complaint at 65.

³⁰⁵ *Id.* at 65-66.

³⁰⁶ *Id.* at 65.

³⁰⁷ See Proclamation No. 11014 of March 4, 2026, 91 Fed. Reg. 11439 (Mar. 9, 2026); The White House, *Fact Sheet: President Donald J. Trump Advances Energy Affordability with the Ratepayer Protection Pledge* (Mar. 4, 2026), <https://www.whitehouse.gov/fact-sheets/2026/03/fact-sheet-president-donald-j-trump-advances-energy-affordability-with-the-ratepayer-protection-pledge/>.

process, by designating the project as an Immediate Need Reliability Project³⁰⁸ or Short-Term Reliability Project,³⁰⁹ respectively, or through an EPR process. Complainants therefore cannot be permitted to use AI needs as an excuse for eliminating competition to the detriment of consumers generally. Moreover, the Commission has already taken steps to accommodate data centers by directing PJM Interconnection, L.L.C. (“PJM”) to clarify its interconnection rules and provide different transmission service options,³¹⁰ and by approving SPP’s High Impact Large Load initiative.³¹¹ The Commission has further indicated that it intends to act on the Advance Notice of Proposed Rulemaking proceeding initiated by the U.S. Secretary of Energy next month.³¹² AI development therefore does not support, much less require, that the Commission retreat from its “overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.”³¹³

The Complaint overlooks the fact that this is a period when competition is most needed. Indeed, the reforms in Order No. 1000, including elimination of federal rights of first refusal, were undertaken precisely because “changes are at work in the electric utility industry that have created an additional, and potentially significant, need for new transmission infrastructure.”³¹⁴ In Order No. 1000, the Commission expressly recognized

³⁰⁸ See MISO Tariff, Attachment FF, § VIII.A.3.

³⁰⁹ See SPP Tariff, Attachment Y, § I.13.

³¹⁰ See *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,217 (2025).

³¹¹ See *Southwest Power Pool, Inc.*, 194 FERC ¶ 61,031 (2026).

³¹² See *Interconnection of Large Loads to the Interstate Transmission Sys.*, 195 FERC ¶ 61,045 (2026).

³¹³ See Order No. 1000, 136 FERC ¶ 61,051 at P 286 (quoting *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374 (1973)).

³¹⁴ See Order No. 1000-A, 139 FERC ¶ 61,132 at P 50.

that “in an era of increasing transmission congestion and [with] the need for significant new transmission investment,” it “could not rely on the self-interest of transmission providers to expand the grid in a not unduly discriminatory manner.”³¹⁵ Yet, without any sense of irony, Complainants come before the Commission with their self-interested pleas for reinstatement of federal rights of first refusal, ostensibly in the name of facilitating transmission development. The Commission was not fooled by similarly self-interested arguments advanced in opposition to Order No. 1000 and should not be fooled this time.

There is no basis for adopting the Complainants’ suggestion and now walking away from competition, even as an allegedly “interim” measure.³¹⁶ Contrary to the assertions in the Complaint,³¹⁷ there is no exception to the FPA’s mandate that rates be just and reasonable where unjust and unreasonable rates are to be implemented on a temporary or interim basis.³¹⁸ Thus, while the Complaint points to temporary measures adopted by

³¹⁵ See Order No. 1000, 136 FERC ¶ 61,051 at P 17.

³¹⁶ Complainants’ request for relief impacts billions of dollars in projects that will be planned and approved over the next five years, and thus regionally cost allocated to customers over the multi-decade lifetime of the transmission asset (which can range from 30 to 60 years, depending on the asset). The measure is far from “interim.”

³¹⁷ See Complaint at 65-66 (claiming that “[t]he Commission’s significant discretion in setting a just and reasonable replacement rate extends to imposing temporary or interim solutions when warranted by the record”).

³¹⁸ See 16 U.S.C. § 824d(a) (2018) (“*All* rates and charges . . . and *all* rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.” (emphases added)); *ISO New England Inc.*, 171 FERC ¶ 61,235 at P 57 (2020) (“The interim nature of the program does not relieve ISO-NE of the need to demonstrate that the Inventoried Energy Program is just and reasonable . . .”), *petition for review granted in part on other grounds, Belmont Mun. Light Dep’t v. FERC*, 38 F.4th 173 (D.C. Cir. 2022); *ISO New England Inc.*, 124 FERC ¶ 61,235 at P 25 (2008) (explaining that “there is no provision in section 205 that allows the Commission to approve filings on an interim basis” and that the Commission thus found the proposal at issue to be “just and reasonable on its merits” (footnote omitted)); *ISO New England Inc.*, 94 FERC ¶ 61,237 at 61,846 (2001) (noting that a proposed charge was “only intended to be an interim measure” but nonetheless holding that the proponent “had the burden of showing the charge was just and reasonable”).

PJM,³¹⁹ the Commission expressly found that measure to be just and reasonable.³²⁰ Similarly, while the Complaint argues that SPP was permitted to depart from the Commission’s “first come, first served” interconnection approach,³²¹ the Commission specifically approved SPP’s cluster study proposal under the independent entity variation standard and found the proposal to be “just and reasonable, not unduly discriminatory” and that it would “accomplish the purposes of Order No. 2003 by facilitating more timely and orderly processing of interconnection requests.”³²² Here, not only is the independent entity variation inapplicable, but the Complaint seeks to attack, rather than advance, the competitive principles underlying Order No. 1000.

* * * * *

At the end of the day, both of Complainants’ options suffer from the same fatal defect: each seeks to reinstate, either on an ostensibly partial (Option 1) or temporary (Option 2) basis, a rate practice the Commission has already found to be unjust and unreasonable and, therefore, unlawful under the FPA. Complainants cannot save their unjust and unreasonable proposals by pointing to Section 309 of the FPA,³²³ because this provision only empowers the Commission “to advance remedies not expressly provided by

³¹⁹ See Complaint at 66 (discussing *PJM Interconnection, L.L.C.*, 179 FERC ¶ 61,161 (2022) (“*PJM*”), *aff’d sub nom. Citadel FNGE Ltd. V. FERC*, 77 F.4th 842 (D.C. Cir. 2023)).

³²⁰ See *PJM*, 179 FERC ¶ 61,161 at P 1 (explaining that the Commission had found “PJM’s existing Operating Agreement was unjust and unreasonable and accept[ed] PJM’s proposed revisions as the just and reasonable replacement rate” (footnote omitted)).

³²¹ See Complaint at 66 (discussing *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,114 (2009) (“*SPP*”).

³²² *SPP*, 128 FERC ¶ 61,114 at P 25.

³²³ See Complaint at 71.

the FPA, *as long as they are consistent with the [FPA]*.³²⁴ Fixing an unjust and unreasonable replacement rate would clearly be inconsistent with the FPA, because Section 206(a) of the FPA expressly requires that any replacement rate be “just and reasonable.”³²⁵ For the same reason, Complainants’ proposals find no support in orders in which the Commission has granted waivers of certain of its regulations,³²⁶ because as the order cited in the Complaint makes clear, the Commission can only “waive its regulations ‘if waiver is consistent with the language and objective of the statute under which the regulation was promulgated.’”³²⁷

To the extent Complainants are suggesting that their proposed remedies could be implemented through waivers of the applicable SPP and MISO tariff provisions, they are mistaken. As an initial matter, they have not even acknowledged, much less addressed, the Commission’s four-pronged test for tariff waivers. Even if the Commission could overlook that patent deficiency, the remedies proposed in the Complaint go well beyond what is appropriate for a tariff waiver in that they seek to “create[] an entire process that is not in the [t]ariff”³²⁸ and seek relief contrary to express requirements of Order No. 1000.

³²⁴ *Verso Corp. v. FERC*, 898 F.3d 1, 10 (D.C. Cir. 2018) (emphasis added) (citations omitted). See also, e.g., *Niagara Mohawk Power Corp. v. FERC*, 379 F.2d 153, 158 (D.C. Cir. 1967) (stating that Section 309 authorizes FERC to “use means of regulation not spelled out in detail, provided [FERC’s] action conforms with the purposes and policies of Congress and does not contravene any terms of the Act”).

³²⁵ 16 U.S.C. 824e(a) (2024).

³²⁶ See Complaint at 71-72 (discussing *Interstate Nat. Gas Ass’n of Am.*, 191 FERC ¶ 61,209 (2025) (“*INGAA*”), *reh’g dismissed*, 193 FERC ¶ 61,119 (2025)).

³²⁷ *INGAA*, 191 FERC ¶ 61,209 at P 9 (footnote omitted) (quoting *New Fortress Energy LLC*, 176 FERC ¶ 61,031 at P 25 (2021)).

³²⁸ *ISO New England Inc.*, 164 FERC ¶ 61,003 at P 47 (2018).

Moreover, the relief requested cannot be reconciled with the four prongs of the Commission’s waiver test, all of which must be satisfied if a tariff waiver is to be granted.³²⁹ First, Complainants have not demonstrated that they have acted in good faith with respect to any implicit tariff waiver request. This is not a circumstance in which Complainants have “worked diligently” and will nonetheless be unable to comply with a tariff provision “due to circumstances beyond [their] control”³³⁰ Rather, they are unsuccessful litigants who are dissatisfied with a long line of Commission and judicial precedent that has rebuffed their efforts to secure long-term, regionally planned transmission projects for themselves.

Second, the waiver is not limited in scope either temporally or substantively. A waiver giving effect to Option 2 would be for five years, while a waiver giving effect to Option 1 would be for an unlimited time period. Neither can even remotely be described as establishing a “limited period of time for the duration of the requested waiver.”³³¹ The substantive relief is similarly overreaching in scope as it would apply to an unspecified number of projects across the entirety of MISO’s 15-state and SPP’s 14-state footprints.³³²

³²⁹ See *CPV Shore, LLC*, 168 FERC ¶ 61,048 (2019) (“The Commission uses satisfaction of all four criteria as a guide to when it may be appropriate to grant waiver. If the Commission identifies a criterion that by itself makes waiver inappropriate, it need not continue to analyze other criteria before it denies waiver.” (footnotes omitted). See also *Dominion Energy Servs., Inc.*, 192 FERC ¶ 61,214 at P 22 (2025) (explaining that the Commission’s policy fosters regulatory certainty because “regulatory certainty is achieved by ensuring that tariff provisions are only waived when such requests satisfy all four of the waiver prongs”).

³³⁰ *Helix Ravenswood, LLC*, 170 FERC ¶ 61,022 (2020).

³³¹ *Tri-State Generation & Transmission Ass’n, Inc.*, 193 FERC ¶ 61,163 at P 58 (2025).

³³² See, e.g., *HQC Solar Holdings 1, LLC*, 185 FERC ¶ 61,174 at P 17 (2023) (finding that a waiver that would “apply a new penalty-free withdrawal deadly broadly to all interconnection customers who were in [the transmission provider]’s interconnection queue as of June 3, 2023 . . . is not limited in scope”); *California Indep. Sys. Operator Corp.*, 184 FERC ¶ 61,009 at P 22 (2023) (finding a requested waiver that would have applied to “16 pending cases with an

Third, the Complaint fails to demonstrate the existence of a concrete problem that would be remedied by the relief requested. While the Complaint certainly alleges the existence of a concrete problem, Complainants fail to demonstrate how the relief requested would resolve that problem.³³³ Moreover, Complainants' claims are "premised on theoretical future events."³³⁴

Fourth, granting the relief requested in the Complaint would have undesirable consequences, because it will result in substantial harm to third parties, including consumers and other transmission developers. Customers will face higher electricity prices due to increased transmission development costs when incumbents develop projects with none of the cost discipline provided by competition, and non-incumbent developers will be deprived of even the opportunity to bid.³³⁵

2. Any Replacement Rate Should Be Tailored to Expedite Solicitations While Preserving the Benefits of Competition

Section 206(b) of the FPA makes clear that the Commission is responsible for ensuring that any replacement rates are just and reasonable.³³⁶ The Commission cannot

accrued penalty amount that [movant] estimates as approximately \$2.4 million" not to be "limited in scope").

³³³ *Thunderhead Wind Energy LLC*, 173 FERC ¶ 61,179 at P 22 (2020). See also *Associated Elec. Coop.*, 180 FERC ¶ 61,111 at P 23 (2022) (addressing a request for waiver to allow more time for the parties to resolve a dispute and finding that it "does not address a concrete problem because the requested additional time will not resolve the ongoing dispute").

³³⁴ *EFS Parlin Holdings, LLC*, 184 FERC ¶ 61,205 at P 12 (2023); *PJM Capacity Suppliers*, 167 FERC ¶ 61,119 at P 12 (2019) (finding a "waiver request is speculative and therefore does not address a concrete problem").

³³⁵ See *Big Rivers Elec. Coop. v. Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,132 at P 30 (2017) (finding that "because MISO indicates that at least one project in its interconnection queue could be affected by granting this Waiver Request, we cannot conclude that granting [the] request would have no undesirable consequences").

³³⁶ See, e.g., *Maryland Pub. Serv. Comm'n v. FERC*, 632 F.3d 1283, 1285 n. 1 (D.C. Cir. 2011) (noting that, under Section 206, "[i]t is the Commission's job—not the petitioner's—to find a just and reasonable rate"); *Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 446, 454 (D.C. Cir. 1988)

fulfill that responsibility by adopting either of Complainants’ proposed remedies, which, as explained above, fail to address any concerns regarding the speed of the solicitation process and instead simply seek to throw the competition baby out with the solicitation process bathwater. Of course, that is precisely why Complainants and other incumbent transmission owners – which have not previously demonstrated any great enthusiasm for expedition – filed the Complaint. But eager as they may be to eliminate competition altogether, the fact remains that they have failed to justify such radical relief, let alone show that either of their proposed replacement rates would produce faster infrastructure developments.³³⁷

At most, the Complaint demonstrates that MISO’s and SPP’s solicitation processes could be improved, and if that is the problem, it follows that the appropriate remedy is one that improves the process. In other words, as the Commission and the courts have repeatedly recognized, the “remedy should be appropriately tailored (i.e., neither too broad nor too narrow) to the particular concern at issue”³³⁸ While the fact that the processes

(explaining that, upon finding an existing rate to be unjust or unreasonable, “the Commission is required to reach a further determination: the just and reasonable rate to be fixed in place of either an unlawful proposed or existing rate” (emphasis in original)).

³³⁷ See Toleman Affidavit at 29-30.

³³⁸ *Dominion Energy Mktg., Inc.*, 145 FERC ¶ 61,109 at n.17 (2013). See also *Colorado Off. of Consumer Counsel v. FERC*, 490 F.3d 954, 956 (D.C. Cir. 2007) (“While the statute requires the Commission to act upon a finding that rates . . . are unjust or unreasonable, it nowhere mandates that having made such a finding with respect to a discrete issue, the Commission must reopen and reevaluate all other aspects of the filed rate.”); *Associated Gas Dists. v. FERC*, 824 F.2d 981, 1019 (D.C. Cir. 1987) (rejecting the argument that the Commission was required to adopt “an industry-wide solution for a problem that exists only in isolated pocket” and stating that “[i]n such a case, the disproportion of the remedy to ailment would, at least at some point, become arbitrary and capricious”); *Badger Power Mktg. Auth., Inc. v. Wisconsin Pub. Serv. Corp.*, 114 FERC ¶ 61,208 at P 20 (2006) (rejecting complainant’s proposed remedy where there was “no nexus between [complainant]’s alleged harm and the proposed remedy that it seeks”).

could be improved does not render the existing rate practices unjust and unreasonable,³³⁹ the notion that they should be improved is not particularly controversial. Indeed, ETCC has long urged the Commission to take steps to improve the solicitation processes.³⁴⁰ Nonetheless, to the extent that the Commission believes concerns about such processes rise to the level of rendering MISO's or SPP's tariff unjust and unreasonable, the Commission should establish further proceedings to consider ways to improve those processes while maintaining the competitive framework that the Commission found to be critical to ensure "more efficient or cost-effective solution[s] to a region's needs."³⁴¹

As potential areas for improvement or further evaluation, Protesters highlight the following mechanisms and considerations in the SPP and MISO tariff frameworks where potentially unnecessary administrative delays could be reduced:

SPP Potential Timeline Modifications

- 1. SPP RFP issuance.** Under SPP's tariff, SPP has the discretion to issue an RFP by "the later of (1) thirty (30) calendar days after approval of the Competitive Upgrade by the SPP Board of Directors; or (2) eighteen (18) months prior to the date that

³³⁹ See, e.g., *Entergy Servs., Inc.*, 116 FERC ¶ 61,275 at P 32 (2006) (a rate need not "be perfect, or the most desirable way of doing things, it need only be just and reasonable" (footnote omitted)); *Louisville Gas & Elec. Co.*, 114 FERC ¶ 61,282 at P 29 ("[T]he just and reasonable standard under the FPA is not so rigid as to limit rates to a 'best rate' or 'most efficient rate' standard."), *on reh'g sub nom. E.ON U.S. LLC*, 116 FERC ¶ 61,020 (2006).

³⁴⁰ See, e.g., Comments by the Electricity Transmission Competition Coalition in Opposition to Certain Aspects of the Proposed Rule at 24, Docket No. RM21-17-000 (filed Aug. 17, 2022) (recommending that independent transmission monitors be designated to oversee transmission planning, including by "monitor[ing] compliance with the rules for competitive transmission processes [and] mak[ing] suggestions for process improvements").

³⁴¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 11 (footnote omitted). See also *id.* at P 83 (explaining that "the Commission's rationale for requiring the elimination of federal rights of first refusal is not based solely on the economic incentives of incumbent transmission developers/providers; it is also based on the belief that expanding the universe of transmission developers offering potential solutions can lead to the identification and evaluation of potential solutions to regional needs that are more efficient or cost-effective").

anticipated financial expenditure is needed for the Competitive Upgrade.”³⁴² That discretion could delay the competitive window by many months before competition even begins.³⁴³ FERC could require SPP to open its competitive window within 30 days of projects receiving Board approval, or no later than 30 days after any genuinely necessary approval-for-construction milestone, and remove the 18-month alternative.

2. **SPP incumbent utility cost estimates.** For mixed competitive/non-competitive projects, SPP may wait to issue an RFP until it receives refined cost estimates for non-competitive elements. Business Practice 7060 §8.3 currently permits up to 180 days for those cost estimates after an NTC is issued.³⁴⁴ This is a pre-solicitation delay within incumbent utility control, not a product of competition. If SPP requires updated cost information for non-competitive elements, FERC could require those estimates within 30 days, concurrent with RFP preparation.³⁴⁵
3. **SPP’s proposal window.** SPP’s tariff establishes a default submission window of 180 days but allows SPP to cut this window in half to 90 days “based on, but not limited to, the Competitive Upgrade’s need date or scope.”³⁴⁶ Because SPP’s tariff already permits a 90-day RFP response window, the Commission need not choose between delay and direct assignment. FERC could require SPP to use the tariff-authorized 90-day window for projects subject to expedited treatment, absent a specific showing that a longer window is necessary.
4. **SPP Industry Expert Panel (“IEP” evaluation.** SPP’s tariff requires that an IEP evaluate RFP proposals and submit a recommendation to SPP within 90

³⁴² SPP Tariff Att. Y §III 2(e)(i). (Transmission Owner Selection Process for Competitive Upgrades) (12.0.0), § 2.e.i.

³⁴³ On May 22, 2026, in Docket No. ER26-2604, SPP proposed several revisions to the RFP process and timeline. In particular, the proposed tariff revisions will allow SPP to issue an RFP within 180 days of projects receiving Board approval. While SPP’s filing will provide needed efficiencies, a more expeditious timeline would allow SPP to issue RFPs even faster, further boosting SPP’s ability to “get needed transmission projects in-service sooner to meet our region’s growing electricity needs and savings to customers.”

³⁴⁴ SPP, *Business Practice 7060: Notification to Construct and Project Cost Estimated Processes Effective* (Apr. 14, 2026), § 8.3.

³⁴⁵ The SPP tariff revisions currently pending in Docket No. ER26-2604 would allow SPP to issue an RFP for the Competitive Upgrades as soon as ninety (90) days after the issuance of the request for the refined cost estimate. While SPP’s filing will provide needed efficiencies, an even more expeditious timeline would allow SPP to issue RFPs even faster.

³⁴⁶ SPP Tariff Att. Y §III.2(c)(xix). (“Subject to any modifications resulting from Attachment Y, Section VIII.3(b), the deadline for all RFP Proposal submissions shall be one hundred eighty (180) calendar days from the date the RFP is issued (‘RFP Response Window’). The Transmission Provider may reduce the RFP Response Window to no less than ninety (90) days based on, but not limited to, the Competitive Upgrade’s need date or scope.”).

days.³⁴⁷ However, SPP’s tariff also sets no deadline when SPP must initiate review after proposals are due. The Commission could require immediate IEP initiation after the proposal deadline, and the IEP could be required to issue its recommendation within 60 days after the proposal deadline.

5. **SPP Board action.** SPP’s tariff sets no deadline when the Board must act after receiving the recommendation. The SPP Board could be required to act within 30 days after the IEP recommendation.
6. **NTC issuance and DTO Agreement execution.** SPP could be required to issue the Notification to Construct or NTC within 14 days after Board selection, and the Designated Transmission Owner (“DTO”) would be required to execute the DTO Agreement within 7 days after receiving the NTC.

MISO Potential Timeline Modifications

7. **MISO RFP issuance.** Under its current tariff, MISO has the discretion to release RFPs serially over up to 365 calendar days after Board approval.³⁴⁸ For LRTP Tranche 2.1, which the MISO Board approved in December 2024, up to seven separate RFPs could be released between January and December 2025—meaning the last developer cannot even submit a bid until nearly 12 months after Board approval. The stagger alone accounts for much of the Complaint’s 20-month MISO figure. MISO could be required to issue all RFPs for Board-approved competitive projects simultaneously within 30 days after Board approval. This eliminates staggered RFP issuance and prevents front-end idle time before developers can begin preparing proposals.
8. **MISO proposal submission window.** MISO’s 165-day proposal period could be treated as a firm maximum, with no discretionary extensions absent Commission authorization.
9. **MISO proposal validation.** MISO could be required to complete proposal validation within 15 days after the proposal submission deadline so that completeness review and deficiency processing do not become unbounded sources of delay.
10. **MISO proposal evaluation.** MISO’s tariff does not set a hard deadline for the evaluation window. In LRTP Tranche 1, MISO’s Competitive Transmission Executive Committee (“CTEC”) deliberations ran over 7 months with no tariff constraint. FERC could consider implementing hard, 90-day evaluation deadline after proposal validation is complete; the selection report, dispute process, and

³⁴⁷ SPP Tariff Att. Y §III 2(c)(vi). (“The IEP’s recommendation shall be submitted to the Transmission Provider within ninety (90) calendar days of the initiation of the IEP’s review.”).

³⁴⁸ MISO Tariff, Att. FF §VIII.C.

Selected Developer Agreement execution are addressed separately in the following 30-day step.

- 11. Selection report, dispute process, and Selected Developer Agreement execution.** MISO could be required to issue the selection report, complete any dispute process, and execute the Selected Developer Agreement within 30 days after CTEC evaluation.

Critically, suspending competition will not cure any alleged delays. However, addressing the issues discussed above could compress SPP's timeline potentially down to around nine months and MISO's timeline down to approximately eleven months. If the Commission's objective is to develop faster transmission development, the Commission could also consider carefully evaluating opportunities to improve planning-cycle and study-cycle bottlenecks to expand – rather than reduce or eliminate – competition.

VI. CONCLUSION

The Complaint has not been shown to be just and reasonable. Nor can Complainants demonstrate that it is not unduly discriminatory or preferential. The Commission should reject the filing with prejudice. Anything less would establish a precedent with no limiting principle that competition is not necessary in the federal energy marketplace, as well as expose consumers to substantial, unchecked cost increases. Complainants assert a false choice: that we must choose between energy affordability and speed to power when, in reality, preserving competition, cost savings, and Order 1000 need not come at the expense of improving speed to power. Complainants' Filing is a collateral attack on Order 1000, seeking to circumvent Commission requirements for project evaluation and competition through the solicitation process and is procedurally deficient due to Complainants' failure to substantiate any current applicable Tariff provisions. The Commission must reject Complainants' effort. Respectfully Submitted,

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<p><u>/s/ Michael J. Pattwell</u> Michael J. Pattwell (P72419) Benjamin J. Holwerda (P82110) Clark Hill PLC 212 East César Chávez Avenue Lansing, MI 48906 Phone: (517) 318-3100 mpattwell@clarkhill.com bholwerda@clarkhill.com</p> <p><i>Counsel to the Association of Businesses Advocating for Tariff Equity</i></p>	<p>MARYLAND OFFICE OF PEOPLE’S COUNSEL David S. Lapp People’s Counsel</p> <p>William F. Fields Deputy People’s Counsel Philip L. Sussler Senior Assistant People’s Counsel MARYLAND OFFICE OF PEOPLE’S COUNSEL 6 St. Paul Street, Suite 2102 Baltimore, MD 21202 (410) 767-8150 davids.lapp@maryland.gov william.fields@maryland.gov philip.sussler@maryland.gov</p>

The following organizations are not filing motions to intervene to obtain party status in this proceeding but desire to sign off in express support of this Protest.

<p><u>/s/ Matt Welch</u> Matt Welch Conservative Texans for Energy Innovation matt@conservativetexansforenergyinnovation.org</p> <p>Encourage Competition and Choice “We believe that today’s economy calls for a rethinking of the role of utility providers. The monopolistic structures of the past can now be altered to encourage competition in</p>	<p><u>/s/ Barry Smitherman</u> Barry Smitherman, Chairman Texans for Affordable Energy smithermantexas@gmail.com</p> <p>“Texans for Affordable Transmission supports competition for new transmission projects because it means lower costs for families and businesses alike. Our coalition represents a diverse group of supporters including manufacturing leaders, consumer advocates, public power</p>
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<p>the marketplace and recognize the rights of individuals to choose how they purchase and consume electricity. We support policies that eliminate barriers to entry for independent electric providers and, at the same time, enable greater access and choice for consumers.”</p> <p>https://www.conservativetexansforenergyinnovation.org/</p> <p><i>Conservative Texans for Energy Innovation</i></p>	<p>representatives, and non-incumbent developers all working together to deliver Texas energy independence through competition and accountability.”</p> <p>https://tx4transmission.com/about-us/</p> <p><i>Texans for Affordable Energy</i></p>
<p><u>/s/ James Zakoura</u> James Zakoura Special Counsel, Foulston Siefkin LLP 7500 College Boulevard, Suite 1400 Overland Park, Kansas 66210 Telephone: 913-253-2142 jzakoura@fouston.com</p> <p><i>Counsel to the Kansas Industrial Consumers Group, Inc.</i></p>	<p><u>/s/ Bryant Esch</u> Bryant Esch President – Wisconsin Cast Metals Association 1955 Brunner Drive P.O. Box 249 Waupaca, WI 54981 (715) 258-6674 Bryant.Esch@waupacafoundry.com</p> <p><i>Wisconsin Cast Metals Association</i></p>
<p><u>/s/ Cole Howard</u> Cole Howard Deputy Director of Policy Conservative Energy Network choward@conservativeenergynetwork.org https://conservativeenergynetwork.org/</p>	

Date: May 27, 2026

CERTIFICATE OF SERVICE

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

Dated on this 27th day of May, 2026.

/s/Kenneth R. Stark

*Counsel to the Electricity
Transmission Competition Coalition,
the Industrial Energy Consumers of
America, and the Coalition of MISO
Transmission Customers and on
behalf of Protesters*